

Complaint

IN THE MATTER OF

NORRISTOWN AUTOMOBILE CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT, THE
CONSUMER LEASING ACT, AND THE TRUTH IN LENDING ACT

Docket C-3922; File No. 992 3081

Complaint, February 7, 2000 – Decision, February 7, 2000

This consent order prohibits respondents from disseminating advertisements that state the amount of any payment due at inception (excluding the monthly payment amount) or the fact that any or no inception payment is due without also disclosing with “equal prominence” the total amount a consumer must pay at lease signing or delivery. The consent orders also prohibit respondents from disseminating advertisements that state the amount of any payment or that any or no initial payment is required at lease signing or delivery, if delivery occurs after consummation, without disclosing clearly and conspicuously all of the terms required, that the transaction advertised is a lease; the total amount due at lease signing or delivery; whether or not a security deposit is required; the number, amounts, and timing of scheduled payments; and that an extra charge may be imposed at the end of the lease term in a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the vehicle. With respect to credit advertisements, the proposed orders prohibit respondents from stating 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 terms, the amount or percentage of the down payment; the terms of repayment; and the correct annual percentage rate, using that term or the abbreviation “APR.” If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed. The consent orders also prohibit respondents from stating a rate of finance charge without stating the rate as an “annual percentage rate” or “APR.”

Participants

For the Commission: *Rolando Berrelez, David Medine, and Sally Forman Pitofsky.*

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For the Respondents: *Paul R. Rosen, Spector, Gadon & Rosen, P.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Norristown Automobile Co., Inc., a corporation, doing business as Norristown Ford, and William Milliken, individually and as an officer of the corporation, ("respondents"), have 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. §§ 1667-1667f, 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 Norristown Automobile Co., Inc. is a Pennsylvania corporation with its principal office or place of business at Ridge Pike, Norristown, Pennsylvania 19404. Respondent offers automobiles for sale or lease to consumers.

2. Respondent William Milliken is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, controls, and participates in the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of the corporate respondent.

3. Respondents have 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.

4. Respondents have disseminated advertisements to the public that promote credit sales and other extensions of closed-end credit in consumer credit transactions, as the terms

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“advertisement,” “credit sale,” and “consumer credit” are defined in Section 226.2 of Regulation Z, 12 C.F.R. § 226.2, as amended.

5. The acts and practices of respondents 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.

6. Respondents have disseminated or have caused to be disseminated advertisements promoting consumer leases (“lease advertisements”) and credit sales (“credit advertisements”) for automobiles, including but not necessarily limited to the attached Norristown Exhibits A and B. Norristown Exhibits A and B are advertisements in the print media. These lease and/or credit advertisements contain the following statements:

- A. [Norristown Exhibit A states numerous lease and credit offers, including:]

**“NEW 1998 FORD
TAURUS GL SEDAN . . .**

MSRP.....\$19,070
Pkg Disc./Rebate...\$1,000
College Grad.....\$400
Norristown Disc....\$1,242
Cash or Trade.....\$3,000

**LEASE FOR \$169
24
MOS.
or BUY FOR
\$13,428"**

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[A fine print disclosure at the bottom of the ad states, “. . . Prices and payments are based upon \$3000 down cash or trade. All rebates including recent 24 months college grad rebate applied. All leases are closed end with 1st month payment, security deposit, bank fee, tax and tags due at lease signing. All purchase prices exclude title, tax and tags. . . .”] (Norristown Exhibit A)

- B. [Norristown Exhibit B states numerous lease and credit offers, including:]

“FINANCING***AS 0.9% . . .****LOW****AS****NEW 1998 FORD****TAURUS SE SEDAN . . .**

MSRP.....\$20,425

Rebate.....\$750

College Grad.....\$400

Cash or Trade.....\$3,000

Norristown Discount..\$2,360

BUY \$13,915**FOR****OR \$195 PER****LEASE MONTH****FOR 24****MONTHS”**

[A fine print disclosure at the bottom of the ad states, “. . . Prices and payments on new vehicles and special purchase vehicles are with \$3000 down cash or trade. All rebates including recent 24 months college grad rebate applied. All leases are closed end with 1st month payment, security deposit, bank fee, tax and tags due at

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lease signing. All purchase prices exclude title, tax and tags. . . ."]
(Norristown Exhibit B)

FEDERAL TRADE COMMISSION ACT VIOLATIONS**COUNT I: FAILURE TO DISCLOSE, AND/OR FAILURE
TO DISCLOSE ADEQUATELY, LEASE TERMS**

7. In lease advertisements, including but not necessarily limited to Norristown Exhibits A and B, respondents have 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 the downpayment amount.

8. These lease advertisements have failed to disclose, and/or failed to disclose adequately, additional terms pertaining to the lease offer, such as the total amount due at lease inception. This information does not appear at all or appears in fine print in the advertisements. This information would be material to consumers in deciding whether to visit respondents' dealerships and/or whether to lease an automobile from respondents. The failure to disclose, and/or failure to disclose adequately, these additional terms, in light of the representation made, was, and is, a deceptive practice.

9. Respondents' 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: FAILURE TO DISCLOSE CREDIT TERMS

10. In credit advertisements, including but not necessarily limited to Norristown Exhibits A and B, respondents have represented, expressly or by implication, that consumers can purchase the advertised vehicles at the terms prominently stated in

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the advertisements, including but not necessarily limited to the sales price and downpayment amount.

11. These credit advertisements have failed to disclose additional terms pertaining to the credit offer, such as the annual percentage rate and the terms of repayment. This information would be material to consumers in deciding whether to visit respondents' dealerships and/or whether to purchase an automobile from respondents. The failure to disclose these additional terms, in light of the representation made, was, and is, a deceptive practice.

12. Respondents' 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).

**CONSUMER LEASING ACT AND REGULATION M
VIOLATIONS**

**COUNT III: FAILURE TO DISCLOSE, AND/OR FAILURE
TO DISCLOSE CLEARLY AND CONSPICUOUSLY,
REQUIRED INFORMATION**

13. Respondents' lease advertisements, including but not necessarily limited to Norristown Exhibits A and B, state a monthly payment amount and down payment amount, but fail to disclose, and/or fail to disclose clearly and conspicuously, certain additional terms required by the Consumer Leasing Act and Regulation M, including one or more of the following terms:

- a. that the transaction advertised is a lease;
- b. the total amount due prior to or at consummation, or by delivery, if delivery occurs after consummation. This total amount may: 1) exclude third-party fees that vary by state or locality, such as taxes, licenses, and registration fees, and disclose that fact or 2) provide a total that includes third-party fees

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based on a particular state or locality as long as that fact and the fact that such fees may vary by state or locality are disclosed;

- c. whether or not a security deposit is required;
- d. the number, amounts, and timing of scheduled payments; and
- e. that an extra charge may be imposed at the end of the lease term in a lease where the liability of the consumer is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

14. The lease disclosures required by Regulation M, if provided, are not clear and conspicuous because they appear in fine print and/or in an inconspicuous location.

15. Respondents' practices have violated Section 184 of the Consumer Leasing Act, 15 U.S.C. § 1667c, and Section 213.7 of Regulation M, 12 C.F.R. § 213.7.

**COUNT IV: FAILURE TO DISCLOSE THE TOTAL
AMOUNT DUE AT LEASE SIGNING WITH EQUAL
PROMINENCE**

16. Respondents' lease advertisements, including but not necessarily limited to Norristown Exhibits A and B, state a downpayment amount more prominently than the disclosure of the total amount due at lease signing, in violation of Section 213.7(b)(1) of Regulation M, 12 C.F.R. § 213.7(b)(1).

17. Respondents' practices have violated Section 213.7(b)(1) of Regulation M, 12 C.F.R. § 213.7(b)(1).

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**TRUTH IN LENDING ACT AND REGULATION Z
VIOLATIONS****COUNT V: FAILURE TO DISCLOSE REQUIRED
INFORMATION**

18. In credit advertisements, including but not necessarily limited to Exhibits A and B, respondents have stated the downpayment amount, but have failed to disclose the following items of information required by Regulation Z: the annual percentage rate and the terms of repayment.

19. Respondents' practices have violated Section 144 of the Truth in Lending Act, 15 U.S.C. § 1664, and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c).

**COUNT VI: FAILURE TO STATE RATE OF FINANCE
CHARGE AS ANNUAL PERCENTAGE RATE**

20. In credit advertisements, including but not necessarily limited to Norristown Exhibit B, respondents have stated a rate of finance charge without stating that rate as an "annual percentage rate," using that term or the abbreviation "APR."

21. Respondents' 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.

THEREFORE, the Federal Trade Commission this seventh day of February, 2000, has issued this complaint against respondents.

By the Commission.

Complaint Exhibits

Exhibit A

[illegible]

Exhibit B

NORRISTOWN

REBATES

\$3600

FREE

COLOR TV WITH REMOTE

ON 4 HEAD VCR

WITH FORMERLY AT-RISK BUYERS NEW FINANCING ON PRE-OWNED VEHICLES. FINANCING ON APPROVAL.

Right On The Money!

FINANCING

0.9%

NEW 1992 FORD ZX-2 COUPE

6 SPEED MANUAL

4 Speed - 2.0L 4-Cyl - 100 - PWR - 16" - 100MPH - 2000 - Power Brakes - 100 - 100MPH - 2000

MSRP	\$22,400
Dealer Prep	\$1,000
Color Cost	\$1,000
Destination Charge	\$1,100
MSRP	\$25,500

***\$8919**

\$149 PER 24

NEW 1992 FORD ESCORT LX SEDAN

5 SPEED MANUAL

4 Cyl - 1.6L 4-Cyl - 100 - Power Steering - 100 - 100MPH - 2000 - 100 - 100MPH - 2000

MSRP	\$17,500
Dealer Prep	\$1,000
Color Cost	\$1,000
Destination Charge	\$1,100
MSRP	\$20,600

***\$8351**

\$134 PER 24

NEW 1992 FORD CONTOUR LX SEDAN

6 SPEED MANUAL

4 Cyl - 2.0L 4-Cyl - 100 - Power - 100 - 100MPH - 2000 - 100 - 100MPH - 2000

MSRP	\$17,700
Dealer Prep	\$1,000
Color Cost	\$1,000
Destination Charge	\$1,100
MSRP	\$20,800

***\$10973**

\$167 PER 24

NEW 1992 FORD TAURUS SE SEDAN

6 SPEED MANUAL

4 Cyl - 2.0L 4-Cyl - 100 - Power - 100 - 100MPH - 2000 - 100 - 100MPH - 2000

MSRP	\$22,400
Dealer Prep	\$1,000
Color Cost	\$1,000
Destination Charge	\$1,100
MSRP	\$25,500

***\$13915**

\$195 PER 24

NEW 1992 FORD EXPEDITION XLT

LAST ONE!

8 Cyl - 4.9L 8-Cyl - 100 - 100MPH - 2000 - 100 - 100MPH - 2000

MSRP	\$22,400
Dealer Prep	\$1,000
Color Cost	\$1,000
Destination Charge	\$1,100
MSRP	\$25,500

***\$21495**

\$265 PER 24

NEW 1992 FORD MUSTANG GT CONV.

6 SPEED MANUAL

4 Cyl - 2.0L 4-Cyl - 100 - 100MPH - 2000 - 100 - 100MPH - 2000

MSRP	\$22,400
Dealer Prep	\$1,000
Color Cost	\$1,000
Destination Charge	\$1,100
MSRP	\$25,500

***\$19451**

\$277 PER 24

NEW 1992 FORD MUSTANG LX COUPE

6 SPEED MANUAL

4 Cyl - 2.0L 4-Cyl - 100 - 100MPH - 2000 - 100 - 100MPH - 2000

MSRP	\$22,400
Dealer Prep	\$1,000
Color Cost	\$1,000
Destination Charge	\$1,100
MSRP	\$25,500

***\$13663**

\$169 PER 24

NEW 1992 FORD F-150 SUPER CAB PICK-UP

6 SPEED MANUAL

4 Cyl - 2.0L 4-Cyl - 100 - 100MPH - 2000 - 100 - 100MPH - 2000

MSRP	\$22,400
Dealer Prep	\$1,000
Color Cost	\$1,000
Destination Charge	\$1,100
MSRP	\$25,500

***\$15900**

\$178 PER 24

SPECIAL PURCHASE VEHICLES SAVE THOUSANDS!!

NEW 1992 FORD ESCORT LX SEDAN

LAST ONE!

4 Cyl - 1.6L 4-Cyl - 100 - 100MPH - 2000 - 100 - 100MPH - 2000

MSRP	\$17,500
Dealer Prep	\$1,000
Color Cost	\$1,000
Destination Charge	\$1,100
MSRP	\$20,600

***\$995**

\$69 PER 24

NEW 1992 FORD CONTOUR

8 SPEED MANUAL

4 Cyl - 2.0L 4-Cyl - 100 - 100MPH - 2000 - 100 - 100MPH - 2000

MSRP	\$22,400
Dealer Prep	\$1,000
Color Cost	\$1,000
Destination Charge	\$1,100
MSRP	\$25,500

***\$8995**

\$149 PER 24

NEW 1992 FORD TAURUS GL

5 SPEED MANUAL

4 Cyl - 1.6L 4-Cyl - 100 - 100MPH - 2000 - 100 - 100MPH - 2000

MSRP	\$17,500
Dealer Prep	\$1,000
Color Cost	\$1,000
Destination Charge	\$1,100
MSRP	\$20,600

***\$995**

\$159 PER 24

NEW 1992 FORD MUSTANG CONV.

4 SPEED MANUAL

4 Cyl - 2.0L 4-Cyl - 100 - 100MPH - 2000 - 100 - 100MPH - 2000

MSRP	\$22,400
Dealer Prep	\$1,000
Color Cost	\$1,000
Destination Charge	\$1,100
MSRP	\$25,500

***\$13495**

\$199 PER 24

NEW 1992 FORD MUSTANG COUPE

4 SPEED MANUAL

4 Cyl - 2.0L 4-Cyl - 100 - 100MPH - 2000 - 100 - 100MPH - 2000

MSRP	\$22,400
Dealer Prep	\$1,000
Color Cost	\$1,000
Destination Charge	\$1,100
MSRP	\$25,500

***\$10995**

\$169 PER 24

UNDER \$2000

91 DODGE DAKOTA

4 Cyl - 2.0L 4-Cyl - 100 - 100MPH - 2000 - 100 - 100MPH - 2000

***\$995**

SPORTY

90 DODGE DAKOTA

4 Cyl - 2.0L 4-Cyl - 100 - 100MPH - 2000 - 100 - 100MPH - 2000

***\$2985**

FAMILY

91 FORD TANGENT LX IVN

4 Cyl - 2.0L 4-Cyl - 100 - 100MPH - 2000 - 10

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DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of 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 the respondents with violations of the Federal Trade Commission Act, 15 U.S.C. §§ 45-58, as amended, the Consumer Leasing Act, 15 U.S.C. §§ 1667-1667f, 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

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its

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complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Norristown Automobile Co., Inc. is a Pennsylvania corporation with its principal office or place of business at Ridge Pike, Norristown, Pennsylvania 19404.
2. Respondent William Milliken is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation. His principal office or place of business is the same as that of the corporate respondent.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

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

1. "Clearly and conspicuously" shall mean as follows:
 - a. In a television, video, radio, or Internet or other electronic advertisement, an audio disclosure shall be delivered in a volume, cadence, and location sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade, and shall appear on the screen for a duration and in a location, sufficient for an ordinary consumer to read and comprehend it.

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- b. In a print advertisement, a disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

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.

- 2. "Equal prominence" shall mean as follows:
 - a. In a television, video, radio, or Internet or other electronic advertisement, a video disclosure shall be presented in the same or similar format, including but not necessarily limited to type size, shade, contrast, duration, and placement. An audio disclosure shall be delivered in the same or similar manner, including but not necessarily limited to volume, cadence, pace, and placement.
 - b. In a print advertisement, a disclosure shall be presented in the same or similar format, including but not necessarily limited to type size, shade, contrast, and placement.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

- 3. "Total amount due at lease signing or delivery" as used herein shall mean the total amount of any initial payments required to be paid by the lessee on or before consummation of the lease or delivery of the vehicle, whichever is later, as required by Regulation M, 12 C.F.R. § 213, as amended. The total amount due at

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lease signing or delivery may 1) exclude third-party fees, such as taxes, licenses, and registration fees, and disclose that fact or 2) provide a total that includes third-party fees based on a particular state or locality as long as that fact and the fact that such fees may vary by state or locality are disclosed. (Section 213.7 of Regulation M, 12 C.F.R. § 213.7, as amended.)

4. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
5. Unless otherwise specified, "respondents" shall mean Norristown Automobile Co., Inc., a corporation, its successors and assigns and its officers; William Milliken, individually and as an officer of the corporation; and each of the above's agents, representatives, and employees.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to promote, directly or indirectly, any consumer lease in or affecting commerce, as "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 C.F.R. § 213.2, as amended, shall not, in any manner, expressly or by implication:

- A. Make any reference to any charge that is part of the total amount due at lease signing or delivery or that no such charge is required, not including a statement of the periodic payment, unless the advertisement also states with equal prominence the total amount due at lease signing or delivery.
- B. State the amount of any payment or that any or no initial payment is required at lease signing or delivery, if delivery occurs after consummation, without

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disclosing clearly and conspicuously all of the terms required by Regulation M, as follows:

1. that the transaction advertised is a lease;
2. the total amount due at lease signing or delivery;
3. whether or not a security deposit is required;
4. the number, amounts, and timing of scheduled payments; and
5. that an extra charge may be imposed at the end of the lease term in a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the vehicle.

(Section 184(a) of the Consumer Leasing Act ("CLA"), 15 U.S.C. § 1667c(a), as amended, and Section 213.7 of Regulation M, 12 C.F.R. § 213.7, as amended.)

For radio advertisements, respondents may also comply with the requirements of this subparagraph by utilizing Section 184(c) of the CLA, 15 U.S.C. § 1667c(C), and Section 213.7(f) of Regulation M, 12 C.F.R. § 213.7(f), as amended. For television advertisements, respondents may also comply with the requirements of this subparagraph by utilizing Section 213.7(f) of Regulation M, as amended.

- C. Fail to comply in any other respect with Regulation M, 12 C.F.R. § 213, as amended, and the CLA, 15 U.S.C. §§ 1667-1667f, as amended.

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II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to promote, directly or indirectly, any extension of consumer credit in or affecting commerce, as “advertisement” and “consumer credit” are defined in Section 226.2 of Regulation Z, 12 C.F.R. § 226.2, as amended, shall not, in any manner, expressly or by implication:

- A. State the amount or percentage of any downpayment, 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 terms required by Regulation Z, as follows:
 - 1. the amount or percentage of the downpayment;
 - 2. the terms of repayment; and
 - 3. the correct annual percentage rate, using that term or the abbreviation “APR.” If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed.

(Sections 107 and 144(d) of the TILA, 15 U.S.C. §§ 1606 and 1664(d), as amended, and Sections 226.22 and 226.24(c) of Regulation Z, 12 C.F.R. §§ 226.22 and 226.24(c), as amended.)
- B. State a rate of finance charge without stating the rate as an “annual percentage rate” or the abbreviation “APR,” using that term.
- C. Fail to comply in any other respect with Regulation Z, 12 C.F.R. § 226, as amended, and the TILA, 15 U.S.C. §§ 1601-1667, as amended.

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III.

IT IS FURTHER ORDERED that respondent Norristown Automotive Co., Inc., and its successors and assigns, and respondent William Milliken 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 all records that will demonstrate compliance with the requirements of this order.

IV.

IT IS FURTHER ORDERED that respondent Norristown Automotive Co., Inc., and its successors and assigns, and respondent William Milliken 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 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. Respondents shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

IT IS FURTHER ORDERED that respondent Norristown Automotive Co., Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not necessarily 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

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practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate 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. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VI.

IT IS FURTHER ORDERED that respondent William Milliken, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment involving the advertising and/or extension of a "consumer lease," as that term is defined in the CLA and its implementing Regulation M, or the advertising and/or extension of "consumer credit," as that term is defined in the TILA and its implementing Regulation Z. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VII.

IT IS FURTHER ORDERED that respondent Norristown Automobile Co., Inc., and its successors and assigns, and respondent William Milliken shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

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VIII.

This order will terminate on February 7, 2020, 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 Part 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; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondents 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 Part 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.

Analysis to Aid Public Comment

**Analysis of Proposed Consent Orders
to Aid Public Comment****Summary**

The Federal Trade Commission has accepted separate agreements, subject to final approval, orders from respondents Dunphy Nissan, Inc. and Serge Naumovsky (“Dunphy”); Norristown Automobile Co., Inc. and William Milliken (“Norristown”); Northeast Auto Outlet, Inc. and Arthur Micchelli (“Northeast”); Pacifico Ardmore, Inc. and Kerry J. Pacifico (“Pacifico Ardmore”); Pacifico Ford, Inc. and Kerry T. Pacifico (“Pacifico Ford”); and Marty Sussman Organization, Inc. and Martin E. Sussman (“Sussman”)(together “respondents”). The persons named in these actions are named individually and as officers of their respective corporations.

The proposed consent orders have been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreement or make final the agreements' proposed orders.

I. Complaint Allegations**A. FTC Act Violations**

The complaints against the respondents allege that their automobile lease advertisements violate the Federal Trade Commission Act (“FTC Act”), the Consumer Leasing Act (“CLA”), and Regulation M. The complaints also allege that respondents' credit advertisements have violated the Truth in Lending Act (“TILA”) and Regulation Z. Section 5 of the FTC Act prohibits false, misleading, or deceptive representations or omissions of material information in advertisements. In addition, Congress established statutory disclosure requirements for lease

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and credit advertising under the CLA and the TILA, respectively, and directed the Federal Reserve Board ("Board") to promulgate regulations implementing such statutes -- Regulations M and Z respectively. See 15 U.S.C. §§ 1601-1667e; 12 C.F.R. Part 213; 12 C.F.R. Part 226.

The complaints against respondents allege that their lease advertisements represent 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 the downpayment amount. These lease advertisements, according to the complaints, have failed to disclose, and/or failed to disclose adequately, additional terms pertaining to the lease offer, such as the total amount due at lease inception. The complaints allege that this information does not appear at all or appears in fine print in the advertisements and that the information would be material to consumers in deciding whether to visit respondents' dealerships and/or whether to lease an automobile from respondents. These practices, according to the complaints, constitute deceptive practices in violation of Section 5(a) of the FTC Act.

The complaints against Dunphy and Northeast also allege that these respondents misrepresent that consumers can purchase the advertised vehicles for the monthly payment amounts prominently stated in the advertisements. According to the complaints, the monthly payment amounts prominently stated in the advertisements are components of lease offers and not credit offers. These practices, according to the complaints, constitute deceptive practices in violation of Section 5(a) of the FTC Act.

The complaint against Dunphy further alleges that Dunphy misrepresents that the amount stated as "down" or "downpayment" is the total amount consumers must pay at lease inception to lease the advertised vehicles. According to the complaint, however, consumers are required to pay additional fees beyond the amount

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stated as “down” or “downpayment,” including but not limited to the first month's payment, a security deposit, and/or a bank fee. This practice, according to the complaint, constitutes a deceptive practice in violation of Section 5(a) of the FTC Act.

The complaint against Northeast also alleges that Northeast misrepresents that the offer to double consumers' downpayments up to \$4,000 applied to the lease or credit offers advertised. According to the complaint, the offer to double consumers' downpayments up to \$4,000 was not available with the advertised lease or credit offers. This practice, according to the complaint, constitutes a deceptive practice in violation of Section 5(a) of the FTC Act.

The complaints against Dunphy, Northeast, Norristown, and Pacifico Ardmore allege that their credit advertisements represent that consumers can purchase the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the sales price and/or downpayment amount. According to the complaints, these credit advertisements fail to disclose additional terms pertaining to the credit offer, such as the terms of repayment and the annual percentage rate. Such information is alleged to be material to consumers in deciding whether to visit respondents' dealerships and/or whether to purchase an automobile from respondents. These practices, according to the complaints, constitute deceptive practices in violation of Section 5(a) of the FTC Act.

B. CLA and Regulation M Violations

The complaints allege that all respondents violated the CLA and Regulation M. The complaints allege that respondents' lease ads state a monthly payment amount and/or downpayment amount, but fail to disclose, and/or fail to disclose clearly and conspicuously, one or more of the following required 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 and that such amount: 1) excludes third-party fees

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that vary by state or locality, such as taxes, licenses, and registration fees, and discloses that fact or 2) includes third-party fees based on a particular state or locality and discloses that fact and the fact that such fees may vary by state or locality; whether or not a security deposit is required; the number, amounts, and timing of scheduled payments; and that an extra charge may be imposed at the end of the lease term in a lease where the liability of the consumer is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

According to the complaints, the lease disclosures in respondents' lease advertisements are not clear and conspicuous because they appear in fine print and/or in an inconspicuous location. These practices, according to the complaints, violate the advertising requirements of the CLA and Regulation M

The complaints also allege that respondents' lease advertisements state a downpayment amount more prominently than the disclosure of the total amount due at lease signing. According to the complaints, these practices violate Regulation M.

C. TILA and Regulation Z Violations

The complaints against Dunphy, Norristown, Northeast, Pacifico Ardmore, and Pacifico Ford allege that these respondents violated the TILA and Regulation Z. According to the complaints, these respondents state a monthly payment amount and/or a downpayment amount as terms for financing the purchase of the advertised vehicles, but fail to disclose the following items of information required by Regulation Z: the annual percentage rate and the terms of repayment. In addition, the complaints against all respondents allege that their credit ads do not properly state the finance charge as the annual percentage rate, as required by Regulation Z.

II. Proposed Orders

The proposed orders prohibit respondents from disseminating advertisements that state the amount of any payment due at inception (excluding the monthly payment amount) or the fact that any or no inception payment is due without also disclosing with “equal prominence” the total amount a consumer must pay at lease signing or delivery. This requirement parallels an identical requirement found in Regulation M.

The proposed orders also prohibit respondents from disseminating advertisements that state the amount of any payment or that any or no initial payment is required at lease signing or delivery, if delivery occurs after consummation, without disclosing clearly and conspicuously all of the terms required by Regulation M, as follows: that the transaction advertised is a lease; the total amount due at lease signing or delivery; whether or not a security deposit is required; the number, amounts, and timing of scheduled payments; and that an extra charge may be imposed at the end of the lease term in a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the vehicle. This requirement is intended to enjoin the respondents from deceptively advertising only the most attractive portions of its lease offers by requiring clear and conspicuous disclosure of the information necessary for consumers to make informed decisions about advertised lease offers. This paragraph parallels the advertising disclosure requirements from the CLA and Regulation M. The proposed orders also prohibit respondents from violating the CLA and Regulation M.

In addition, the proposed order for Dunphy prohibits Dunphy from misrepresenting the costs of leasing, including the total due at lease inception. The proposed orders for respondents Dunphy and Northeast prohibit these respondents from misrepresenting that advertised terms apply to a cash or credit offer, when, in fact, the terms apply to an offer to lease the advertised vehicle. The

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proposed order for Northeast also prohibits Northeast from misrepresenting the availability of any advertised offer.

With respect to credit advertisements, the proposed orders prohibit respondents from stating the amount or percentage of any downpayment, 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 terms required by Regulation Z, as follows: the amount or percentage of the downpayment; the terms of repayment; and the correct annual percentage rate, using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed.

The proposed orders also prohibit respondents from stating a rate of finance charge without stating the rate as an "annual percentage rate" or "APR." The proposed orders also prohibit all respondents from violating the TILA or Regulation Z.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

Complaint

IN THE MATTER OF

DUNPHY NISSAN, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT, THE
CONSUMER LEASING ACT, AND THE TRUTH IN LENDING ACT

Docket C-3924; File No. 992 3082
Complaint, February 7, 2000 – Decision, February 7, 2000

This consent order prohibits respondents from disseminating advertisements that state the amount of any payment due at inception (excluding the monthly payment amount) or the fact that any or no inception payment is due without also disclosing with “equal prominence” the total amount a consumer must pay at lease signing or delivery. The consent orders also prohibit respondents from disseminating advertisements that state the amount of any payment or that any or no initial payment is required at lease signing or delivery, if delivery occurs after consummation, without disclosing clearly and conspicuously all of the terms required, that the transaction advertised is a lease; the total amount due at lease signing or delivery; whether or not a security deposit is required; the number, amounts, and timing of scheduled payments; and that an extra charge may be imposed at the end of the lease term in a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the vehicle. With respect to credit advertisements, the proposed orders prohibit respondents from stating 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 terms, the amount or percentage of the down payment; the terms of repayment; and the correct annual percentage rate, using that term or the abbreviation “APR.” If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed. The consent orders also prohibit respondents from stating a rate of finance charge without stating the rate as an “annual percentage rate” or “APR.” Respondent is also prohibited from

Participants

For the Commission: *Rolando Berrelez, David Medine, and Sally Forman Pitofsky.*

For the Respondents: *Serge Naumovsky, Dunphy Nissan, Inc.*