

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In The Matter of

MARTIN ADVERTISING, INC., a corporation.

DOCKET NO.

COMPLAINT

The Federal Trade Commission, having reason to believe that Martin Advertising, Inc., a corporation ("respondent" or "Martin"), has violated the provisions of the Federal Trade Commission Act, 15 U.S.C. §§ 45-58, as amended, the Consumer Leasing Act, 15 U.S.C. §§ 1667-1667e, as amended, and its implementing Regulation M, 12 C.F.R. § 213, as amended, and the Truth in Lending Act, 15 U.S.C. §§ 1601-1667, as amended, and its implementing Regulation Z, 12 C.F.R. § 226, as amended, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Martin Advertising, Inc. is a Delaware corporation with its principal office or place of business at 2801 University Boulevard, Suite 200, Birmingham, Alabama 35233.
2. Respondent, at all times relevant to this complaint, has provided advertising services to automobile dealers and dealer marketing groups, including but not limited to dealer marketing groups that promote General Motors Corporation ("GM") vehicles. Respondent has disseminated advertisements to the public that promote consumer leases, as the terms "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 C.F.R. § 213.2, as amended.
3. Respondent has disseminated advertisements to the public that promote credit sales and other extensions of closed-end credit in consumer credit transactions, as the terms "advertisement," "credit sale," and "consumer credit" are defined in Section 226.2 of Regulation Z, 12 C.F.R. § 226.2, as amended.
4. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

FEDERAL TRADE COMMISSION ACT VIOLATIONS

LEASE ADVERTISING

5. Respondent has prepared and disseminated or has caused to be prepared and disseminated consumer lease advertisements for motor vehicles, including but not necessarily limited to the attached Martin Exhibits A through D. Exhibits A and B are representative examples of respondent's radio advertisements and are attached hereto in storyboard format. Exhibits C and D are representative examples of respondent's television advertisements and are attached hereto in video and storyboard format.

A. [Audio:] "Lincolns, Mercurys, Jeeps, Eagles, or Hyundais just 96 cents over factory invoice! It's Capital Motor Company's 96-hour countdown. Now through Monday buy any new Lincoln, Mercury, Jeep, Eagle, or Hyundai in stock and pay just 96 cents over factory invoice. Capital is out to break all sales records. Cash in with up to \$2,000 cash back, discounts up to \$5,500 and financing as low as 1.9%. Plus, act now and drive away in a new '97 Jeep Grand Cherokee for just 3- 29 a month. Now is the best time

to save on every new car in stock at Capital Motor Company. Everything must go - nothing will be held back. Plus, Capital guarantees to have the best price on any new car or they'll pay you \$1,000 cash. Don't let time run out - take advantage of huge year-end savings during the 96 Hour Capital Countdown - only at Capital Motor Company - home of the \$1,000 price guarantee. See our ad in Saturday's Tallahassee Democrat for details." (Martin Exhibit A).

B. [Audio:] "Choose the way you want to save this holiday season at Mid South Nissan. See Mid South Nissan before the New Year and drive a loaded '97 Nissan pickup for only 99 dollars a month with zero down payment! You get air, stereo cassette, alloy wheels, chrome package, sliding rear window and more. Drive it for 99 dollars a month with zero down! Or buy the same loaded '97 Nissan pickup for only 10-8-88. That's a total savings of over 4500 dollars. Plus when you buy, Mid South Nissan writes you a check for 1000 dollars. One thousand dollars holiday cash to use any way you choose. A fun new '97 pickup, thousands in savings, plus a thousand bucks. Choose the way you want to save this holiday at Mid South Nissan. Drive a new '97 Nissan pickup for 99 dollars a month with zero down. Or buy it for just 10-8-88 and get 1000 dollars holiday cash. Hurry to Mid South Nissan, 966 South Gloster, Tupelo."

[The following disclosure is rapidly stated at the end of the advertisement, over background sound: "Sale prices plus tax, tag, and fees. 24 month lease with approved credit. Acquisition fee, security deposit and first month's payment at inception. See dealer for details."] (Martin Exhibit B).

C. [Audio:] "Premier Pontiac Nissan's Final Four Year-end clearance! You'll score big on every car in stock, get financing as low as 3.9%, and no payments up to 6 months... Plus, drive away in a '97 Nissan pick-up for just \$99 a month or Altima for just 1-29 a month."

[Video:] "FINANCING AS LOW AS 3.9%*

NO PAYMENT UP TO 6 MONTHS

97 VTP NISSAN PICK-UP

\$99 A MONTH**

97 NISSAN ALTIMA

\$129 A MONTH***"

[The advertisement contains the following disclosure at the bottom of the screen in light-colored fine print superimposed on moving background:

"*You must take retail delivery from dealer stock by 1/2/97.

Dealer financial participation may affect consumer cost. Length of finance contract is limited. See dealer for details.

*36-month NMAC lease. Stock #8501; MSRP \$13,868. Sale price \$11,525. Residual \$9,085.12. 36 payments of \$99.43 with \$1675 cash or trade plus tax, title, tag and security deposit. See dealer for details.

**36-month NMAC lease. Stock #8328; MSRP \$20,597. Sale price \$18,095. Residual \$13,799.99. 36 payments of \$129.15 with \$1,999 cash or trade plus tax, title, tag and security deposit. See dealer for details."] (Martin Exhibit C).

D. [Audio] "Right now drive a new '97 GMC Sierra extended cab 4 by 4 for only 2-89 a month. Or how about a new '97 Pontiac Sunfire for just 1-99 a month."

[Video:] "'97 GMC SIERRA EXTENDED CAB 4X4

\$289 MONTH/36 MONTH LEASE*

\$2200 CASH OR TRADE DOWN

4 SPEED AUTOMATIC

CAST ALUMINUM WHEELS"

"'97 PONTIAC SUNFIRE

\$199 MONTH/48 MONTH LEASE**

\$1500 CASH OR TRADE DOWN"

[The advertisement contains the following lease disclosure at the bottom of the screen in light-colored fine print superimposed on moving background:

"* 289 per month/36 month lease. \$2200 cash or trade down payment. \$2789 due at lease signing (first's month payment of \$289, \$300 refundable security deposit plus downpayment). Customer has option to purchase vehicle at lease end. See dealer for details.

**\$199 per month/48 month lease. \$1500 cash or trade down payment. \$1899 due at lease signing (first month's payment of \$199, \$200 refundable security deposit plus down payment). Customer has option to purchase vehicle at lease end. See dealer for details."] (Martin Exhibit D).

Federal Trade Commission Act Violations

COUNT I: Misrepresentation of Advertised Transaction

6. In lease advertisements, including but not necessarily limited to Martin Exhibits A through C, respondent has represented, expressly or by implication, that consumers can purchase the advertised vehicles by financing the vehicles through credit for the monthly payment amounts prominently stated in the advertisements.

7. In truth and in fact, consumers cannot purchase the advertised vehicles by financing the vehicles through credit at the monthly payment prominently amounts stated in the advertisements. Each monthly payment amount prominently stated in Martin Exhibits A through C is a component of a lease offer and not a credit offer. Therefore, respondent's representation as alleged in Paragraph 6 was, and is, false or misleading.

8. Respondent knew or should have known that the representation set forth in Paragraph 6 was, and is, false and misleading.

9. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

COUNT II: Misrepresentation of Inception Fees

10. In lease advertisements, including but not necessarily limited to Martin Exhibits B and D, respondent has represented, expressly or by implication, that the amount stated as "down" or "cash or trade down" in respondent's lease advertisements is the total amount consumers must pay at lease inception to lease the advertised vehicles.

11. In truth and in fact, the amount stated as "down" or "cash or trade down" in respondent's lease advertisements is not the total amount consumers must pay at lease inception to lease the advertised vehicles. Consumers must also pay additional fees beyond the amount stated as "down" or "cash or trade down," such as the first month's payment, security deposit, and acquisition fee at lease inception. Therefore, respondent's representation as alleged in Paragraph 10 was, and is, false or misleading.

12. Respondent knew or should have known that the representation set forth in Paragraph 10 was, and is, false and misleading.

13. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

COUNT III: Failure to Disclose Adequately that Transaction Advertised is a Lease

14. In lease advertisements, including but not necessarily limited to Exhibits A through C, respondent has represented, expressly or by implication, that consumers can purchase the advertised vehicles for the monthly payment amounts prominently stated in the advertisements. These advertisements do not adequately disclose that each advertised monthly payment amount is a component of a lease offer.

15. The existence of this additional information would be material to consumers in deciding whether to visit the dealership named in the advertisement and/or whether to lease or purchase an automobile from the dealership. The failure to disclose adequately this additional information, in light of the representation made, was, and is, a deceptive practice.

16. Respondent knew or should have known that the failure to disclose adequately that the advertised monthly payment amount was a component of a lease offer as set forth in Paragraph 14 was, and is, deceptive.

17. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

COUNT IV: Failure to Disclose Adequately Inception Fees

18. In its lease advertisements, including but not limited to Martin Exhibits A - D, respondent has represented, expressly or by implication, that consumers can lease the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount and/or amount stated as "down." These lease advertisements do not adequately disclose additional terms pertaining to the lease offer, including but not necessarily limited to one or more of the following charges: a required security deposit, first month's payment, and/or acquisition fee.

19. These additional terms would be material to consumers in deciding whether to visit a dealership named in respondent's advertisement and/or whether to lease an automobile from the dealership. The failure to disclose adequately these additional terms, in light of the representation made, was, and is, a deceptive practice.

20. Respondent knew or should have known that the failure to disclose adequately material terms as set forth in Paragraph 18 was, and is, deceptive.

21. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

COUNT V: Consumer Leasing Act and Regulation M Violations

22. Respondent's lease advertisements, including but not necessarily limited to Martin Exhibits A through D, state a monthly payment amount, the number of required payments, and/or an amount "down." Respondent's advertisements omit or fail to clearly and conspicuously disclose certain additional terms required by the Consumer Leasing Act and Regulation M, including one or more of the following terms: that the transaction advertised is a lease; the total amount of any payments such as a capitalized cost reduction required at lease inception; that a security deposit is required; and the number, amount, and timing of scheduled payments.

23. Respondent's practices violate Section 184 of the Consumer Leasing Act, 15 U.S.C. § 1667c, as amended, and Section 213.7 of Regulation M, 12 C.F.R. § 213.7, as amended.

Credit Advertising

24. Respondent has prepared and disseminated or has caused to be prepared and disseminated credit sale advertisements ("credit advertisements") for motor vehicles, including but not necessarily limited to the attached Martin Exhibits A, C, and E. Martin Exhibit E, a television credit advertisement (attached in video and storyboard format), contains the following statements:

[Audio:][Announcer]: "Then we told them that Jimmy was only \$299 a month with a GMAC SmartBuy. [Consumer #6:] \$299 a month? [Consumer #7:] \$299 a month -- that's great. [Consumer #8:] A Jimmy like this for \$299 a month would be fantastic."

[Video:] "\$299 a month 36-month GMAC SmartBuy"

[The advertisement contains the following credit disclosure in white print superimposed on a light-colored background and accompanied by background sound and images: "Example based on Jimmy MSRP of \$20,498. 6.9% APR GMAC SMARTBUY FINANCING. For 36 months, 35 months at \$299.38 per month and final payment of \$9441.94. \$3350 down, actual down payment may vary. Tax, license, title fees and insurance extra. Purchaser may refinance the final payment, or with 30 days advance written notice sell the vehicle to GMAC at end of term and pay \$250 disposal fee plus any excess mileage and wear charges. Dealer financial participation may affect consumer cost. See your participating dealer for qualification details. You must take retail delivery out of dealer stock by 9/22/93." (Martin Exhibit E).

Federal Trade Commission Act Violations

COUNT VI: Misrepresentation in Credit Advertising

25. In credit advertisements, including but not necessarily limited to Martin Exhibit E, respondent has represented, expressly or by implication, that consumers can buy the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount.

26. In truth and in fact, consumers cannot buy the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount. Consumers are also responsible for a final balloon payment of several thousand dollars to purchase the advertised vehicles. Therefore, respondent's representation as alleged in Paragraph 25 was, and is, false or misleading.

27. Respondent knew or should have known that the representation set forth in Paragraph 25 was, and is, false and misleading.

28. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

COUNT VII: Failure to Disclose Adequately in Credit Advertising

29. In credit advertisements, including but not necessarily limited to Martin Exhibit E, respondent has represented, expressly or by implication, that consumers can buy the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount and/or number of required monthly payments. These advertisements do not adequately disclose additional terms pertaining to the credit offer, including but not necessarily limited to a final balloon payment of several thousand dollars, the amount of the downpayment, and the annual percentage rate. The existence of these additional terms would be material to consumers in deciding whether to buy the advertised vehicle. The failure to disclose adequately these additional terms, in light of the representation made, was, and is, a deceptive practice.

30. Respondent knew or should have known that the failure to disclose adequately material terms as set forth in Paragraph 29 was, and is, deceptive.

31. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

Truth in Lending Act and Regulation Z Violations

COUNT VIII: Failure to State Rate of Finance Charge as Annual Percentage Rate

32. In credit advertisements, including but not necessarily limited to Martin Exhibits A and C, respondent has stated a rate of finance charge without stating that rate as an "annual percentage rate," using that term or the abbreviation "APR."

33. Respondent's aforesaid practice constitutes a violation of Section 144 and 107 of the TILA, 15 U.S.C. §§ 1664 and 1606, respectively, and Sections 226.24(b) and 226.22 of

Regulation Z, 12 C.F.R. §§ 226.24(b) and 226.22, respectively.

COUNT IX: Failure to Disclose Required Information

Clearly and Conspicuously

34. In credit advertisements, including but not necessarily limited to Martin Exhibit E, respondent has stated a rate of finance charge, monthly payment amount, and/or an amount "down" as terms for financing the purchase of the advertised vehicles.

35. These credit advertisements have omitted or failed to disclose clearly and conspicuously all of the terms required by Regulation Z, as follows: the amount or percentage of the downpayment, the terms of repayment, and the annual percentage rate, using that term or the abbreviation "APR."

36. Respondent's aforesaid practice violates Section 144 of the Truth in Lending Act, 15 U.S.C. § 1664, as amended, and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c), as amended.

THEREFORE, the Federal Trade Commission this day of , , has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: