

**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

**JIM BURKE AUTOMOTIVE, INC.,
also d/b/a JIM BURKE NISSAN
a corporation,**

DOCKET NO.C-4523

COMPLAINT

The Federal Trade Commission, having reason to believe that Jim Burke Automotive, Inc., also doing business as Jim Burke Nissan (“Respondent”), has violated provisions of the Federal Trade Commission Act (“FTC Act”), the Truth in Lending Act (“TILA”), and its implementing Regulation Z, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is an Alabama corporation with its principal place of business at 1300 3rd Avenue North, Birmingham, AL 35203. Respondent offers automobiles for sale or lease to consumers.
2. The acts or practices of Respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
3. Since at least November 2014, Respondent has disseminated or caused to be disseminated advertisements to the public promoting the purchase, finance, and leasing of automobiles.
4. Respondent has disseminated or caused to be disseminated advertisements to the public promoting credit sales and other extensions of closed-end credit in consumer credit transactions, as the terms “advertisement,” “closed-end credit,” “credit sale,” and “consumer credit” are defined in Section 226.2 of Regulation Z, 12 C.F.R. § 226.2, as amended.
5. Respondent’s advertisements include, but are not necessarily limited to advertisements posted on the website, www.jimburkenissancars.com, pages of which are attached as

Exhibit A. These advertisements are prominently displayed on the dealer's home page and throughout the website.

- Respondent has advertised various vehicles for sale and financing and discounted prices. For example, Respondent has advertised a Nissan Murano for "\$9,000 off" or "ZERO % for 72 months," as depicted below and in Exhibit A.



- In this advertisement, Respondent offers closed-end credit for a 72-month term; however, Respondent does not include required information triggered by the advertisement, such as the down payment amount, the monthly payment amount, and the annual percentage rate.
- Respondent's advertisements typically include disclaimers such as the following that appear in fine print and muted colors that are difficult to read. These disclaimers routinely state, in part, that the advertised prices and financing deals include all factory rebates.



- In fact, in numerous instances, the advertised discount and price are not generally available to consumers. In numerous instances, the advertised discount and price are subject to various qualifications or restrictions. Such qualifications or restrictions have included, for example, being a recent college graduate.

10. Additionally, in numerous instances, the advertised prices and financing offers require substantial down payment amounts, often \$3,000. Thus, the actual price of each of Respondent's advertised vehicles is \$3,000 more than the dollar amount that is prominently advertised.
11. In other web pages linked to the advertisements on its home page, Respondent advertises vehicles for specific "Dealer Rebate[s]" and "Internet Price[s]" for particular automobiles. For example, as illustrated below and in Exhibit B, Respondent advertises a 2014 Nissan Murano LE as having an Internet price of \$33,549 and dealer rebate of \$8,241:

2014 Nissan Murano LE

Enlarge Photos Video

FREE OIL CHANGES FOR LIFE *FREE NITROGEN IN YOUR TIRES* *GUARANTEED LOAN APPROVAL*
FREE WARRANTY ON PRE-OWNED VEHICLES *NO HASSLE 5 DAY RETURN POLICY* *AND MORE!!*

AT A GLANCE

18 mpg City 24 mpg Highway

Actual rating will vary with options, driving conditions, habits and vehicle condition.

SEND VEHICLE:

NEXT STEPS
Have a question? Call us.
866-432-7231

GET A PRICE QUOTE
SCHEDULE A TEST DRIVE
GET MORE INFORMATION

Jim Burke auto mall jimburke.com

Selling Price : \$41,790
Dealer Rebate : \$8,241
Internet Price : \$33,549

VIN: JN8AZ1MU1EW401451
Stock #: NS14541
Miles: 4103
Exterior Color: Pearl White
Transmission: Variable

12. Further down on the web page, the following information typically appears in part:

*The selling price shown appears after calculating dealer offers, it is for informational purposes only. Price can include all available rebates, not all customers may qualify for the offers, incentives, discounts or financing.

Exhibit B.

13. In fact, in numerous instances, the advertised discount and price are not generally available to consumers. In numerous instances, the advertised discount and price are subject to various qualifications or restrictions. Such qualifications or restrictions have included, for example, being a recent college graduate.
14. Additionally, in numerous instances, the advertised prices and financing offers require substantial down payment amounts, often \$3,000. Thus, the actual price of each of Respondent's advertised vehicles is \$3,000 more than the dollar amount that is prominently displayed in the advertisement for the vehicle.

FEDERAL TRADE COMMISSION ACT VIOLATIONS

Count I

Misrepresentation of Vehicle Purchase Price

15. Through the means described in Paragraphs 6 through 14, Respondent has represented, expressly or by implication, that vehicles are available for purchase at the prices prominently advertised.
16. In truth and in fact, vehicles are not available for purchase at the prices prominently advertised. Consumers must pay an additional \$3,000 to purchase the advertised vehicles. Therefore, Respondent's representations as alleged in Paragraphs 6 through 14, were, and are, false and misleading.
17. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count II

Misrepresentation of Rebates and Incentives

18. Through the means described in Paragraphs 6 through 13, Respondent has represented, expressly or by implication, that specific discounts, rebates, bonuses, or incentives are generally available to consumers.
19. In truth and in fact, the specific dealer discounts, rebates, bonuses, or incentives are not generally available to consumers. Therefore, the representations set forth in Paragraphs 6 through 13 of this Complaint were, and are, false and misleading.
20. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE TRUTH IN LENDING ACT AND REGULATION Z

21. Under Section 144 of the TILA and Section 226.24(d) of Regulation Z, as amended, advertisements promoting closed-end credit in consumer credit transactions are required to make certain disclosures ("additional terms") if they state any of several terms, such as the monthly payment ("TILA triggering terms").
22. Respondent's advertisements promoting closed-end credit, including but not necessarily limited to those described in Paragraphs 6 through 7, are subject to the requirements of the TILA and Regulation Z.

Count III

Failure to Disclose or Disclose Clearly and Conspicuously Required Credit Information

23. Respondent's advertisements promoting closed-end credit, including but not necessarily limited to those described in Paragraphs 6 through 7, have included TILA triggering terms, but have failed to disclose or disclose clearly and conspicuously, additional terms required by the TILA and Regulation Z, including one or more of the following:
- a. The amount or percentage of the down payment;
 - b. The terms of repayment, including any balloon payment;
 - c. The "annual percentage rate," using that term, and, if the rate may be increased after consummation, that fact.
24. Therefore, the practices set forth in Paragraphs 6 through 7 of this Complaint have violated Section 144 of the TILA, 15 U.S.C. § 1664, and Section 226.24(d) of Regulation Z, 12 C.F.R. § 226.24(d), as amended.

THEREFORE, the Federal Trade Commission, this fourth day of May, 2015, has issued this complaint against Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: