

Complaint

IN THE MATTER OF

PARAMOUNT KIA OF HICKORY, LLCCONSENT 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-4450; File No. 132 3191*
Complaint, April 11, 2014 – Decision, April 11, 2014

This consent order addresses Paramount Kia of Hickory, LLC's advertisements for sale of automobiles and failure to disclose clearly and conspicuously required credit information, despite the respondent's use of certain triggering terms in the advertisements. The complaint alleges that respondent advertised that consumers can pay \$0 up-front and \$99 per month to finance a car, however the monthly payment increases dramatically after the first three payments. The consent order requires that the respondent clearly and conspicuously make all of the disclosures required by the Truth In Lending Act and Regulation Z if it states 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. The order also prohibits the respondent from misrepresenting any material fact about the price, sale, financing, or leasing of any vehicle.

*Participants*For the *Commission*: Mark Glassman.For the *Respondent*: Shawn D. Mercer, Bass Sox Mercer.**COMPLAINT**

The Federal Trade Commission, having reason to believe that Paramount Kia of Hickory, LLC, a limited liability company ("Paramount"), 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 the Commission that this proceeding is in the public interest, alleges:

1. Respondent Paramount Kia of Hickory, LLC, is a North Carolina limited liability company with its principal office or place of business at 1205 South Center Street, Hickory, North

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Carolina 28602. Paramount offers automobiles for sale or lease to consumers.

2. The acts or practices of Paramount 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 July 2012, Paramount has disseminated or caused to be disseminated advertisements to the public promoting the purchase, finance, and leasing of automobiles.

4. Paramount 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. One such advertisement has been posted on the website YouTube.com. A video copy of the advertisement is attached as Exhibit A, and a screenshot capture of one image on the video is attached as Exhibit B.

The video attached as Exhibit A depicts a new Kia Sportage, accompanied by prominent graphics stating:

ZERO \$ DOWN
2013 KIA SPORTAGE
\$99/MO

While this language appears on screen, a person who appears on the screen states, “Drive any vehicle like the new 2013 Kia Sportage: zero down \$99 a month.”

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Also, while these statements appear on screen, a statement consisting of small white text that blends in against a silver and black background – the tire and hubcap of the Kia Sportage – appears on the bottom left corner of the screen, stating:

Example 2013 Kia Sportage
STK#4886. Sale Price \$27,444, \$0
down, graduated payment plan:
payments 1-3 \$99, payments 4-72
\$531/mo @ 9.99% APR Plus tax,
tag, title and \$599 administrative
fee. On approved credit. On
select vehicles. See dealer for
details.

Thus, instead of owing \$99 per month, consumers will owe \$531 per month for 69 of 72 months. Further, the advertisement fails to clearly and conspicuously disclose the repayment obligations over the full term of the loan and the “annual percentage rate,” using that term.

6. Other advertisements that Paramount has disseminated or has caused to be disseminated have been posted on Paramount’s website, paramountkia.com. One example is the screenshot attached as Exhibit C, which depicts a new Kia Soul, accompanied by prominent graphics representing:

Drive Any Vehicle

\$99/mo

Below this statement, the following fine-print statement appears:

Ex.Stk#6818 2012 Kia Soul Base. Sale Price \$12980 \$0 down graduated
payment plan: payments 1-3 \$99; 4-72 \$251/mo. @ 9.99% APR. Plus tax, tag and
\$599 admin. fee. OAC. On select vehicles. See dealer for details.

Thus, instead of owing \$99 per month, consumers will owe \$251 per month for 69 of 72 months. Further, the advertisement fails to clearly and conspicuously disclose the repayment obligations over the full term of the loan and the “annual percentage rate,” using that term.

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

7. Through the means described in Paragraphs 5 and 6, Paramount has represented, expressly or by implication, that consumers can finance the purchase of vehicles for the prominently advertised terms, including the advertised monthly payment amount.

8. In truth and in fact, consumers cannot finance the purchase of vehicles for the prominently advertised terms, including the advertised monthly payment amount. In numerous instances, consumers' monthly payments increase dramatically after the first three payments of \$99. Therefore, Paramount's representation as alleged in Paragraph 7 was, and is, false and misleading.

9. Paramount'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 disclosures ("additional terms") if they state any of several terms, such as the monthly payment ("TILA triggering terms").

11. Paramount's advertisements promoting closed-end credit, including but not necessarily limited to those described in Paragraphs 5 and 6, are subject to the requirements of the TILA and Regulation Z.

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

12. Paramount's advertisements promoting closed-end credit, including, but not necessarily limited to those described in Paragraphs 5 and 6, 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, 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.

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 eleventh day of April, 2014, has issued this complaint against Paramount.

By the Commission.

Exhibit A**Video Advertisement for Paramount Kia of Hickory LLC**

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Exhibit B

WE SAY YES! EVERY DAY!

10 YEAR 100,000 MILE WARRANTY

2013 KIA SPORTAGE

ZERO \$ DOWN

\$99/MO

Example 2013 Kia Sportage
STK#4886, Sale Price \$27,444, \$0
down, 0% financing payment plan;
payment 1 \$3,289, payments 4-72
\$321/mo. at 9.99% APR. Plus tax,
tag, license \$699 administrative
fee, with approved credit. On
select vehicles, see dealer for
details.

PARAMOUNT KIA of ASHEVILLE

paramount KIA asheville.com
800-WE-SAY-YES
800-937-2993

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Exhibit C



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"), 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 waives and other provisions as required by the Commission's Rules; and

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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 any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Paramount Kia of Hickory, LLC, is a North Carolina limited liability company with its principal office or place of business at 1205 South Center Street, Hickory, North Carolina 28602.
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:

- A. Unless otherwise specified, “respondent” shall mean Paramount Kia of Hickory, LLC, and its successors and assigns.
- B. “Advertisement” shall mean a commercial message in any medium that directly or indirectly promotes a consumer transaction.

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- 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.
- 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.

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- 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 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

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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
- B. State a rate of finance charge without stating the rate as an “annual percentage rate” or the abbreviation “APR,” using that term; or

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- 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 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

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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 entity 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 entity's 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. Paramount Kia of Hickory, LLC.

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.

VII.

This order will terminate on April 11, 2034, or twenty (20) years from the most recent date that the United States or the

Analysis to Aid Public Comment

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 Paramount Kia of Hickory, 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

Analysis to Aid Public Comment

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 pay \$0 up-front and \$99 per month to finance a car. The complaint alleges that, in fact, monthly payment increases dramatically after the first three payments. 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 a violation of the Truth In Lending Act and Regulation Z for failing to disclose clearly and conspicuously required credit information, despite the respondent's use of certain triggering terms in the advertisements.

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 allegation. It requires that the respondent clearly and conspicuously make all of the disclosures required by TILA and Regulation Z if it states the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge. In addition, Part II prohibits the respondent from stating a rate of finance charge without stating the rate as an "annual percentage rate" or the abbreviation "APR," using that term. Part II also prohibits any other violation of TILA and Regulation Z.

Analysis to Aid Public Comment

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.

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IN THE MATTER OF

AMERICAN PLASTIC MANUFACTURING, INC.]CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4453; File No. 122 3291
Complaint, April 24, 2014 – Decision, April 24, 2014

This consent order addresses American Plastic Manufacturing's marketing, sale, and distribution of purportedly biodegradable plastic shopping bags to the public. The complaint alleges that respondent represented that its plastic products are completely biodegradable in a landfill, or in a stated qualified timeframe as a result of respondent's use of a plastic additive manufactured by ECM Biofilms, Inc. The complaint further alleges that, although respondent represented (expressly or implicitly) that it could substantiate its degradable claims, respondent did not in fact possess or rely upon a reasonable basis to substantiate these representations of biodegradability. The consent order prohibits respondent from making any representation that a product or package is degradable, unless the entire item will completely decompose into elements found in nature within one year after customary disposal, and the representation must be clear and prominent and in close proximity qualified by either the time to complete decomposition or the rate and extent of decomposition. The order also requires that, at the time of any such representation, respondent must possess and rely upon competent and reliable scientific evidence from a scientific technical protocol.

Participants

For the *Commission*: Katherine Johnson.

For the *Respondent*: Mark Leen, Inslee Best Doezie & Ryder,
P.S.

COMPLAINT

The Federal Trade Commission, having reason to believe that American Plastic Manufacturing, Inc. ("respondent"), has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges: