

Complaint

IN THE MATTER OF

NISSAN OF SOUTH ATLANTA, LLC

D/B/A

NISSAN SOUTHCONSENT 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-4441; File No. 132 3163**Complaint, February 28, 2014 – Decision, February 28, 2014*

This consent order addresses Nissan of South Atlanta, LLC also d/b/a Nissan South's advertisements for automobiles and failure to clearly and conspicuously disclose required information concerning costs and credit terms. The complaint alleges that respondent has advertised that consumers can finance the purchase of vehicles by paying \$99 per month with a \$0 down payment however; consumers will pay \$99 per month for only the first two months of an 84-month period. The complaint further alleges that the advertisements fail to state the amount of each payment beyond the first two months of financing. The consent order requires clear and conspicuous Truth in Lending Act and 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." Additionally, the order prohibits the respondent from misrepresenting any other material fact about the price, sale, financing, or leasing of any vehicle.

Participants

For the *Commission*: Sana Chriss, Mark Glassman, John Jacobs, Carole Reynolds, Jason Schall, Christina Tusan, and Katherine Worthman.

For the *Respondent*: Stephen H. Block, Barrett, Daffin, Frappier, Levine & Block, LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Nissan of South Atlanta, LLC, also doing business as Nissan South ("respondent"), has violated provisions of the Federal Trade Commission Act ("FTC Act"), the Truth in Lending Act ("TILA"), and its implementing Regulation Z, and it appearing to

Complaint

the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a Georgia corporation with its principal office or place of business at 6889 Jonesboro Road, Morrow, Georgia, 30260-2902. Respondent offers automobiles for sale or lease to consumers.

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 February 2013, respondent has disseminated or caused to be disseminated advertisements to the public promoting the purchase, finance, and leasing of automobiles.

4. Respondent has disseminated or caused to be disseminated advertisements to the public 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.

5. Such advertisements include print advertisements published in paper circulations of Cars Magazine. A copy of one such advertisement is attached as Exhibit A. This advertisement contains the statements and depictions described below. Respondent’s advertisements in other editions of Cars Magazine contain substantially similar statements.

- a. The top portion of the advertisement attached as Exhibit A includes the following representation in large, bold font:

\$0 DOWN \$99/MO

- b. The middle portion of the advertisement depicts several vehicles, most of which contain the representation:

\$0 DOWN • \$99/MO

Complaint

- c. The bottom portion of the advertisement includes the following representation in small text:

*\$0 DOWN AT 5.499% APR FOR 84 MONTHS WITH APPROVED CREDIT. SEE DEALER FOR DETAILS. DEALER RETAINS ALL REBATES.
\$99/MO IS FOR 1ST 2 MONTHS. CANNOT EXCEED TOTAL VALUE OF \$800.
NOT APPLICABLE WITH ANY OTHER OFFER*

6. Respondent's advertisements fail to state clearly and conspicuously that consumers will pay \$99 per month for only the first two months of an 84-month period. The advertisements also fail to state the amount of each payment beyond the first two months of financing.

FEDERAL TRADE COMMISSION ACT VIOLATIONS**Count I****Misrepresentation Regarding Monthly Payment Amount**

7. Through the means described in Paragraph 5, respondent has represented, expressly or by implication, that consumers can finance vehicles for the prominently advertised terms, including the advertised monthly payment amount.

8. In truth and in fact, consumers cannot finance the vehicles for the prominently advertised terms, including the advertised monthly payment amount of \$99. Instead, consumers pay \$99 each month for the first two months only, and consumers owe a different monthly amount for the remaining 82 months. Accordingly, respondent's representation as alleged in Paragraph 7 was, and is, false and misleading.

9. Respondent's practices 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).

**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, as amended, advertisements promoting closed-end credit in consumer credit transactions are required to make certain

Complaint

disclosures (“additional terms”) if they state any of several terms, such as the monthly payment (“TILA triggering terms”).

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.

Count II

**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 down payment.
- b. The terms of repayment, including any balloon payment.
- c. The “annual percentage rate,” using that term, and, if the rate may be increased after consummation, that fact.

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.

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

By the Commission.

Decision and Order

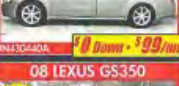
Exhibit A

Issue 1306 | February | www.CarsMagazine.com | Atlanta

TAX TIME SUPER OFFER!

