
FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS
JANUARY 1, 2008, TO JUNE 30, 2008

IN THE MATTER OF

BUDGET RENT-A-CAR SYSTEM, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-4212; File No. 062 3042
Complaint, January 2, 2008 – Decision, January 2, 2008

This consent order addresses allegations that Budget Rent-A-Car, Inc., a vehicle-rental company, engaged in deceptive practices relating to its EZ Fuel program. The order prohibits Budget from misrepresenting (1) that renters who return their vehicle with a full tank of gas will not incur any fuel-related charges; (2) any fuel-related charge, fee, cost, or requirement; or (3) any charge, fee, or cost, or term or condition, relating to the rental of any vehicle. The order requires that Budget disclose, clearly and conspicuously, at the time of rental transaction any fuel-related charges, fee, or costs; any material requirements related to the fuel-related charge; and the manner, if any, in which the renter can avoid such fuel-related charges. The order prohibits Budget from making any representation about the benefits, costs, or parameters of any fuel-related option unless it discloses clearly and conspicuously, and in close proximity to the representation, any material terms or conditions relating to that fuel option. These provisions do not prohibit Budget from imposing fuel-related charges, so long as such charges are disclosed as required by the order. The order also requires Budget to retain documents relating to its compliance with the order, to disseminate the order to persons with responsibilities relating to the subject matter, to notify the Commission of changes in corporate status, and to submit compliance reports to the Commission.

Participants

For the Commission: *Aaron Gershbock, Frank Gorman, Kerry O'Brien, Evan Rose, Lisa D. Rosenthal, and Sarah Schroeder.*

For the Respondent: *John Hutchins, Amy Mudge, Richard Rosen, and Randal Shaheen, Arnold & Porter.*

COMPLAINT

Complaint

The Federal Trade Commission, having reason to believe that Budget Rent-A-Car, Inc., a corporation (“Budget” or “Respondent”), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a Delaware corporation with its principal office or place of business at 6 Sylvan Way, Parsippany, New Jersey.
2. Respondent has advertised, offered for rent, and rented, directly and through franchisees, vehicles to consumers.
3. 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.
4. Respondent traditionally has offered customers three options with respect to refueling their rental vehicle. Customers have been able to: (1) return the vehicle with as much fuel as was in the tank upon rental and not pay any fuel or service charge; (2) return the vehicle with less fuel than was in the tank upon rental, and pay the specified per-mile or per-gallon rate for the difference; or (3) prepay for a full tank of gas up-front at a discounted rate, and forego credit for any fuel still in the tank upon return.
5. In November of 2004, Respondent launched a pilot program at six non-franchise locations to charge consumers who drove their rental vehicles fewer than 75 miles an automatic fee of \$5 or \$6, depending on the location, unless the consumer refueled the gas tank and presented a fuel receipt. Respondent refers to this program as the “EZ Fuel” program and the fee as the “EZ Fuel fee.”
6. In June of 2005, Respondent expanded the EZ Fuel program to all of its non-franchise U.S. locations, except for Hawaii.

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7. In September of 2005, Respondent increased the EZ Fuel fee to \$9.50 for all locations that used the EZ Fuel program.

8. From November of 2004 to June of 2005, customers who were charged the EZ Fuel fee could have the charge reversed only if they refueled the gas tank and, after returning the rental vehicle and being checked out on the rental lot, went inside to the rental counter and presented a fuel receipt.

9. In June of 2005, Respondent began allowing customers with a corporate account who had been charged the EZ Fuel fee to have the charge reversed on the return lot if they refueled the gas tank and presented a receipt. Customers without a corporate account still had to present their fuel receipt inside at the rental counter to have the EZ Fuel fee reversed.

10. In March of 2006, Respondent began allowing all customers who had been charged the EZ Fuel fee to have the charge reversed on the return lot, without having to go inside to the rental counter, if they refueled the gas tank and presented a receipt.

11. Throughout the period Respondent ran the EZ Fuel program, Respondent continued to promote the traditional three fuel options described in Paragraph 4.

12. In connection with the renting of vehicles, Respondent has disseminated or caused to be disseminated promotional and informational material through its website, *budget.com*; its telephone reservation system; point-of-sale disclosures; and the rental contract.

13. Until March of 2006, Respondent did not inform consumers who reserved a rental car by telephoning Budget or via *budget.com* about the EZ Fuel program at any point during the reservation process.

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14. Certain of Respondent's promotional and informational material including, but not limited to, the website disclosures, the point-of-sale disclosures, and the rental contract, (attached as Exhibits A through D), describe the various charges renters will pay to rent a vehicle and the renters' options and obligations with respect to refueling the vehicle. These disclosures contain the following statements:

A. [BUDGET.COM]

"Common Questions

...

Will any other fees apply? ... On budget.com, all additional charges are quoted as part of your total online rate so there aren't any surprises when you get to the rental counter. . . .The rate you reserve is the rate you pay!

...

Does the cost of the rental include the fuel?

Our prices do not include the cost of fuel. Your rental location will discuss the various fuel options available to you at time of rental. You will have the option to purchase a tank of gas at a discounted rate, or simply return the vehicle with a full tank of gas to avoid additional charges.

...

What is your fuel policy?

You have three options:

1. Pay in advance for the fuel . . .
2. If you aren't sure how far you'll be driving, but plan to stop for gas, don't pay Budget in advance for fuel. Simply bring the car back full to avoid any refueling service charge.
3. If you won't be using a full tank, and don't have time to stop for gas, pay us only for the fuel you use,

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based on the renting location's per-gallon refueling service charge. Budget customer service representatives can tell you what the renting location's refueling service charge is when you pick up the car. "

(Exhibit A).

B. [POINT-OF-SALE SIGN]

"YOUR FUEL OPTIONS

ONE: PAY US NOW... BRING IT BACK EMPTY	TWO: DON'T PAY US FOR GAS... BRING IT BACK FULL.	THREE: PAY US TO FILL IT UP WHEN YOU'RE THROUGH.
New! Save Money And Time! Pay us for your fuel at the time of rental. ...	Save Money! Don't pay us for any fuel! Start with a full tank. If you have the time, and want to save on refueling charges, refill the car before returning it. No fuel charge will be added to your contract.	Save time! Pay us only for the fuel you use! You'll pay more per galls, but it's a smart option if you won't have time to refuel the car before returning.
ADVANCE FUEL RATE \$2.70 per gallon	LOCAL AVG FUEL RATE \$2.85 per gallon	REFUELING SERVICE \$6.75 per gallon "

(Exhibit B, typically larger than 8.5"x11" with blue background and white lettering).

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C. [DIFFERENT VARIATIONS OF DISCLOSURE IN
RENTAL AGREEMENT FOOTER]

“If car is returned with less fuel than when rented a service charge applies.”

“00-74 miles, \$9.50 refueling chge applies.”

(Exhibit C, text included in the footer of rental agreement, in the first of two columns, typically on the thirteenth line of 15 to 16 lines of text).

D. [RENTAL AGREEMENT JACKET]

“Fuel Service Charges. Most Budget rentals come with a full tank of gas, but that is not always the case. There are 3 fueling options:

- (1) IF YOU DO NOT PURCHASE FUEL FROM BUDGET AT THE BEGINNING OF YOUR RENTAL AND YOU RETURN THE CAR WITH AT LEAST AS MUCH FUEL AS WAS IN IT WHEN YOU RECEIVED IT, YOU WILL NOT PAY BUDGET A FUEL AND SERVICE CHARGE.
- (2) IF YOU DO NOT PURCHASE FUEL FROM BUDGET AT THE BEGINNING OF YOUR RENTAL AND YOU RETURN THE CAR WITH LESS FUEL THAN WAS IN IT WHEN YOU RECEIVED IT, Budget will charge you a Fuel and Service Charge at the applicable per mile or per gallon rate specified in the Rental Document. . . .
- (3) IF YOU CHOOSE TO PURCHASE FUEL FROM BUDGET AT THE BEGINNING OF YOUR RENTAL BY SELECTING THE GAS SERVICE OPTION, YOU WILL BE CHARGED AS SHOWN ON THE RENTAL DOCUMENT FOR THAT PURCHASE. . . .”

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(Exhibit D).

15. Through the means described in Paragraph 14, including but not limited to the representations in Exhibits A-D, Respondent has represented, expressly or by implication, that, if consumers return their rental vehicle with a full gas tank, they will not have to pay any fuel-related charge, fee, or cost.

16. In truth and in fact, in numerous instances, if consumers return their rental vehicle with a full gas tank, they will have to pay a fuel-related charge, fee, or cost. Consumers who drive their rental vehicle fewer than 75 miles will have to pay the EZ Fuel fee, regardless of whether they return the vehicle with a full gas tank, unless they present a gas receipt. Therefore, the representations set forth in Paragraph 14 were, and are, false or misleading.

17. In connection with the renting of vehicles, Respondent has represented that consumers can avoid paying any fuel or fuel-related service fee by returning their rental vehicle with a full gas tank. Respondent has failed to disclose, or failed to disclose adequately, that consumers who drive their rental vehicle fewer than 75 miles and refuel will have to pay the EZ Fuel fee unless they present a fuel receipt. In addition, Respondent failed to disclose that, prior to March of 2006, consumers without corporate accounts who drove their rental vehicle fewer than 75 miles and refueled would have to pay the EZ Fuel fee unless they presented their fuel receipt inside at the rental counter after returning their rental vehicle and checking out on the return lot. These facts would be material to consumers in their rental transaction. The failure to disclose, or failure to disclose adequately, the existence and the terms and conditions of the EZ Fuel program, in light of the representations made, was, and is, a deceptive practice.

18. The acts and practices of Respondent as alleged in this Complaint constitute unfair or deceptive acts or practices, in or

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affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this second day of January, 2008, has issued this complaint against Respondent.

By the Commission.

Complaint



reservations | deals | car types | locations | frequent renter | about us | customer care

Common Questions

Helpful information about rental requirements, locations, options and terms and conditions.

These frequently-asked questions have been assembled to help you understand Budget's fast and friendly rental process. If your question isn't answered here, please [contact us](#).



Requirements for Renting
[Are there age requirements for renting?](#)
[Will you check my driving record?](#)
[What if I have traffic infractions?](#)
[What kind of credentials and driving record do I need?](#)
[Do you require a deposit to rent a vehicle?](#)
[Am I required to take the insurance?](#)
[What happens if I do not elect to take your insurance?](#)
[Does my own insurance protect me in the event of an accident?](#)
[What are the benefits of purchasing coverages?](#)
[Can I rent a car to take a driving test?](#)
[Will you accept a citation or summons in lieu of a driver's license?](#)

Reserving My Car
[Is a credit card minimum required to rent a vehicle?](#)
[Is a credit card needed to hold my reservation?](#)
[What kind of deposit is required when I pick up my car?](#)
[What credit charge and debit cards do you accept?](#)
[Can you reserve a specific make/model car for me?](#)
[How do I know if special terms or conditions apply to my rental?](#)
[Do you lease vehicles?](#)
[Do you rent cars by the hour?](#)
[What additional benefits do you offer when renting with Budget?](#)
[Do you deliver vehicles?](#)
[Do you offer a pick-up service?](#)
[Do you provide cab or bus reimbursement to get to your Budget location?](#)
[How do I modify my existing reservation?](#)
[How do I cancel my existing reservation?](#)
[How can I view my reservation on budget.com?](#)
[What are the benefits of purchasing the insurance?](#)
[Can I use another person's credit card if I have their permission?](#)
[Will my credit/debit card be charged when I make the reservation?](#)

Complaint Exhibit A

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What is your cancellation policy?
Can I take the vehicle out of state/country?
What does "PSGR" mean?
What does "APO" mean?

My Rental Rate
How is my rental rate calculated?
Do late-return fees apply?
Will any other fees apply?
What is the cost of a child safety seat?
What is the cost of a ski rack?
Does the cost of the rental include the fuel?
What is the cost of snow chains?
What is the cost of a towing hitch?

Renting Options: Locations, Products and Extras
Where are your locations?
What types of vehicles do you offer?
What types of discounts and upgrades are available?
Can I pick up at one location and return at another?
Can I rent additional accessories?
Can you confirm availability of additional accessories?
What's the difference between an infant seat, toddler safety seat and a child booster seat?
Do you offer vehicles for drivers with disabilities?
What is your fuel policy?
What insurance do you offer while I'm renting?
Do you offer insurance replacement while the car I own is being serviced?
If I rent, may another person drive?
Can I earn frequent flyer miles when I rent with Budget?
Do you offer hand controls?
Do you offer wheelchair-accessible vehicles?

While I'm renting
What should I do if I'm involved in an accident?
What should I do if I have problems with my car?
Do you have any other rental tips?
Can I add an additional driver after I have picked up the rental vehicle?
Can I change where or when I return a vehicle after I have picked it up?

Other
Do I need to have a RapidRez number to make a reservation online?
Can I store a debit or prepaid card on my Fastbreak profile?
Where on budget.com do I enter a discount code (BCD) or coupon number?
How do I receive a discount code (BCD)?

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Will any other fees apply?

For Budget and all other rental car companies at many airport locations, concession recovery and facility fees may be charged. A vehicle license recovery fee may be charged as well. For U.S. Government rentals, the government imposes a \$6/day Administrative Rate Supplement (GARS/GA). Please check for fees that apply to your rental in the rates section during your reservation process. On budget.com, all additional charges are quoted as part of your total online rate so there aren't any surprises when you get to the rental counter. And, if any fees go up between the time you reserve and rent your car, just submit our [rate guarantee form](#) and we will reimburse you for any additional fees that you were charged over your reserved rate. The rate you reserve is the rate you pay!

[^ back to top](#)**What is the cost of a child safety seat?**

Rates vary by location but average about \$9 per day with a maximum of \$80 per rental. You can obtain the exact price of the baby seat on step 3 of the [online reservation process](#).

[^ back to top](#)**What is the cost of a ski rack?**

The cost and availability of ski racks varies by location but usually average about \$7 per day. We display availability and the cost of the ski rack at your chosen location in step 3 of the [online reservation process](#).

[^ back to top](#)**Does the cost of the rental include the fuel?**

Our prices do not include the cost of fuel. Your rental location will discuss the various fuel options available to you at time of rental. You will have the option to purchase a tank of gas at a discounted rate, or simply return the vehicle with a full tank of gas to avoid additional charges.

[^ back to top](#)**What is the cost of snow chains?**

Snow chains are not offered or available as optional equipment because of local restrictions or the potential damage to the rental vehicle.

[^ back to top](#)**What is the cost of a towing hitch?**

Tow hitches are not offered or available as optional equipment because of the potential damage to

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Does the cost of the rental include the fuel?

Our prices do not include the cost of fuel. Your rental location will discuss the various fuel options available to you at time of rental. You will have the option to purchase a tank of gas at a discounted rate, or simply return the vehicle with a full tank of gas to avoid additional charges.

[^ back to top](#)**What is the cost of snow chains?**

Snow chains are not offered or available as optional equipment because of local restrictions or the potential damage to the rental vehicle.

[^ back to top](#)**What is the cost of a towing hitch?**

Tow hitches are not offered or available as optional equipment because of the potential damage to the rental vehicle.

[^ back to top](#)**Renting Options: Locations, Products and Extras****Where are your locations?**

Budget has thousands of worldwide locations, so it's easy to find a quality rental car in your area.

[^ back to top](#)**What types of vehicles do you offer?**

Budget features Ford and Lincoln products, as well as other fine cars and trucks. Since each location decides which vehicles best fit its customers' needs, all locations do not offer every vehicle. We cannot guarantee that you will receive a certain make, model or color because these specifications are based on availability at time of pickup. When necessary, we will substitute another brand of car within your car class with similar amenities. Upon arrival, however, you may advise the counter representative of your preference and, if possible, we will be happy to accommodate your request. And you'll be glad to know that any Budget car you rent at a corporate location is guaranteed to be less than one year old. Also, we can promise that, if you order an intermediate, for example, we'll have an intermediate available for you — or upgrade you to a larger vehicle at no extra charge.

[^ back to top](#)**What types of discounts and upgrades are available?****Complaint Exhibit A**

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Complaint

What is your fuel policy?

You have three options:

1. Pay in advance for the fuel, and bring the car back empty. Budget will fill the car at, or sometimes below, the current retail pump price. Regardless of how much fuel is left in the tank, credits will not be given for unused gasoline.
2. If you aren't sure how far you'll be driving, but plan to stop for gas, don't pay Budget in advance for fuel. Simply bring the car back full to avoid any refueling service charge.
3. If you won't be using a full tank, and don't have time to stop for gas, pay us only for the fuel you use, based on the renting location's per-gallon refueling service charge. Budget customer service representatives can tell you what the renting location's refueling service charge is when you pick up the car.

[← back to top](#)

What insurance do you offer while I'm renting?

Purchasing any one of our coverages provides you with the added peace of mind and assurance that you are protected against any damage or theft to your rental vehicle. Below is a brief description of the types of coverages that you'll be offered when you reserve online or pick up your vehicle. Here also is a summary of the optional insurance plans available for an additional daily charge at most Budget locations in the U.S.

These plans are provided by independent insurance companies, and are subject to the provisions, limitations and exclusions contained in the actual policies, which are available for review upon request. Other rental companies may offer similar coverages under different names and at varying limits and costs. As with any optional insurance or protection plan, smart renters will want to do some research before purchasing these options. Budget offers several types of optional insurance plans to protect you during the rental period:

- **Supplemental Liability Insurance (SLI)** is excess automobile liability insurance that protects you and all authorized drivers of the rental vehicle against third-party bodily injury and property damage claims for which you are legally liable. When SLI is purchased, liability protection provided by Budget and the SLI carrier becomes primary, and applies before other liability protection available to you. This means that you probably won't have to call upon your other protection unless the loss exceeds the SLI limit or results from your use of the vehicle in violation of the terms of the rental agreement. By not having to file a claim under your own policy, you can probably avoid possible premium increases or even cancellation. Another benefit is that SLI provides a high limit of liability protection that might not otherwise be available to the renter. By accepting SLI, the limit of liability protection available to the renter or authorized driver is \$1 million combined single limit.

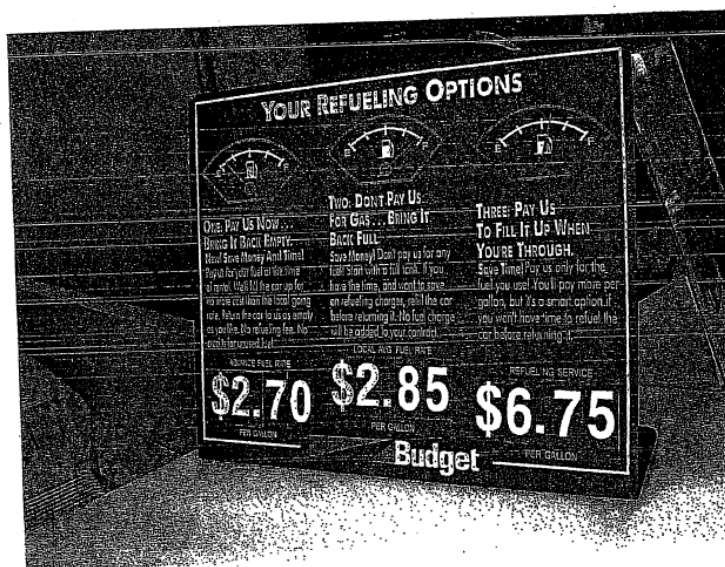
- **Personal Accident and Effects Insurance (PAE)** protects you and your passengers against accident, injury, and loss to personal property. PAE provides renters and occupants of the rental vehicle with accidental death benefit and coverage for certain medical expenses resulting from an accident. Renters are protected both in and out of the rental vehicle during the entire rental period.

Complaint Exhibit A

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Complaint Exhibit B

Complaint

Budget.

517914655
Budget Rent A Car System, Inc.

CX

RA DOCUMENT 768766972 F-13CDR 1985
CARN 9146841 ERP C

RENTED: 21APR86/1038
DUE IN: 23APR86/1825

Redacted

MI. OUT: 2181
PLAYER CA STCR23 FUEL OUT: 8/8
RED CHEV MALI ADR SPIDER 206

*****OPTIONAL SERVICES*****

LIM:	15.00/DAY DECLINED
PRI:	4.35/DAY ACCEPTED
ESP:	4.00/DAY ACCEPTED
SLI:	12.35/DAY DECLINED

O R Y MY INITIALS I ACCEPT OR
DECLINE OPTIONAL SERVICES AS
SHOWN ABOVE.) Redacted

Redacted

Redacted

***RA 768766972

*MIN 1 DAY
*RATE NOT VALID AFTER MON 23:59
*FRIDAY NIGHT OVERTIME REQUIRED

MILEAGE CHG: UNLIMITED
HOURLY: 9.67
DAILY: 28.99
ADD'L BY: 58.99
MONTHLY:
FUEL SERVICE: .2791/MIL
6.699/GAL.
WT: 7.75# + \$3.50
\$3.50/MENTAL SAN DIEGO
CONVENTION PARKING FEE

Redacted

NOTICES NOTICES NOTICES NOTICES NOTICES NOTICES NOTICES

*****RENTERS ARE NOT REQUIRED TO PURCHASE LOSS DAMAGE WAIVER
LOW. IT IS NOT MANDATORY. BEFORE PURCHASING LOW, RENTER
MUST CHECK IF OWN INSURANCE COVERS DAMAGE TO AND LOSS OF
THE CAR, THE LIMIT OF COVERAGE AND DEDUCTIBLE. IF THE
RENTER DECLINES LOW, RENTER MAY BE LIABLE FOR UP TO THE
RENTAL FAIR MARKET VALUE (LESS SALVAGE) OF THE CAR,
WHETHERLESS OF FAULT, UNLESS ORDINARY NEGLIGENCE IS EXCLUDED
BY LAW. REPAIRS ARE AT BUDGET'S COST. READ LOW TERMS ON THE
RENTAL DOCUMENT TICKET TERMS AND CONDITIONS, INCLUDING
EXCLUSIONS FROM LOW.

*****TRAVEL INTO MEXICO IS PROHIBITED UNLESS AUTHORIZED, IN
WRITING, BY BUDGET AND OUR MEXICAN INSURANCE IS PROVIDED
*****8-74 MILES, 4 \$3.50 REFUELING SERVICE CHRG WILL APPLY.
*****MINIMUM CHARGE IS 1 DAY (24 HRS) PLUS MILEAGE.
FUEL SERVICES ADD'L.

*****ADDITIONAL OPERATORS ARE AUTHORIZED OR PERMITTED
WITHOUT BUDGET'S PRIOR WRITTEN APPROVAL. IN ACCORDANCE
WITH THE TERMS AND CONDITIONS OF THE RENTAL AGREEMENT
OR APPLICABLE STATE LAW.

*****IF I HAVE PRESENTED A CREDIT CARD FOR PAYMENT, ALL
CHARGES, INCLUDING PARKING TICKET EXPENSES, MAY BE
BILLED TO THE CARD, AND MY SIGNATURE BELOW WILL BE
CONSIDERED TO HAVE BEEN MADE ON THE APPLICABLE
CARD VOUCHER.

*****BY MY SIGNATURE, I ACKNOWLEDGE RECEIPT OF ALL NOTICES
WHICH APPEAR ON THIS RENTAL DOCUMENT. I AGREE TO THE
TERMS AND CONDITIONS INCLUDING AND NOW DRIVE THE CAR,
WHICH IS STATED ON THE RENTAL DOCUMENT TICKET PROVIDED.

Redacted

RES # 3189480-US-DC
PREPARED BY:15857
6FBE/13CE/06111/13:40/F RENTAL# 768766972

Complaint Exhibit C
pg. 2 of 2

Complaint

7. **Loss Damage Waiver.** In and Insurance and not mandatory. If I accept Loss Damage Waiver (LDW) at the rate per day, pay the LDW fee and the car is operated in accordance with this agreement, you assume all loss or damage to the car except for my amount of "responsibility" as specified on the Rental Document. If I do not accept LDW, I will own you for all loss or damage to the car as described in the following paragraph and includes vandalism. Loss Damage Waiver does not apply to theft of the vehicle, for which I am not responsible unless it results from failure to use ordinary care while the car is in the possession of myself or the driver, in which case I am responsible regardless of whether or not I accept LDW. I acknowledge I have been advised that my own insurance may cover loss or damage to the car.
8. **Damage/Loss to the Car.** If the law of a jurisdiction covering this rental requires conditions on LDW that are different than the terms in this agreement, that law prevails. If I do not accept LDW, I will own for all loss or damage to the car regardless of fault (unless the renter's liability for ordinary negligence is prohibited by law) whether due to collision, vandalism, or any other cause except accidental fire or explosion. If the car is damaged, I'll pay its retail fair market value before damage less salvage, unless your repair cost plus the diminution of the car's value after repairs is less and you are not required by law to salvage the car, in which case I'll pay the latter amount. I'll also pay loss of use based on reasonable deduction or as specified by law, plus a reasonable administrative fee determined by you or specified by law, plus towing and storage charges, all of which are also part of the "loss". Whether or not I accept LDW, I'm responsible for loss or damage to the car and loss of use caused by me or an authorized additional driver if I violate paragraph 16 below. If my responsibility for loss or damage is covered by my own insurance or my charge card issuer, as applicable, I will identify my insurer and policy number or my card issuer and its insurer. I authorize you to collect any loss directly from the insurer. I authorize you to collect any loss from a third party responsible for it; you will refund any sum you collect exceeding the loss.
9. **Loss Damage Waiver Fee.** If I accept LDW, I'll pay the LDW rate per day as specified on the Rental Document for a full day, even if I don't have the car for the entire day. LDW fee is the applicable rate per day multiplied by the number of rental days. I acknowledge reading the notice on loss damage shown on the Rental Document or in separate notice form.
10. **Fuel Service Charge.** Most Budget rentals come with a full tank of gas, but that is not always the case. There are three refueling options:
(1) IF YOU DO NOT PURCHASE FUEL FROM BUDGET AT THE BEGINNING OF YOUR RENTAL AND YOU RETURN THE CAR WITH AT LEAST AS MUCH FUEL AS WAS IN IT WHEN YOU RECEIVED IT, YOU WILL NOT PAY BUDGET A FUEL AND SERVICE CHARGE.
(2) IF YOU DO NOT PURCHASE FUEL FROM BUDGET AT THE BEGINNING OF YOUR RENTAL AND YOU RETURN THE CAR WITH LESS FUEL THAN WAS IN IT WHEN YOU RECEIVED IT, Budget will charge you a Fuel and Service Charge at the applicable per-mile or per-gallon rate specified on the Rental Document.
(a) The per-mile rate is used if you do not buy fuel during the rental. To estimate this amount, Budget multiplies the number of miles driven, as shown on the car's odometer, times the per-mile rate shown on the Rental Document.
(b) The per-gallon rate is used if you buy fuel during the rental but the tank is not as full when you return the car as when you received it. To calculate this amount, Budget multiplies the number of gallons needed to refill the fuel tank to the level it was at when you received the car (by reading the factory installed gauge, rounded down to the nearest 1/8 of a tank), times the per-gallon rate shown on the Rental Document.
ALTHOUGH TWO METHODS ARE USED FOR EASE OF CALCULATION, THE PER-MILE AND PER-GALLON RATES PRODUCE APPROXIMATELY THE SAME RESULT.
(3) IF YOU CHOOSE TO PURCHASE FUEL FROM BUDGET AT THE BEGINNING OF YOUR RENTAL BY SELECTING THE GAS SERVICE OPTION, YOU WILL BE CHARGED AS SHOWN ON THE RENTAL DOCUMENT FOR THAT PURCHASE. IF YOU CHOOSE THIS OPTION, YOU WILL NOT INCUR AN ADDITIONAL FUEL AND SERVICE CHARGE, BUT YOU WILL NOT RECEIVE ANY CREDIT FOR FUEL LEFT IN THE TANK AT THE TIME OF RETURN. THE PER GALLON COST OF THE GAS SERVICE OPTION WILL ALWAYS BE LOWER THAN THE FUEL AND SERVICE CHARGE. BUT IF YOU SELECT THE GAS SERVICE OPTION YOU WILL NOT RECEIVE CREDIT FOR FUEL LEFT IN THE TANK AT THE TIME OF RETURN. THE COST OF REFUELING THE CAR YOURSELF AT A LOCAL SERVICE STATION WILL GENERALLY BE LOWER THAN THE FUEL AND SERVICE CHARGE OR THE GAS SERVICE OPTION. HOWEVER, THE FUEL AND SERVICE CHARGE AND THE GAS SERVICE OPTION ALLOW FOR THE CONVENIENCE OF NOT HAVING TO STOP AND REFUEL THE CAR PRIOR TO RETURN.
11. **Special Charges.** If I represent I'll return car to another location, I may have to pay "one-way service fee" as specified on the Rental Document. If I return the car to a location different from agreed return location as specified on the Rental Document without your written permission, I'll pay an "unauthorized return location fee". Minimum for this fee is \$45. I'll pay a higher fee, if by multiplying your normal mileage rate by the distance between

Complaint Exhibit D

Decision and Order

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of Budget Rent-A-Car System, Inc. (hereinafter referred to as “Respondent”), and Respondent having been furnished thereafter with a copy of the draft of Complaint which the Western Region proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order (“Consent Agreement”), containing an admission by the Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent 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 Respondent has violated the said Act, and that Complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of comments, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Order:

1. Respondent Budget Rent-A-Car System, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 6 Sylvan Way, Parsippany, New Jersey.

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2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

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

1. Unless otherwise specified, “Respondent” shall mean Budget Rent-A-Car System, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees.
2. “Clearly and conspicuously” shall mean as follows:
 - a. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement. Provided, however, that in any advertisement presented solely through visual or audio means, the disclosure may be made through the same means in which the ad is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.
 - b. In a print advertisement, promotional material (including, but not limited to counter signs), or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary

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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 or promotional material.

3. “Commerce” shall mean commerce as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
4. “Fuel-related charge, fee, or cost” shall mean any charge, fee, or cost imposed by Respondent on consumers in connection with the use of fuel or gasoline.
5. “Fuel-related option” shall mean any option, program, or alternative offered by Respondent in connection with how consumers will pay for fuel or gasoline or the method by which Respondent will calculate fuel-related charges, fees, or costs.
6. “Renter” shall mean any person in any manner obligated under a contract for the lease or hire of a passenger vehicle from Respondent for a period of less than 30 days.
7. “At the time of rental transaction” shall mean the time after which a renter arrives at the location from which the vehicle will be rented but before the renter signs the rental contract.

I.

IT IS ORDERED that Respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for rent, or renting of any vehicle, shall not misrepresent, in any manner, expressly or by implication:

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- A. that renters who return their vehicle with a full gas tank will not incur any fuel-related charges;
- B. any fuel-related charge, fee, or cost, or related requirement; or
- C. any charge, fee, or cost, or material term or condition, relating to the rental of any vehicle.

II.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for rent, or renting of any vehicle, shall disclose clearly and conspicuously, at the time of rental transaction,

- A. any fuel-related charges, fees, or costs, including any fuel-related charges, fees, or costs which a renter who drives the vehicle less than any specified amount may incur;
- B. any requirements related to fuel-related charges, fees, or costs, including any fuel-related requirements which a renter who drives the vehicle less than any specified amount may need to satisfy; and
- C. the manner, if any, in which a renter can avoid such fuel-related charges, fees, or costs, or related requirements.

III.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for rent, or renting of any vehicle, shall not make, expressly or by implication, any representation about the benefits, costs, or

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parameters of any fuel-related option, unless it discloses clearly and conspicuously, and in close proximity to the representation, all material terms and conditions relating to that fuel option.

IV.

IT IS FURTHER ORDERED that Respondent Budget Rent-A-Car System, Inc. and its successors and assigns, for five (5) years after the last date of dissemination of any representation covered by this order, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

V.

IT IS FURTHER ORDERED that Respondent Budget Rent-A-Car System, Inc. and its successors and assigns, for a period of three (3) years, 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. Respondent shall deliver this order to current personnel within forty-five (45) days after the date of service of this order, and to future personnel within forty-five (45) days after the person assumes such position or responsibilities.

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VI.

IT IS FURTHER ORDERED that Respondent Budget Rent-A-Car System, Inc. and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not 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 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.

VII.

IT IS FURTHER ORDERED that Respondent Budget Rent-A-Car System, Inc. and its successors and assigns 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 it has complied with this order.

VIII.

This order will terminate on January 2, 2028, 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

Analysis to Aid Public Comment

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 Respondent 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 OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission has accepted an agreement to a proposed consent order with Budget Rent-A-Car System, Inc. ("Budget"), one of the nation's largest rental car agencies.

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons.

Analysis to Aid Public Comment

Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns deceptive practices by Budget with respect to an automatic, flat "EZ Fuel" fee it charges to renters who drive fewer than 75 miles, regardless of whether they return their rental with a full gas tank, unless they present a receipt. Budget has failed to adequately disclose the EZ Fuel fee or how renters can have the fee reversed.

The complaint alleges that Budget engaged in deceptive practices relating to its EZ-Fuel program. The complaint alleges that Budget has falsely represented that, if consumers return their rental vehicle with a full gas tank, they will not have to pay any fuel-related charge, fee, or cost. In numerous instances, however, consumers who drive their vehicle fewer than 75 miles will have to pay the EZ Fuel fee, regardless of whether they return the vehicle with a full gas tank, unless they present a gas receipt.

The complaint further alleges that Budget failed to disclose and failed to disclose adequately that consumers who drive their rental vehicle fewer than 75 miles and refuel can have the EZ Fuel fee reversed only if they present a fuel receipt. In addition, Budget failed to disclose that consumers without corporate accounts would have to present their fuel receipt inside at the rental counter after returning their rental vehicle and checking out on the return lot. These facts would be material to consumers in their rental transaction. The failure to disclose these facts, in light of the representations made, was a deceptive practice.

The proposed order contains provisions designed to prevent Budget from engaging in similar acts and practices in the future. Part I prohibits Budget from misrepresenting (A) that renters who

Analysis to Aid Public Comment

return their vehicle with a full tank of gas will not incur any fuel-related charges; (B) any fuel-related charge, fee, cost, or requirement; or, (C) any charge, fee, or cost, or term or condition, relating to the rental of any vehicle.” Part II of the proposed order requires that Budget disclose, clearly and conspicuously, at the time of rental transaction: (A) any fuel related charges, fee, or costs; (B) any material requirements related to the fuel-related charge; and (C) the manner, if any, in which the renter can avoid such fuel-related charges. Finally, Part III of the proposed order prohibits Budget from making any representation about the benefits, costs, or parameters of any fuel-related option unless it discloses clearly and conspicuously, and in close proximity to the representation, any material terms or conditions relating to that fuel option. These conduct provisions prohibit the deceptive practices alleged in the complaint, but do not prohibit Budget from imposing fuel-related charges, so long as such charges are disclosed as required by the proposed order.

Parts IV through VII of the proposed order are reporting and compliance provisions. Part IV requires Budget to retain documents relating to its compliance with the order. Part V requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part VI ensures notification to the FTC of changes in corporate status. Part VII mandates that Budget submit compliance reports to the FTC. Part VIII is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to modify the terms of the proposed order in any way.

Complaint

IN THE MATTER OF

**THE GREAT ATLANTIC & PACIFIC TEA
COMPANY, INC.**

AND

PATHMARK STORES INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS
OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL
TRADE COMMISSION ACT

Docket C-4209; File No. 071 0120

Complaint, November 27, 2007 B Decision, January 2, 2008

This consent order addresses the \$1.3 billion acquisition by The Great Atlantic & Pacific Tea Company (“A&P”) of Pathmark Stores. The Complaint alleges that the acquisition may increase opportunities for all firms in the market for retail sale of grocery products from supermarkets in Staten Island, New York, and Shirley, Long Island, New York to engage in coordinated interaction or for A&P to exercise unilateral market power, leading to higher prices or decreases in services. The order requires that A&P sell four Waldbaum’s supermarket stores and one Pathmark supermarket store in Staten Island and a Waldbaum’s store in Shirley, Long Island, together with their related assets. The one Pathmark store and four Waldbaum’s stores in Staten Island are required to be divested to King Kullen Grocery Co., Inc., and the Waldbaum’s store in Shirley is required to be divested to The Stop & Shop Supermarket Company LLC, a subsidiary of Koninklijke Ahold NV.

Participants

For the Commission: *Joseph Brownman, Benjamin Gris, Grace H. Kwon, Mazor Matzkevich, Susan E. Raitt, Anthony R. Saunders, Jan Tran, and Nancy Turnblacer.*

For the Respondents: *Manfred Gabriel, Hanno Kaiser, and Bruce Prager, Latham & Watkins LLP; Michael L. Keeley, William Rubenstein, Michelle Seagull, and Adam Strayer, Axinn, Veltrop & Harkrider LLP.*