

Complaint

IN THE MATTER OF

FRANK MYERS AUTOMAXX, LLCCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4353; File No. 112 3206
Complaint, April 19, 2012 – Decision, April 19, 2012

This consent order addresses Frank Myers AutoMaxx, LLC's advertising of the purchase, financing, and leasing of its motor vehicles. The complaint alleges that respondent has represented that when a consumer trades in a used vehicle in order to purchase another vehicle, respondent will pay off the balance of the loan on the trade-in vehicle such that the consumer will have no remaining obligation for any amount of that loan, but does not. The consent order prohibits the respondent from misrepresenting that it will pay the remaining loan balance on a consumer's trade-in vehicle such that the consumer will have no obligation for any amount of that loan and any other material fact relating to the financing or leasing of a motor vehicle.

Participants

For the *Commission*: Gregory A. Ashe and Robin Thurston.

For the *Respondent*: Matthew Bryant and Casey Otis,
Hendrick Bryant Nerhood & Otis, LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Frank Myers AutoMaxx, LLC, a limited liability corporation ("Respondent"), has violated provisions of the Federal Trade Commission Act ("FTC Act"), and, it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Frank Myers AutoMaxx, LLC, is a North Carolina limited liability corporation with its principal place of business at 4200 N. Patterson Ave., Winston Salem, NC, 27105. Respondent offers automobiles for sale.

2. The acts or practices of Respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

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3. Since at least September 2009, Respondent has disseminated or caused to be disseminated advertisements regarding the purchasing and financing of its automobiles.

4. Respondent's advertisements include, but are not necessarily limited to, video advertisements posted on the website YouTube.com, copies of which are attached as Exhibits A through E. These advertisements include the following statements:

- a. "We'll pay off your trade no matter what you owe!" (Exhibit A (DVD containing 7/6/11 capture of YouTube advertisement "Winston-Salem Car Dealer Wants You To Have A Nicer, Newer Car" at 0:18-0:23)).
- b. "You're driving a car you hate, but you owe more than it's worth; no problem. When you buy any certified car, we'll pay of your trade, regardless of what you owe." (Exhibit B (DVD containing 7/14/11 capture of YouTube advertisement "'Common Sense Ain't So Common' says Tracy Myers of Frank Myers Auto Maxx" at 0:11-0:19)).
- c. "We'll pay off your current loan no matter how much you owe." (Exhibit C (DVD containing 7/6/11 capture of YouTube Advertisement "Frank Myers Auto - Biz Is Booming Trade-In Event in Winston-Salem, NC 27105" at 0:13-0:16)).
- d. "Uncle Frank wants to pay [your trade] off in full, no matter how much you owe!" (Exhibit D (DVD containing 7/6/11 capture of YouTube Advertisement "HATE Your Car? STOP Making Payments - Frank Myers Auto in Winston-Salem, NC 27105" at 0:06-0:10)).
- e. "We'll pay off your lease or loan, in full, no matter how much you owe." (Exhibit E (DVD containing 7/6/11 capture of YouTube Advertisement "'Snow Blows!' exclaims a Winston-Salem, NC used car dealer" at 0:14-0:18)).

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**VIOLATION OF THE FEDERAL TRADE COMMISSION
ACT****Count I: Misrepresentation of Financing Terms**

5. Through the means described in Paragraph 4, Respondent has represented expressly or by implication that, when a consumer trades in a used vehicle in order to purchase another vehicle, Respondent will pay off the balance of the loan on the trade-in vehicle such that the consumer will have no remaining obligation for any amount of that loan.

6. In truth and in fact, in numerous instances, when a consumer trades in a used vehicle with a loan balance that exceeds the vehicle's value (*i.e.* the trade-in has negative equity) in order to purchase another vehicle, Respondent will not pay off the balance of the loan on the trade-in vehicle such that the consumer will have no remaining obligation for any amount of that loan. Instead, Respondent sometimes requires the consumer to pay the amount of the negative equity at the time of the sale.

7. Therefore, the representation set forth in Paragraph 5 of this Complaint was, and is, false or misleading.

8. The acts and practices of Respondent as alleged in this complaint constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the FTC Act.

THEREFORE, the Federal Trade Commission, this nineteenth day of April, 2012, has issued this complaint against Respondent.

By the Commission.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of Respondent named in the caption hereof, and Respondent having been furnished thereafter with a copy of a draft 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 Respondent with violation of the Federal Trade Commission Act; and

Respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order ("consent agreement"), an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the 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 Respondent has violated the Act, and that a 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 public comments, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Frank Myers AutoMaxx, LLC, is a North Carolina limited liability corporation with its principal office or place of business at 4200 N. Patterson Ave., Winston Salem, North Carolina, 27105.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

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ORDER**DEFINITIONS**

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

- A. “Advertisement” shall mean a commercial message in any medium that directly or indirectly promotes a consumer transaction.
- B. “Material” shall mean likely to affect a person’s choice of, or conduct regarding, goods or services.
- C. “Motor vehicle” shall mean
 - 1. any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;
 - 2. recreational boats and marine equipment;
 - 3. motorcycles;
 - 4. motor homes, recreational vehicle trailers, and slide-in campers; and
 - 5. other vehicles that are titled and sold through dealers.

I.

IT IS ORDERED that Respondent, directly or through any corporation, subsidiary, division, or other device, in connection with any advertisement to promote, directly or indirectly, the purchase, financing, or leasing of automobiles, in or affecting commerce, shall not, in any manner, expressly or by implication

- A. Misrepresent that when a consumer trades in a used motor vehicle (“trade-in vehicle”) in order to purchase another motor vehicle (“newly purchased vehicle”), Respondent will pay any remaining loan balance on the trade-in vehicle such that the consumer will have

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no remaining obligation for any amount of that loan;
or

- B. Misrepresent any material fact regarding the cost and terms of financing or leasing any newly purchased vehicle.

II.

IT IS FURTHER ORDERED that Respondent and its successors and assigns 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:

- 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 their 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.

III.

IT IS FURTHER ORDERED that Respondent and its successors and assigns 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 thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

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IV.

IT IS FURTHER ORDERED that Respondent 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. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC, 20580. The subject line must begin: FTC v. Frank Myers AutoMaxx.

V.

IT IS FURTHER ORDERED that Respondent and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of their own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports.

VI.

This order will terminate on April 19, 2032, 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;
- 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 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, Commissioner Ohlhausen not participating.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

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

Analysis to Aid Public Comment

The respondent is a motor vehicle dealer. The matter involves its advertising of the purchase, financing, and leasing of its motor vehicles. According to the FTC complaint, respondent has represented that when a consumer trades in a used vehicle in order to purchase another vehicle, respondent will pay off the balance of the loan on the trade-in vehicle such that the consumer will have no remaining obligation for any amount of that loan. The complaint alleges that in fact, when a consumer trades in a used vehicle with negative equity (*i.e.* the loan balance on the vehicle exceeds the vehicle's value) in order to purchase another vehicle, respondent does not pay off the balance of the loan on the trade-in vehicle such that the consumer will have no remaining obligation for any amount of that loan. Instead, the respondent may require the consumer to pay for the negative equity in cash at the time of sale. The complaint alleges therefore that the representation is false or misleading in violation of Section 5 of the FTC Act.

The proposed order is designed to prevent the respondent from engaging in similar deceptive practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting that it will pay the remaining loan balance on a consumer's trade-in vehicle such that the consumer will have no obligation for any amount of that loan. It also prohibits misrepresenting any other material fact relating to the financing or leasing of a motor vehicle.

Part II of the proposed order requires respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements. Part III requires that respondent provide copies of the order to certain of its personnel. Part IV requires notification of the Commission regarding changes in corporate structure that might affect compliance obligations under the order. Part V requires the respondent to file compliance reports with the Commission. Finally, Part VI is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

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

Complaint

IN THE MATTER OF

RAMEY MOTORS, INC.

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT, THE TRUTH
IN LENDING ACT, AND REGULATION Z

Docket No. C-4354; File No. 112 3207
Complaint, April 19, 2012 – Decision, April 19, 2012

This consent order addresses Ramey Motors, Inc.'s advertising of the purchase and financing of its motor vehicles. The complaint alleges that respondent has represented that when a consumer trades in a used vehicle in order to purchase another vehicle, respondent will pay off the balance of the loan on the trade-in vehicle such that the consumer will have no remaining obligation for any amount of that loan, but does not. In addition, the complaint alleges violations of the Truth in Lending Act and Regulation Z for failing to disclose certain costs and terms when advertising credit. The consent order prohibits the respondent from misrepresenting that it will pay the remaining loan balance on a consumer's trade-in vehicle such that the consumer will have no obligation for any amount of that loan or any other material fact relating to the financing or leasing of a motor vehicle.

Participants

For the *Commission*: Gregory A. Ashe and Robin Thurston.

For the *Respondent*: Johnnie E. Brown, Pullin, Fowler,
Flanagan, Brown & Poe, PLLC.

COMPLAINT

The Federal Trade Commission, having reason to believe that Ramey Motors, Inc., a corporation ("Respondent"), has violated provisions of the Federal Trade Commission Act ("FTC Act") and the Truth in Lending Act ("TILA"), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a West Virginia corporation with its principal place of business at Route 460 East, Princeton, WV, 24720. Respondent offers automobiles for sale.