



## FTC Strikes Gold in California

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The Federal Trade Commission continued its successful streak of attacking dealers for alleged violations of the FTC Act, the Truth in Lending Act, and the Consumer Leasing Act.

The FTC recently announced that nine Los Angeles-based auto dealerships and their holding and management companies (we'll call them, collectively, "Sage Auto") and two individual owners have agreed to pay more than \$3.6 million to consumers in order to settle charges that they used deceptive and unfair sales and financing practices, deceptive advertising, and deceptive online reviews.

Last September, the FTC alleged that Sage Auto and its owners used "yo-yo" financing tactics (i.e., deception or other unlawful pressure tactics to coerce consumers who had signed retail installment contracts and driven off the lot into agreeing to different financing terms) and packed extra and unauthorized charges for add-ons or aftermarket products and services into the deals. The FTC's complaint also alleged that Sage Auto's employees or agents posted phony positive, five-star online reviews to tout their dealerships and to discredit negative reviews by consumers about the company's advertising, sales, and financing practices.

According to the FTC's complaint, the defendants enticed consumers, particularly financially distressed and non-English-speaking consumers, into their dealerships with print, Internet, radio, and television ads that made an array of misleading claims, including that vehicles were generally available for the advertised terms and that consumers could buy vehicles for low prices, finance with low monthly payments, or make low down payments. Other allegedly misleading claims included that consumers could finance the purchase of vehicles – when in fact they were lease offers – and that the defendants would pay off consumers' trade-in vehicles, despite the fact that consumers ultimately were responsible for paying off any amount owed on the trade-ins.

In addition to the deceptive advertising and marketing allegations, the FTC charged that several financing tactics were deceptive and unfair. As part of the sales and financing process, the defendants offered add-ons such as extended warranties, guaranteed auto protection, and maintenance or service plans. The FTC alleged that the defendants violated the FTC Act by charging some consumers for add-ons without their consent or falsely claiming the products were required or were free.

The FTC's complaint also charged that the defendants violated TILA and Regulation Z, and the CLA and Regulation M, for failing to clearly disclose required credit information and lease information in their advertising. In some cases, the advertisements included miniscule fine print or

cursory, inconspicuous disclaimers. The complaint includes specific advertisements and examples eerily reminiscent of the FTC's Operation Steer Clear and Operation Ruse Control complaints.

The references to "yo-yo" financing in the FTC's press releases for the complaint and proposed order appear to raise concerns about spot deliveries. On closer inspection however, the order implicitly recognizes that a spot delivery is permissible. The issue for the dealers in this case was the arm-twisting they allegedly did to get the consumer to sign a new financing contract after the original contract was cancelled because the dealer was not able to assign it. From the description of a spot delivery in the complaint, it is not clear whether the FTC would recognize the dealer's right to charge for use of the vehicle while the customer had possession of it. But, the FTC's complaint does not appear to take issue with the practice of cancelling the deal after the dealer's failure to find an assignee.

It's also refreshing to see at least one federal regulator responsible for enforcing the law appropriately describe a three-party sales finance transaction and the dealer's role in it.

Another takeaway – it appears some dealers still don't understand (as alleged) that it's not acceptable to distinguish between the total amount due at lease signing and the "down payment." Presumably, the dealers thought that "down payment" was somehow a term of art that refers only to a capitalized cost reduction required on a lease. Thus, they thought it was ok to say that the down payment was a small amount or zero even though the customer would have to pay a large additional sum at lease signing. The FTC's actions here and in earlier enforcement actions should make it clear that there is no support for this notion among regulators.

The proposed settlement order will prohibit the dealerships and owners from making misrepresentations related to their advertising, add-on products, financing, and endorsements or testimonials. The proposed order will also bar the defendants from engaging in other unlawful conduct when a sale is cancelled, such as failing to return any down payment or trade-in or seeking legal action, arrest, repossession, or debt collection unless the action is lawful and the defendants intend to take such action. Finally, the proposed order prohibits the defendants from violating TILA and Reg. Z, as well as the CLA and Reg. M. As the FTC is just getting warmed up on its attacks against dealers, the complaint is a must-read for dealers.

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