

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright
 Terrell McSweeney

In the Matter of

**NATIONAL PAYMENT NETWORK, INC.,
a corporation, also known as NPN,
INC.**

DOCKET NO. C-4521

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Respondent named in the caption hereof, and Respondent having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violation of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45 *et seq.*; and

Respondent and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), which includes a statement by Respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; and waives and other provisions as required by the Commission’s Rules;

The parties, having agreed that the complaint may be used in construing the terms of the order and that no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of this order; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the FTC Act and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent, National Payment Network, Inc., also known as NPN, Inc. is a California corporation, with its principal place of business at 1875 S. Grant Street, Suite 250, San Mateo, California 94402.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

- A. Unless otherwise specified, “**Respondent**” means National Payment Network, Inc., also known as NPN, Inc., and its successors and assigns.
- B. “**Add-on product or service**” means any product or service relating to the sale, lease, or financing of a motor vehicle that is offered, provided, or arranged by the dealer that is not provided or installed by the motor vehicle manufacturer, including but not limited to extended warranties, payment programs, guaranteed automobile protection (“GAP”) or “GAP insurance,” etching, service contracts, theft protection or security devices, global positioning systems or starter interrupt devices, undercoating, rustproofing, fabric protection, road service or club memberships, appearance products, credit life insurance, credit accident or disability insurance, credit loss-of-income insurance, and debt cancellation and debt suspension coverage. The term excludes any such product or service that the dealer provides to the consumer at no charge.
- C. “**Clearly and conspicuously**” shall mean as follows:
 1. In a print advertisement, the disclosure shall be in a type size, location, and in print that contrasts with the background against which it appears, sufficient for an ordinary consumer to notice, read, and comprehend it.
 2. In an electronic medium, an audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade and appear on the screen for a duration, and in a location, sufficient for an ordinary consumer to read and comprehend it.
 3. In a television or video advertisement, an audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade, and appear on the screen for a duration, and in a location, sufficient for an ordinary consumer to read and comprehend it.
 4. In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

5. In all advertisements, the disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or promotion.

D. **“Competent and reliable evidence”** means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

E. **“Current customers”** means all customers who are enrolled in Respondent’s biweekly payment program as of October 1, 2014.

F. **“Fee waiver period”** means the period beginning 30 days after the date of service of the order and concluding when no current customer is enrolled in Respondent’s biweekly payment program.

G. **“Payment program”** means any product, service, plan, or program represented, expressly or by implication, to provide payment or meet other terms of a financing contract between a consumer and (1) a creditor, including an auto dealer, or (2) another financing entity, including a finance company, a bank, or another assignee.

I.

IT IS ORDERED that Respondent, its officers, agents, representatives, and employees, directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any payment program and add-on product or service, shall not in any manner, expressly or by implication:

- A. Represent that the payment program or add-on product or service will save any consumer money, including interest, unless:
 1. The amount of savings a consumer will achieve is greater than the total amount of fees and costs charged in connection with the payment program or add-on product or service and the representation is otherwise true, or
 2. Any qualifying information relating to the savings a consumer might achieve from the payment program or add-on product or service is clearly and conspicuously disclosed, including, but not limited to, information about the total amount of fees and costs charged in connection with such payment program or add-on product or service.
- B. Represent that the payment program or add-on product or service will save any consumer a specific amount of money, including interest, unless:
 1. The specified amount is the amount of savings after deducting any fees or costs charged in connection with the payment program or add-on product or service and the representation is otherwise true, or

2. Any qualifying information relating to the savings a consumer might achieve from the payment program or add-on product or service is clearly and conspicuously disclosed, including, but not limited to, information about the total amount of fees and costs charged in connection with such payment program or add-on product or service.

II.

IT IS FURTHER ORDERED that Respondent and its officers, agents, representatives, and employees, directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any payment program shall not misrepresent, in any manner, expressly or by implication:

- A. The existence, amount, timing, or manner of any fee or cost charged by Respondent or a third party in connection with such payment program;
- B. That such payment program has the ability to improve, repair or otherwise affect a consumer's credit record, credit history, credit rating, or ability to obtain credit; and
- C. The benefits, performance, or efficacy of the payment program.

III.

IT IS FURTHER ORDERED that Respondent and its officers, agents, representatives, and employees, directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any add-on product or service shall not misrepresent, in any manner, expressly or by implication:

- A. The total costs to purchase, receive, or use, or the quantity of, the add-on product or service;
- B. Any restriction, limitation, or condition on purchasing, receiving, or using the add-on product or service;
- C. Any aspect of the benefits, performance, or efficacy of the add-on product or service;
- D. Any aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy, including, but not limited to, the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the consumer; and
- E. That any add-on product or service has the ability to improve, repair or otherwise affect a consumer's credit record, credit history, credit rating, or ability to obtain credit.

IV.

IT IS FURTHER ORDERED that Respondent and its officers, agents, representatives, and employees, directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of any payment program or add-on product or service shall not make any representation or assist others in making any representation, expressly or by implication, about the benefits, performance, or efficacy of any add-on product or service or payment program, unless at the time such representation is made, the Respondent possesses and relies upon competent and reliable evidence that substantiates that the representation is true.

V.

IT IS FURTHER ORDERED that Respondent and its officers, agents, representatives, and employees, whether acting directly or indirectly, shall not assess, collect, or attempt to collect any cancellation fees from current customers who complete Respondent's biweekly payment program or finish paying off their financing contract.

VI.

IT IS FURTHER ORDERED that Respondent shall pay two million four hundred and seventy five thousand dollars (\$2,475,000.00) as follows:

- A. Respondent shall refund customers one million five hundred and twenty-six thousand dollars (\$1,526,000.00) within thirty (30) days of the date of service of this order, or remit the balance to the FTC within forty (45) days of the date of service of this order. Such refunds shall include refunds of all cancellation fees paid by customers who remained in Respondent's biweekly payment program for 48 months or more, and for the remaining amount of the \$1,526,000.00, pro rata refunds of fees assessed to current customers. Within forty five (45) days of the date of service of this order, Respondent shall provide records to the Commission sufficient to show all payments made pursuant to this Section VI.A.
- B. Respondent shall waive an additional nine hundred and forty-nine thousand dollars (\$949,000.00) in fees for current customers during the fee waiver period, or remit the balance to the FTC within fifteen (15) days of the conclusion of the fee waiver period. Such waived fees shall include all remaining enrollment fees and cancellation fees, and at least 50% of each ACH fee, and may include other fees. Respondent shall provide the Commission with quarterly reports within thirty (30) days after the end of each quarter sufficient to show all fee waivers made during that quarter, until the entire amount of \$949,000.00 is waived or the balance is remitted to the FTC.
- C. In the event of default on the obligation pursuant to Sections VI.A and VI.B of this order, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment. In the event such default continues for ten (10) calendar days beyond the date that payment is due, the entire amount shall immediately become due and payable.

- D. In the event that Respondent remits any balance to the FTC pursuant to Sections VI.A and VI.B, Respondent shall also provide to the Commission a searchable electronic file containing the name and contact information of all consumers who enrolled in Respondent's biweekly payment program, to the extent it has such information in its possession or control, including information available upon request from auto dealers and others. Such file: (1) shall include each consumer's name and address, the date of enrollment, the total amount of payments made under the biweekly payment program, the total amount of all fees paid in connection with the biweekly payment program less any amounts credited for refunds or waived by Respondent, and, if available, the consumer's telephone number and email address; (2) shall be updated through the National Change of Address database; and (3) shall be accompanied by a sworn affidavit attesting to its accuracy.
- E. All funds paid to the Commission pursuant to Sections VI.A and VI.B of this order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Respondent's practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Respondent has no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection. No portion of any payment under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.
- F. Respondent relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Respondent shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.
- G. Respondent agrees that the facts as alleged in the complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this order, including but not limited to a nondischargeability complaint in any bankruptcy case. Respondent further agrees that the facts alleged in the complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this order shall have collateral estoppel effect for such purposes.
- H. Respondent acknowledges that its Taxpayer Identification Number (or Employer Identification Number), which Respondent must submit to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this order, in accordance with 31 U.S.C. § 7701.

- I. Proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this order.

VII.

IT IS FURTHER ORDERED that Respondent shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representations;
- B. All materials that were relied upon in disseminating the representations;
- C. All evidence in its possession or control that contradicts, qualifies, or calls into question the representations, or the basis relied upon for the representations, including complaints and other communications with consumers or with governmental or consumer protection organizations; and
- D. Any documents reasonably necessary to demonstrate full compliance with each provision of this order, including but not limited to all documents obtained, created, generated, or that in any way relate to the requirements, provisions, or terms of this order, and all reports submitted to the Commission pursuant to this order.

VIII.

IT IS FURTHER ORDERED that Respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives, including auto dealerships who sell Respondent's payment programs or Respondent's add-on products and services, having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

IX.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any change in the entity that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the entity's name or address. Provided, however, that, with respect to any proposed change in the corporation about which Respondent learns less than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless

otherwise directed by a representative of the Commission in writing, all notices required by this Section shall be emailed to Debrief@ftc.gov or sent by overnight courier (not U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC, 20580. The subject line must begin: FTC v. NPN, Inc.

X.

IT IS FURTHER ORDERED that Respondent, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit additional true and accurate written reports.

XI.

This order will terminate on May 4, 2035, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Section in this order that terminates in less than twenty (20) years;
- B. This order's application to any Respondent that is not named as a defendant in such complaint;
- C. This order if such complaint is filed after the order has terminated pursuant to this Section.

Provided, further, that if such complaint is dismissed or a federal court rules that Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Section as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED: May 4, 2015