

Complaint

IN THE MATTER OF

GANLEY FORD WEST, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4428; File No. 122 3269**Complaint, January 28, 2014 – Decision, January 28, 2014*

This consent order addresses Ganley Ford West, Inc.'s failure to disclose material information to consumers wishing to purchase motor vehicles. The complaint alleges that respondent has advertised that particular Ford models are available at a specific dealer discount however, once consumers reach the dealership, they find out that respondent has failed to disclose that the specific discounts are only available for some, but not all, of the Ford models advertised. The consent order prohibits respondent from misrepresenting any material fact about the price, sale, financing, or leasing of motor vehicles; and from representing that a discount, rebate, bonus, incentive or price is available to consumers unless the representation clearly and conspicuously discloses all material qualifications or restrictions, if any, including but not limited to qualifications or restrictions on: (a) a consumer's ability to obtain the discount, rebate, bonus, incentive or price or (b) the vehicles available at the discount, rebate, bonus, incentive or price.

Participants

For the *Commission*: Teresa N. Kosmidis and Peter Lamberton.

For the *Respondent*: A. Steven Dever, A. Steven Dever, LPA.

COMPLAINT

The Federal Trade Commission, having reason to believe that Ganley Ford West, Inc., a 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. Respondent Ganley Ford West, Inc. is an Ohio corporation with its principal office or place of business at 16100 Lorain Avenue, Cleveland, OH 44111. Respondent offers motor vehicles for sale or lease.

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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 August 4, 2012, respondent has disseminated, or has caused to be disseminated, advertisements promoting the purchase, financing, and leasing of its motor vehicles.

4.Respondent’s advertisements include, but are not necessarily limited to, advertisements posted on the website www.ganleyfordwest.com, copies of which are attached as Exhibits A and B. These advertisements list specific discounts from the manufacturer’s suggested retail price (“MSRP”) for Ford models. These advertisements include the following statements:

A. NEW 2013 FORD
F-150
\$12,000
OFF MSRP!

(Exhibit A).

B. NEW 2012 FORD
F-150
\$10,000 OFF
MSRP

(Exhibit B).

5.In fact, in numerous instances when consumers have tried to obtain advertised discounts, they have learned that the discounts are only available for a particular version of the vehicle, often one of the more expensive versions. For example, in many instances when the promotion in Exhibit A was offered, the only 2013 Ford F-150 available for \$12,000 off the MSRP was the Ford F-150 Lariat, with an MSRP of \$47,000. In those instances, the discount was not available on any other versions of the F-150, including the base model, which has an MSRP of \$23,670.

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**VIOLATIONS OF THE FEDERAL TRADE COMMISSION
ACT**

6. Through the means described in Paragraph 4, including but not necessarily limited to Exhibits A and B, respondent has represented expressly or by implication that particular Ford models are available at a specific dealer discount.

7. Respondent has failed to disclose that these specific dealer discounts are only available for some, but not all, of the Ford models advertised. This fact would be material to consumers in their purchase of the motor vehicles offered for sale in the advertisements. In light of the representations made, the failure to disclose this fact was, and is, a deceptive practice.

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, 15 U.S.C. § 45(a).

THEREFORE, the Federal Trade Commission, this twenty-eighth day of January, 2014, has issued this complaint against respondent.

By the Commission.

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Exhibit A

SAT: 9AM-6PM • SUN: 11AM-5PM • MON: 9AM-9PM

Ford

GANLEY FORD
FINAL YEAR-END
COUNTDOWN
NOW THROUGH DEC. 31ST!

\$2,000 OVER BOOK VALUE FOR YOUR TRADE!

NEW 2013 FORD FOCUS
\$120 PER MONTH
OR 25% OFF MSRP!

NEW 2013 FORD FUSION
\$180 PER MONTH
OR 25% OFF MSRP!

NEW 2013 FORD ESCAPE
\$180 PER MONTH OR \$4,000 OFF MSRP!

NEW 2013 FORD EDGE
\$240 PER MONTH OR 20% OFF MSRP!

NEW 2013 FORD F-150
\$330 PER MONTH OR \$12,000 OFF MSRP!

OHIO'S PRE-OWNED SUPERCENTER!
CALLER'S CHOICE INSTANT CREDIT APPROVAL ON ALL CARS BY GANLEY FORD-OWNED VEHICLES!

2005 HONDA CR-V \$6954	2005 FORD EXPLORER LIMITED \$8995	2011 HONDA CR-V \$10990	2006 FORD MUSTANG \$10995
2005 HONDA CR-V \$10995	2006 FORD ESCAPE \$11221	2005 HONDA CR-V \$11573	2006 FORD MUSTANG \$11990
2005 HONDA CR-V \$11997	2006 FORD ESCAPE \$15619	2005 HONDA CR-V \$16066	2006 FORD MUSTANG \$16997
2005 HONDA CR-V \$19995	2006 FORD ESCAPE \$19995	2005 HONDA CR-V \$24252	2006 FORD MUSTANG \$27442

GANLEY FORD CLEVELAND
16100 Lorain Ave.
Cleveland
1-888-439-8077
Monday & Tuesday 9am-8pm • Thursday & Wednesday 9am-6pm
Friday & Saturday 9am-6pm • Sunday 10am-5pm

Shop Online at www.GanleyFord.com

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Exhibit B

NEW 2012 FORD TAURUS
\$289 LEASE PER MONTH + TAX OR **\$5000** OFF MSRP
24 MONTH LEASE, \$2500 DOWNSHIP PER YEAR, \$2500 PLUS FIRST MONTH PAYMENT NOT IN CASH, \$2500 SECURITY DEPOSIT PLUS \$100, \$1000, AND \$10000, LEASE RESPONSIBLE AT LEASE END FOR MILEAGE OVER 15000 MILES PER YEAR AT 15 CENTS PER MILE.

NEW 2012 FORD ESCAPE
\$249 LEASE PER MONTH + TAX OR **20%** OFF MSRP
24 MONTH LEASE, \$2500 DOWNSHIP PER YEAR, \$2500 PLUS FIRST MONTH PAYMENT NOT IN CASH, \$2500 SECURITY DEPOSIT PLUS \$100, \$1000, AND \$10000, LEASE RESPONSIBLE AT LEASE END FOR MILEAGE OVER 15000 MILES PER YEAR AT 15 CENTS PER MILE.

NEW 2012 FORD FOCUS
\$189 LEASE PER MONTH + TAX OR **20%** OFF MSRP
PRICE INCLUDES \$2500 TRADE-IN ALLOWANCE, \$2500 DOWNSHIP PER YEAR, \$2500 PLUS FIRST MONTH PAYMENT NOT IN CASH, \$2500 SECURITY DEPOSIT PLUS \$100, \$1000, AND \$10000, LEASE RESPONSIBLE AT LEASE END FOR MILEAGE OVER 15000 MILES PER YEAR AT 15 CENTS PER MILE.

NEW 2012 FORD FUSION
\$219 LEASE PER MONTH + TAX OR **20%** OFF MSRP
PRICE INCLUDES \$2500 TRADE-IN ALLOWANCE, \$2500 DOWNSHIP PER YEAR, \$2500 PLUS FIRST MONTH PAYMENT NOT IN CASH, \$2500 SECURITY DEPOSIT PLUS \$100, \$1000, AND \$10000, LEASE RESPONSIBLE AT LEASE END FOR MILEAGE OVER 15000 MILES PER YEAR AT 15 CENTS PER MILE.

NEW 2012 FORD F-150
\$10,000 OFF MSRP
Offer ends 12/31/11. Dealer retains all factory vehicles and incentives. Percentage off MSRP is from top suggested retail price in stock inventory only. MSRP for all vehicles at 2012 MSRP. Taxes and available on 2012 models, all approved credit with full credit financing, not all buyers will qualify. Offers vary by location. Price does not include destination, title, license, and dealer fees. Dealer may increase trade value. Actual dealer offers apply to all stock vehicles only. With approved credit. Offers expire 12/31/11. ©2011 GM.

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 ("FTC Act"); and

Respondent, Respondent's 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 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, and having duly considered the comments received from interested persons pursuant to section 2.34 of its Rules, 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 is an Ohio corporation with its principal office or place of business at 16100 Lorain Avenue, Cleveland, OH.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the

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Respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

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

- A. Unless otherwise specified, “respondent” shall mean Ganley Ford West, Inc., and its successors and assigns.
- B. “Advertisement” shall mean a commercial message in any medium that directly or indirectly promotes a consumer transaction.
- C. “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.

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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 the disclosure shall be used in any advertisement or promotion.
- D. “Material” shall mean likely to affect a person’s choice of, or conduct regarding, goods or services.
- E. “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 and its officers, agents, representatives, and employees, directly or indirectly, in connection with the advertising, marketing, or offering for sale, financing, or leasing of motor vehicles shall not, in any manner, expressly or by implication:

- A. Represent that a discount, rebate, bonus, incentive or price is available unless the representation clearly and conspicuously discloses all material qualifications or restrictions, if any, including but not limited to qualifications or restrictions on: (a) a consumer’s

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ability to obtain the discount, rebate, bonus, incentive, or price and (b) the vehicles available at the discount, rebate, bonus, incentive, or price.

B. Misrepresent the following:

1. The existence or amount of any discount, rebate, bonus, incentive, or price;
2. The existence, price, value, coverage, or features of any product or service associated with the motor vehicle purchase;
3. The number of vehicles available at particular prices; or
4. Any other material fact about the price, sale, financing, or leasing of motor vehicles.

II.

IT IS FURTHER ORDERED that respondent 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 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;
- C. All evidence in its possession or control that contradicts, qualifies, or calls 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; and
- D. Any documents reasonably necessary to demonstrate full compliance with each provision of this order, including but not limited to all documents obtained,

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created, generated, or that in any way relate to the requirements, provisions, or terms of this order, and all reports submitted to the Commission pursuant to this order.

III.

IT IS FURTHER ORDERED that respondent 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, with any electronic signatures complying with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.* 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.

IV.

IT IS FURTHER ORDERED that respondent 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

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line must begin: *In re Ganley Ford West, Inc.*, FTC File No. 122 3269, Docket No. C-4426.

V.

IT IS FURTHER ORDERED that respondent, 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 its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit additional true and accurate written reports.

VI.

This order will terminate on January 28, 2034, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the 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 to Aid Public Comment

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 Ganley Ford West, 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. According to the FTC complaint, respondent has advertised that particular Ford models are available at a specific dealer discount. The complaint alleges that, in fact, once consumers reach the dealership, they find out that respondent has failed to disclose that the specific discounts are only available for some, but not all, of the Ford models advertised. The failure to disclose this information could be materially misleading to consumers wishing to purchase one of the numerous other versions of the model. The complaint alleges, therefore, that the representations constitute deceptive acts or practices 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. Section I.A of the proposed consent order prohibits respondent from representing that a discount, rebate, bonus, incentive or price is available to consumers unless the representation clearly and conspicuously discloses all material qualifications or restrictions, if any, including but not limited to qualifications or restrictions on: (a) a consumer’s ability to obtain the discount, rebate, bonus, incentive or price or (b) the vehicles available at the discount, rebate, bonus, incentive or price.

Section I.B. prohibits respondent from misrepresenting: 1) the existence or amount of any discount, rebate, bonus, incentive or price; 2) the existence, price, value, coverage, or features of any product or service; 3) the number of vehicles available at

Analysis to Aid Public Comment

particular prices; or 4) any other material fact about the price, sale, financing, or leasing of motor vehicles.

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 to 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

TIMONIUM CHRYSLER, INC.

D/B/A

**DON WHITE'S TIMONIUM CHRYSLER JEEP
DODGE**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4429; File No. 132 3014**Complaint, January 28, 2014 – Decision, January 28, 2014*

This consent order addresses Timonium Chrysler, Inc. d/b/a Don White's Timonium Chrysler Jeep Dodge's failure to disclose material information to consumers wishing to purchase motor vehicles. The complaint alleges that respondent has advertised that specific dealer discounts and prices are generally available to consumers. The complaint further alleges that, in fact, once consumers reach the dealership, they find out that there are significant restrictions on obtaining the advertised discounts or that the advertised discounts are not available in full. The consent order prohibits respondent from misrepresenting: 1) the existence or amount of any discount, rebate, bonus, incentive or price; 2) the existence, price, value, coverage, or features of any product or service associated with the motor vehicle purchase; 3) the number of vehicles available at particular prices; or 4) any other material fact about the price, sale, financing, or leasing of motor vehicles.

Participants

For the *Commission*: *Teresa N. Kosmidis* and *Peter Lamberton*.

For the *Respondent*: *Steven Byerts, Bass Sox Mercer*.

COMPLAINT

The Federal Trade Commission, having reason to believe that Timonium Chrysler, Inc. d/b/a Don White's Timonium Chrysler Jeep Dodge, a 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: