

Complaint

IN THE MATTER OF

BILLION AUTO, INC.

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

Docket No. C-4356; File No. 112 3209
Complaint, May 1, 2012 – Decision, May 1, 2012

This consent order addresses Billion Auto, Inc.’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. 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 complaint also alleges a violation of the Consumer Leasing Act and Regulation M for failing to disclose the costs and terms of certain leases offered. 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*: Jim McMahon, solo practitioner.

COMPLAINT

The Federal Trade Commission, having reason to believe that Billion Auto, Inc., a corporation (“Respondent”), has violated provisions of the Federal Trade Commission Act (“FTC Act”), the Truth in Lending Act (“TILA”), and the Consumer Leasing Act (“CLA”), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a South Dakota corporation with its principal office or place of business at 3401 West 41st Street,

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Sioux Falls, SD, 57106. Respondent offers automobiles for sale and lease.

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.

3. Since at least May 2011, Respondent has disseminated or has caused to be disseminated advertisements promoting the purchase, financing, and leasing of its automobiles.

4. Respondent’s advertisements include, but are not necessarily limited to, an advertisement on its website www.billionpayoff.com, a copy of which is attached as Exhibit A (DVD containing 7/6/11 capture of www.billionpayoff.com). This advertisement includes the following statements and depictions:

- a. **“We will pay off your trade NO MATTER how much you owe!”**
- b. **“Credit upside down? Need a new car? Go to Billionpayoff.com. We want to pay off your car.”**
The advertisement depicts a car driving, inverts the video to depict the car upside down, and then depicts the car right-side up again.

5. Respondent also has disseminated or has caused to be disseminated advertisements promoting credit sales and other extensions of closed-end credit in consumer credit transactions, as the terms “advertisement,” “closed-end credit,” “credit sale,” and “consumer credit” are defined in Section 226.2 of Regulation Z, 12 C.F.R. § 226.2, as amended, on one of its websites, a copy of which is attached as Exhibit B (copy of 7/6/11 capture of <http://www.billionauto.com>). This advertisement includes the following statements:

- a. **“New Buicks starting at \$249 Mo.”**
- b. **“0% 72 Mo. Toyota Certified”**
- c. **“Toyota 2.9% Financing”**

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d. **“2.9% Financing GMC”**

No additional information regarding the cost or terms of financing a vehicle appears on this website.

6. Respondent also has disseminated or has caused to be disseminated advertisements promoting 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, copies of which are attached as Exhibits C and D (online newspaper advertisements). Respondent’s advertisements promoting consumer leases contain the following statement:

\$199 lease
 /mo.

The term “lease” appears in fine print. No additional information regarding the cost or terms of leasing a vehicle appears in these advertisements.

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

7. 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.

8. In truth and in fact, in many 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 includes the amount of the negative equity in the loan for the newly purchased vehicle.

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9. Therefore, the representation set forth in Paragraph 7 of this Complaint was, and is, false or misleading in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**VIOLATIONS OF THE TRUTH IN LENDING ACT AND
REGULATION Z**

10. Under Section 144 of the TILA and Section 226.24(d) of Regulation Z, advertisements promoting closed-end credit in consumer credit transactions are required to make certain disclosures if they state any of several terms, such as the monthly payment (“TILA triggering terms”). In addition, the rate of the finance charge must be stated as an “annual percentage rate” using that term or the abbreviation “APR.” 15 U.S.C. § 1664; 12 C.F.R. § 226.24(c).

11. Respondent’s advertisements promoting closed-end credit, including but not necessarily limited to those described in Paragraph 5, are subject to the requirements of the TILA and Regulation Z.

**Failure to Disclose or Disclose Clearly and Conspicuously
Required Credit Information**

12. Respondent’s advertisements promoting closed-end credit, including but not necessarily limited to those described in Paragraph 5, have included TILA triggering terms, but have failed to disclose or disclose clearly and conspicuously, additional terms required by the TILA and Regulation Z, including one or more of the following:

- a. The amount or percentage of the downpayment.
- b. The terms of repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment.
- c. The “annual percentage rate,” using that term, and, if the rate may be increased after consummation, that fact.

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13. Therefore, the practices set forth in Paragraph 12 of this Complaint have violated Section 144 of the TILA, 15 U.S.C. § 1664, and Section 226.24(d) of Regulation Z, 12 C.F.R. § 226.24(d), as amended.

Failure to State Rate of Finance Charge as Annual Percentage Rate

14. Respondent's advertisements promoting closed-end credit, including but not necessarily limited to those described in Paragraph 5, have stated a rate of finance charge without stating that rate as an "annual percentage rate" using that term or the abbreviation "APR."

15. Therefore, the practices set forth in Paragraph 14 of this Complaint have violated Section 144 of the TILA, 15 U.S.C. § 1664, and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c).

VIOLATION OF THE CONSUMER LEASING ACT AND REGULATION M

16. Under Section 184 of the CLA and Section 213.7 of Regulation M, advertisements promoting consumer leases are required to make certain disclosures if they state any of several terms, such as the amount of any payment ("CLA triggering terms"). 15 U.S.C. § 1667c, 12 C.F.R. § 213.7.

17. Respondent's advertisements promoting consumer leases, including but not necessarily limited to those described in Paragraph 6, are subject to the requirements of the CLA and Regulation M.

Failure to Disclose or Disclose Clearly and Conspicuously Required Lease Information

18. Respondent's advertisements promoting consumer leases, including but not necessarily limited to those described in Paragraph 6, have included CLA triggering terms, but have failed to disclose or disclose clearly and conspicuously additional terms required by the CLA and Regulation M, including one or more of the following:

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- a. That the transaction advertised is a lease.
- b. The total amount of any initial payments required on or before consummation of the lease or delivery of the property, whichever is later.
- c. Whether or not a security deposit is required.
- d. The number, amount, and timing of scheduled payments.
- e. With respect to 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 property, that an extra charge may be imposed at the end of the lease term.

19. Therefore, the practices set forth in Paragraph 18 of this Complaint have violated Section 184 of the CLA, 15 U.S.C. § 1667c, and Section 213.7 of Regulation M, 12 C.F.R. § 213.7.

20. 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, violations of the Truth in Lending Act and Regulation Z, and violations of the Consumer Leasing Act and Regulation M.

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

By the Commission.

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

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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 (“FTC Act”), the Truth in Lending Act (“TILA”), and the Consumer Leasing Act (“CLA”); 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 FTC Act, the TILA, and the CLA, 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, Billion Auto, Inc., is a South Dakota corporation with its principal office or place of business at 3401 West 41st Street, Sioux Falls, South Dakota, 57106.
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. “Clearly and conspicuously” shall mean as follows:
 - 1. In a print advertisement, the disclosure shall be in a type size, location, and in print that contrasts with the background against which it appears, sufficient for an ordinary consumer to notice, read, and comprehend it.
 - 2. In an electronic medium, an audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade and appear on the screen for a duration and in a location sufficient for an ordinary consumer to read and comprehend it.
 - 3. In a television or video advertisement, an audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade, and appear on the screen for a duration, and in a location, sufficient for an ordinary consumer to read and comprehend it.
 - 4. In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.
 - 5. In all advertisements, the disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of

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the disclosure shall be used in any advertisement or promotion.

- C. “Consumer credit” shall mean credit offered or extended to a consumer primarily for personal, family, or household purposes.
- D. “Consumer lease” shall have the same meaning as that term is defined in Section 213.2 of Regulation M, 12 C.F.R. § 213.2, as amended.
- E. “Material” shall mean likely to affect a person’s choice of, or conduct regarding, goods or services.
- F. “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 HEREBY 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

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the trade-in vehicle such that the consumer will have 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, directly or through any corporation, subsidiary, division, or other device, in connection with an advertisement to promote, directly or indirectly, any extension of consumer credit, in or affecting commerce, shall not in any manner, expressly or by implication:

- A. State the amount or percentage of any down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without disclosing clearly and conspicuously all of the following terms:
 - 1. The amount or percentage of the down payment;
 - 2. The terms of repayment; and
 - 3. The annual percentage rate, using the term “annual percentage rate” or the abbreviation “APR.” If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed; or
- B. State a rate of finance charge without stating the rate as an “annual percentage rate” or the abbreviation “APR,” using that term.
- C. Fail to comply in any respect with Regulation Z, 12 C.F.R. § 226, as amended, and the Truth in Lending Act, as amended, 15 U.S.C. §§ 1601-1667.

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III.

IT IS FURTHER ORDERED that Respondent, directly or through any corporation, subsidiary, division, or other device, in connection with an advertisement to promote, directly or indirectly, any consumer lease, in or affecting commerce, shall not, in any manner, expressly or by implication:

- A. 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 the following terms:
 - 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; or
- B. Fail to comply in any respect with Regulation M, 12 C.F.R. § 213, as amended, and the Consumer Leasing Act, 15 U.S.C. §§ 1667-1667f, as amended.

IV.

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;

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- 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.

V.

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.

VI.

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

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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. Billion Auto.

VII.

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.

VIII.

This order will terminate on May 1, 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 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

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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 Billion Auto, Inc. 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.

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 includes the amount of the negative equity in the loan for the newly purchased vehicle. The complaint alleges therefore that the representation is false or misleading in violation of Section 5 of the FTC Act. In addition, the complaint alleges violations of the Truth in Lending

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Act (“TILA”) and Regulation Z for failing to disclose certain costs and terms when advertising credit. The complaint also alleges a violation of the Consumer Leasing Act (“CLA”) and Regulation M for failing to disclose the costs and terms of certain leases offered.

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 addresses the TILA allegations. It requires clear and conspicuous TILA/Regulation Z disclosures when advertising any of the relevant triggering terms with regard to issuing consumer credit. It also requires that if any finance charge is advertised, the rate be stated as an “annual percentage rate” using that term or the abbreviation “APR.” In addition, Part II prohibits any other violation of TILA or Regulation Z.

Part III of the proposed order addresses the CLA allegation. It requires that the respondent clearly and conspicuously make all of the disclosures required by CLA and Regulation M if it states relevant triggering terms, including the monthly lease payment. In addition, Part III prohibits any other violation of CLA and Regulation M.

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

Analysis to Aid Public Comment

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.

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IN THE MATTER OF

CVS CAREMARK CORPORATIONCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4357; File No. 112 3210
Complaint, May 3, 2012 – Decision, May 3, 2012

This consent order addresses CVS Caremark Corporation's ("CVSC") marketing and sales of Medicare drug plans and Medicare Part D drugs. The complaint alleges that respondent, through its subsidiary RxAmerica, violated Section 5 of the FTC Act by representing that the prices of covered Medicare Part D prescription drugs, as posted on Plan Finder and on the websites of RxAmerica and other third parties from approximately 2007 until the end of 2008, were accurate estimates of the prices that beneficiaries would pay for those drugs at CVS and Walgreens, when the prices charged to RxAmerica beneficiaries who purchased their covered Part D generic drugs from CVS Pharmacy or Walgreens during the relevant time period were significantly higher – in some cases as much as ten times higher – than the prices posted on those websites. The consent order prohibits CVSC from misrepresenting the price or cost of Medicare Part D prescription drugs, or other prices or costs associated with Medicare Part D prescription drug plans.

Participants

For the *Commission*: Malcolm Catt, Philip Eisenstat, Andrew Kushner, Ryan Mehm, Lisa Schifferle and Meredyth Smith Andrus.

For the *Respondent*: Robert Kidwell and Bruce Sokler, Mintz Levin; and Seth Silber, Wilson Sonsini.

COMPLAINT

The Federal Trade Commission, having reason to believe that CVS Caremark Corporation (hereinafter, "CVSC" or "Respondent"), through its subsidiary RxAmerica, 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 One CVS Drive, Woonsocket,