

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Cowboy AG LLC doing business as Cowboy Toyota and Cowboy Scion
File No. 172 3009

The Federal Trade Commission (FTC) has accepted, subject to final approval, an agreement containing a consent order from Cowboy AG LLC, doing business as Cowboy Toyota and Cowboy Scion. The proposed consent order has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the FTC will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

The respondent is a motor vehicle dealer that engaged in substantial Spanish-language advertising, but only provided disclosures in fine-print English. According to the FTC complaint, respondent advertised that consumers could purchase or lease advertised vehicles at certain favorable terms prominently stated in its advertisements. The complaint alleges that respondent violated Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), because it misrepresented in its Spanish-language advertisements that (1) consumers could purchase new 2016 automobiles with no down payments, (2) that advertised low monthly payments were available to those who financed automobile purchases, (3) that advertised interest rates, monthly payments, and other terms were available to consumers with bad credit, and (4) that certain new 2016 model year Toyotas were available for purchase in 2017. This information would be material to consumers in deciding whether to visit respondent's dealership and whether to purchase or lease an automobile from respondent.

The complaint also alleges that respondent's credit sale advertisements violated the Truth in Lending Act (TILA) and Regulation Z by failing to disclose or to disclose clearly and conspicuously required terms. Specifically, respondent's advertisements prominently stated the amount of the finance charge and the number of payments or period of repayment for certain vehicles—all triggering terms under the TILA—but failed to disclose, or unclearly and inconspicuously disclosed at the bottom of the ad in much smaller type, the required information set forth by the TILA. Finally, the complaint alleges that respondent's leasing advertisements violated the Consumer Leasing Act (CLA) and Regulation M by failing to disclose or to disclose clearly and conspicuously required terms. Specifically, respondent's advertisements prominently stated the monthly payment amounts for certain vehicles—a triggering term under the CLA—but failed to disclose, or unclearly and inconspicuously disclosed at the bottom of the ad in much smaller type, the required information set forth by the CLA.

The proposed order is designed to prevent the respondent from engaging in similar deceptive practices in the future.

- Definition B. of the order defines “clearly and conspicuously” to mean that required disclosures must be difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers, including that disclosures must appear in the same language as the representation requiring the disclosure is made (*e.g.* Spanish advertisement → Spanish disclosure).

- Part I.A.1. provides that respondent shall not misrepresent the cost of financing the purchase of an automobile, including by misrepresenting the amount or percentage of the down payment, the number of payments or period of repayment, the amount of any payment, and the repayment obligation over the full term of the loan, including any balloon payment.
- Part I.A.2. provides that respondent shall not misrepresent the cost of leasing an automobile, including by misrepresenting the total amount due at lease inception, the down payment, amount down, acquisition fee, capitalized cost reduction, any other amount required to be paid at lease inception, and the amounts of all monthly or other periodic payments.
- Part I.B. provides that respondent shall not misrepresent any qualification or restriction on the consumer's ability to obtain the represented financing or leasing terms, including any qualification or restriction based on the consumer's credit score or credit history.
- Part I.C. provides that respondent shall not represent any financing or leasing term, unless the representation is non-misleading, and the advertisement clearly and conspicuously discloses all qualifications or restrictions on the consumer's ability to obtain the represented financing or leasing term, including any qualifications or restrictions that respondent's lender, lessor, or any other entity may impose based on a consumer's credit score or credit history. Additionally, if a majority of consumers likely will not be able to meet a credit score qualification or restriction stated in the advertisement, respondent must clearly and conspicuously disclose that fact.
- Part I.D. provides that respondent shall not misrepresent the number of vehicles, makes, or models that are available for purchase or lease.
- Part I.E. provides that respondent shall not misrepresent any other material fact about the price, sale, financing, or leasing of any automobile.
- Part II of the order addresses the TILA and Regulation Z allegations by prohibiting credit sale advertisements that:
 - A. State the amount or percentage of any down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without disclosing clearly and conspicuously all of the following terms:
 - The amount or percentage of the down payment;
 - The terms of repayment; and
 - The annual percentage rate, using the term "annual percentage rate" or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed; or
 - B. State a rate of finance charge without stating the rate as an "annual percentage rate" or the abbreviation "APR," using that term; or
 - C. Fail to comply in any respect with Regulation Z, 12 C.F.R. Part 226, as amended, and the Truth in Lending Act, as amended, 15 U.S.C. §§ 1601-1667f.

- Part III of the order addresses the CLA and Regulation M allegations by prohibiting lease advertisements that:
 - A. State the amount of any payment or that any or no initial payment is required at lease inception, without disclosing clearly and conspicuously the following terms:
 - that the transaction advertised is a lease;
 - the total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;
 - the number, amounts, and timing of scheduled payments;
 - whether or not a security deposit is required; and
 - that an extra charge may be imposed at the end of the lease term where the consumer's liability (if any) is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.
 - B. Fail to comply in any respect with Regulation M, 12 C.F.R. Part 213, as amended, and the Consumer Leasing Act, 15 U.S.C. §§ 1667-1667f, as amended.
- Part IV requires respondent to provide copies of the order to certain personnel and to obtain acknowledgments of receipt.
- Part V requires respondent to file compliance reports with the Commission, including notices regarding changes in corporate structure that might affect compliance obligations under the order. Part VI requires respondent to create certain records for 15 years and to retain them for 5 years. Part VII provides the Commission certain mechanisms to monitor respondent's compliance with the order. Part VIII is a provision that "sunset" the order after 20 years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.