GET COURTESY GAS FOR REST OF THE YEAR AND \$500 GIFT CARD! With purchase of any vehicle. Must present this ad at time of purchase to receive this offer. One per customer. Courtesy gas is up to \$30 per month for remainder 2013.

\$0 DOWN \$99/MO ALL CREDIT APPLICATIONS WELCOME!

06 NISSAN SENTRA  \$6,927	07 BUICK LACROSSE  \$8,995	09 NISSAN CUBE  \$8,999	09 MITSUBISHI GALANT  \$9,497
12 NISSAN TITAN S  \$0 Down • \$99/mo	12 DODGE GRAND CARAVAN  \$0 Down • \$99/mo	11 TOYOTA VENZA  \$0 Down • \$99/mo	11 TOYOTA COROLLA LE  \$0 Down • \$99/mo
12 CHRYSLER 200 LX  \$0 Down • \$99/mo	12 DODGE RAM 1500  \$0 Down • \$99/mo	11 HYUNDAI SANTA FE SE  \$0 Down • \$99/mo	12 TOYOTA CAMRY LE  \$0 Down • \$99/mo
08 NISSAN SENTRA  \$0 Down • \$99/mo	08 NISSAN MAXIMA  \$0 Down • \$99/mo	12 NISSAN ALTIMA  \$0 Down • \$99/mo	11 HONDA CIVIC LX  \$0 Down • \$99/mo
12 MERCEDES C250 LUXURY  \$0 Down • \$99/mo	08 LEXUS GS350  \$0 Down • \$99/mo	08 LINCOLN MKX  \$0 Down • \$99/mo	07 BMW X3  \$0 Down • \$99/mo

\$0 DOWN AT 5.499% APR FOR 84 MONTHS WITH APPROVED CREDIT. SEE DEALER FOR DETAILS. DEALER RETAINS ALL REBATES. \$99/MO IS FOR 1ST 2 MONTHS. CANNOT EXCEED TOTAL VALUE OF \$800. NOT APPLICABLE WITH ANY OTHER OFFER.

ASK FOR TORIA CODE 292 TO GET THIS OFFER **NISSAN SOUTH MORROW** **CALL NOW 678-999-7166** 

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

Decision and Order

charge respondent with violations of the Federal Trade Commission Act (“FTC Act”); the Truth in Lending Act (“TILA”), as amended, 15 U.S.C. §§ 1601-1667; and Regulation Z, 12 C.F.R. Part 226; and

Respondent, respondent’s attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order (“consent agreement”), which includes: a statement by respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; 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, TILA, and Regulation Z, 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 Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Nissan of South Atlanta, LLC, also doing business as Nissan South, is a Georgia corporation with its principal office or place of business at 6889 Jonesboro Road, Morrow, Georgia 30260.
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 the purposes of this order, the following definitions shall apply:

Decision and Order

- A. Unless otherwise specified, “respondent” shall mean Nissan of South Atlanta, LLC, also doing business as Nissan South, 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.
 - 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.

Decision and Order

- D. “Consumer credit” shall mean credit offered or extended to a consumer primarily for personal, family, or household purposes, as set forth in Section 226.2(a)(12) of Regulation Z, 12 C.F.R. § 226.2(a)(12), as amended.
- E. “Lease inception” shall mean prior to or at consummation of the lease or by delivery, if delivery occurs after consummation.
- F. “Material” shall mean likely to affect a person’s choice of, or conduct regarding, goods or services.
- G. “Motor vehicle” or “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 any advertisement for the purchase, financing, or leasing of motor vehicles, shall not, in any manner, expressly or by implication:

- A. Misrepresent the cost of:
 - 1. Purchasing a vehicle with financing, including but not necessarily limited to, the amount or percentage of the down payment, the number of

Decision and Order

payments or period of repayment, the amount of any payment, and the repayment obligation over the full term of the loan, including any balloon payment; or

2. Leasing a vehicle, including but not necessarily limited to, the total amount due at lease inception, the down payment, amount down, acquisition fee, capitalized cost reduction, any other amount required to be paid at lease inception, and the amounts of all monthly or other periodic payments; or

- B. Misrepresent any other material fact about the price, sale, financing, or leasing of any vehicle.

II.

IT IS FURTHER ORDERED that respondent and its officers, agents, representatives, and employees, directly or indirectly, in connection with any advertisement for any extension of consumer credit, 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

Decision and Order

- B. State a rate of finance charge without stating the rate as an “annual percentage rate” or the abbreviation “APR,” using that term; or
- C. Fail to comply in any respect with Regulation Z, 12 C.F.R. Part 226, as amended, and the Truth in Lending Act, as amended, 15 U.S.C. §§ 1601-1667.

III.

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 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;
- 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, 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.

IV.

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

Decision and Order

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.

V.

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 line must begin: **FTC v. NISSAN OF SOUTH ATLANTA, LLC, also d/b/a NISSAN SOUTH.**

VI.

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.

Analysis to Aid Public Comment

VII.

This order will terminate on February 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;
- 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.

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 Nissan of South Atlanta, LLC, also d/b/a Nissan South. The proposed consent order has been placed on the public record for thirty (30) days for receipt 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 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 consumers can finance the purchase of vehicles by paying \$99 per month with a \$0 downpayment. The complaint alleges that, in fact, consumers will pay \$99 per month for only the first two months of an 84-month period. The complaint further alleges that the advertisements fail to state the amount of each payment beyond the first two months of financing. The complaint alleges therefore that the respondent's representations are false or misleading in violation of Section 5 of the FTC Act. In addition, the complaint alleges that the respondent violated the Truth in Lending Act ("TILA") and Regulation Z for failing to clearly and conspicuously disclose required information concerning costs and credit terms.

The proposed order is designed to prevent the respondent from engaging in similar deceptive practices in the future. Part I.A prohibits the respondent from misrepresenting the cost of: (1) purchasing a vehicle with financing, including but not necessarily limited to the amount or percentage of the downpayment, the number of payments or period of repayment, the amount of any payment, and the repayment obligation over the full term of the loan, including any balloon payment; or (2) leasing a vehicle, including but not limited to the total amount due at lease inception, the downpayment, amount down, acquisition fee, capitalized cost reduction, any other amount required to be paid at lease inception, and the amounts of all monthly or other periodic payments. Part I.B prohibits the respondent from misrepresenting any other material fact about the price, sale, financing, or leasing of any vehicle.

Part II of the proposed order addresses the TILA allegations. It requires clear and conspicuous TILA and 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

Analysis to Aid Public Comment

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 requires respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements. Part IV requires that respondent provide copies of the order to certain of its personnel. Part V requires notification to the Commission regarding changes in corporate structure that might affect compliance obligations under the order. Part VI requires the respondent to file compliance reports with the Commission. Finally, Part VII 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

**FIDELITY NATIONAL FINANCIAL, INC.
AND
LENDER PROCESSING SERVICES, INC.****CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT**

*Docket No. C-4425; File No. 131 0159
Complaint, December 23, 2013 – Decision, March 4, 2014*

This consent order addresses the \$2.9 billion acquisition by Fidelity National Financial, Inc. of certain assets of Lender Processing Services, Inc. The complaint alleges that the acquisition agreement constitutes a violation of Section 5 of the Federal Trade Commission Act and, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by eliminating actual, direct, and substantial competition between Respondents and by increasing the likelihood of collusion or coordinated interaction in the markets for the provision of title information services in seven relevant markets in Oregon. The consent order requires Respondents to divest a copy of LPS's title plants serving Clatsop, Columbia, Coos, Josephine, Polk, and Tillamook counties, Oregon, to a Commission-approved acquirer. The order also requires Respondents to divest an ownership interest equivalent to LPS's share in the joint title plant that serves the Portland, Oregon, metropolitan area to a Commission-approved buyer.

Participants

For the *Commission*: *Jessica S. Drake*.

For the *Respondents*: *Joe Simons and Aidan Synnott, Paul, Weiss, Rifkind, Wharton & Garrison LLP and Peter Barbur, Cravath, Swaine & Moore LLP*.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by the Act, the Federal Trade Commission ("Commission"), having reason to believe that Respondents Fidelity National Financial, Inc. ("Fidelity") and Lender Processing Services, Inc. ("LPS") have entered into an acquisition agreement that constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended,