

Complaint

IN THE MATTER OF

COURTESY AUTO GROUP, INC.

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

Docket No. 9359; File No. 132 3171
Complaint, January 7, 2014 – Decision, May 1, 2014

This consent order addresses Courtesy Auto Group, Inc.'s advertising of automobile leases and failing to disclose the costs and terms of certain leases offered, despite the respondent's use of certain triggering terms in the advertisements. The complaint alleges that respondent has advertised that consumers can pay \$0 up-front to lease a car for a specific monthly payment amount but, the advertised payment amounts exclude substantial fees, including but not limited to an acquisition fee. The consent order requires that the Respondent clearly and conspicuously make all of the disclosures required by the Consumer Leasing Act and Regulation M if it states relevant triggering terms, including the monthly lease payment. 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*: Courtney Estep and Mark Glassman.

For the *Respondent*: Robert A. Peretti, Liberati & Peretti, LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Courtesy Auto Group, Inc., a corporation ("respondent"), has violated provisions of the Federal Trade Commission Act ("FTC Act"), the Consumer Leasing Act ("CLA"), and its implementing Regulation M, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a Massachusetts corporation with its principal office or place of business at 11 Scott Street, Attleboro, Massachusetts 02703. Respondent offers automobiles for sale or lease to consumers.

Complaint

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 October 2012, 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 promoting consumer leases for automobiles, as the terms “advertisement” and “consumer lease” are defined in Section 213.2 of Regulation M, 12 C.F.R. §213.2, 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 screenshot captures of the video are attached as Exhibit B. The advertisement contains the following statements and depictions:

2013 KIA Sorento

*\$239/mo buy for i
with \$0 Down or \$20,980*

While these statements appear, a voice-over states:

Get behind the wheel of the new 2013 Kia Sorento,
now lease priced for \$239 a month with zero down,
or sale priced at \$20,980.

At the end of the advertisement, a 380-word block of text scrolls past at high speed, comprised of 33 lines of small, blurry white print against a black background. The text contains the following statements:

. . . . Sorento: Priced with all applicable
Manufacturer rebates and incentives. Does not
include tax, title, acquisition, registration or doc
fees. Soul: APR financing available, subject to
credit approval by Kia Motors Finance (KMF)

Complaint

[Hyundai Motor Finance (HMF) in Massachusetts and D.C.], through KMF/HMK, to very well qualified buyers and not available on balloon financing. Only a limited number of buyers will qualify for advertised APR. Downpayment will vary depending on APR. . . .

6. A similar advertisement has appeared on respondent's website, www.courtesyma.com. A video copy of the advertisement is attached as Exhibit C, and screenshot captures of the video are attached as Exhibit D. The advertisement includes a still photo depicting a 2013 Kia Sorento underneath the following prominent text:

2013 Kia Sorento
Lease for
\$239/mo
with \$0 down
OR
Buy for \$20,980

Adjacent to the still photo is a box in which a video advertisement for the vehicle plays, with a voice-over stating "Get behind the wheel of the new 2013 Kia Sorento, now lease priced for \$239 a month."

Near the end of the video ad, a block of text appears briefly within the box containing the video screen, before being replaced at the end of the video with a graphic allowing consumers to enter personal information to initiate contact with respondent. The block of text states:

. . . . Sorento: Priced with all applicable Manufacturer rebates and incentives. Does not include tax, title, acquisition, registration or doc fees. Not all model trim levels will be applicable. Kelley Blue Book: Minus the mileage, wear and tear up to \$10,000 fair. Not to be combined with any other offer. See dealer for complete details.

Complaint

If consumers scroll down using the bar to the right of the web browser screen, a block of small text appears near the bottom of the screen containing the first four sentences of the statement above.

Thus, consumers cannot pay “\$0 down” to lease the advertised vehicles for the monthly payment amounts offered; they must also pay significant fees, including but not limited to an acquisition fee. Respondent has represented that its acquisition fee is \$595.

7. Additional advertisements have appeared on the landing page of respondent’s website. One such advertisement has appeared in a “slider” panel that automatically presents a sequence of automobile offers prominently at the top of the landing page. A video depicting a user navigating through the advertisement and its links described below is attached as Exhibit E, and screenshot captures of the video are attached as Exhibit F.

The banner includes a still photo depicting a 2013 Kia Soul accompanied by the following text:

2013 Kia Soul

\$199 a Month

\$0 Due at Signing

**Now at
Courtesy Kia!**

See Dealer for full details

The landing page includes no additional information about the offer. If consumers click on the banner, they are taken to a page apparently showing respondent’s inventory of 2013 Kia Souls. This page includes no additional information regarding lease offers, and instead lists various sale prices for each of the cars. If consumers click on the link for a particular car, they are taken to a page for that car, which includes a box labeled “Current Specials.” In some but not all instances, the box includes among other things a monthly payment amount. In such cases, if

Complaint

consumers click on a small “Disclaimer” link at the bottom of the box, a pop-up box containing dense, small, light gray text against a white background appears. The pop-up box includes the statement:

(1) Disclaimer - \$199 a Month with \$0 due at signing 2013 Kia Soul. See dealer for details. Not all applicants will qualify.

Respondent’s website thus does not disclose important additional terms of the prominently advertised lease, including but not limited to whether consumers must pay tax, tags, registration or doc fees, the number of lease payments, and whether an extra charge may be imposed at the end of the lease.

FEDERAL TRADE COMMISSION ACT VIOLATIONS

Count I

Misrepresentation of Amount Due at Lease Inception

8. Through the means described in Paragraphs 5 through 7, respondent has represented, expressly or by implication, that consumers can pay \$0 at lease inception to lease the advertised vehicle for the advertised monthly payment amount.

9. In truth and in fact, consumers cannot pay \$0 at lease inception to lease the advertised vehicle for the advertised monthly payment amount. Consumers must also pay significant fees, including but not limited to an acquisition fee. Therefore, the representation set forth in Paragraph 8 was, and is, false or misleading.

10. 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).

Complaint

**VIOLATION OF THE CONSUMER LEASING ACT AND
REGULATION M**

11. Under Section 184 of the CLA and Section 213.7 of Regulation M, advertisements promoting consumer leases are required to make certain disclosures (“additional terms”) 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.

12. Respondent’s advertisements promoting consumer leases, including but not necessarily limited to those described in Paragraphs 5 through 7, are subject to the requirements of the CLA and Regulation M.

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

13. Respondent’s advertisements promoting consumer leases, including but not necessarily limited to those described in Paragraphs 5 through 7, have included CLA triggering terms, but have failed to disclose or to disclose clearly and conspicuously additional terms required by the CLA and Regulation M, including one or more of the following:

- a. That the transaction advertised is a lease.
- b. The total amount due prior to or at consummation or by delivery, if delivery occurs after consummation.
- 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.

Complaint

14. Therefore, the practices set forth in Paragraph 13 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.

NOTICE

Notice is hereby given to the respondent that the ninth day of September, 2014, at 10:00 a.m., is hereby fixed as the time, and the Federal Trade Commission offices at 600 Pennsylvania Avenue, N.W., Room 532-H, Washington, D.C. 20580, as the place when and where a hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Federal Trade Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions, and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings of fact and conclusions of law under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings.

Complaint

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint, and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after the answer is filed by the respondent. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532-H, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, but in any event no later than five (5) days after the answer is filed by the respondent. Rule 3.31(b) obligates counsel for each party, within five (5) days of receiving respondent's answer, to make certain disclosures without awaiting a formal discovery request.

The following is the form of order which the Commission has reason to believe should issue if the facts are found to be as alleged in the complaint. If, however, the Commission should conclude from record facts developed in any adjudicative proceedings in this matter that the proposed order provisions might be inadequate to fully protect the consuming public, the Commission may order such other relief as it finds necessary or appropriate.

Moreover, the Commission has reason to believe that, if the facts are found as alleged in the complaint, it may be necessary and appropriate for the Commission to seek relief to redress injury to consumers, or other persons, partnerships or corporations, in the form of restitution for past, present, and future consumers and such other types of relief as are set forth in Section 19(b) of the Federal Trade Commission Act. The Commission will determine whether to apply to a court for such relief on the basis of the adjudicative proceedings in this matter and such other factors as are relevant to consider the necessity and appropriateness of such action.

Complaint

ORDER

DEFINITIONS

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

- A. Unless otherwise specified, “respondent” shall mean Courtesy Auto Group, 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.

Complaint

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 lease” shall mean a contract in the form of a bailment or lease for the use of personal property by a natural person primarily for personal, family, or household purposes, for a period exceeding four months and for a total contractual obligation not exceeding the applicable threshold amount, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, as set forth in Section 213.2 of Regulation M, 12 C.F.R. § 213.2, 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

Complaint

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. Leasing a vehicle, including but not necessarily 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; or
 2. 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
- 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 consumer lease, 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 inception, without

Complaint

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. Part 213, as amended, and the Consumer Leasing Act, 15 U.S.C. §§ 1667-1667f, as amended.

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

Complaint

- 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 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

Complaint

Pennsylvania Avenue, NW, Washington, DC, 20580. The subject line must begin: FTC v. Courtesy Auto Group, Inc.

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 twenty (20) years from the date of its issuance, 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.

Complaint

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C. this seventh day of January, 2014.

By the Commission.

Exhibit A

Exhibit A

[Video Copy of the Advertisement Described In Paragraph 5]

Complaint

Exhibit BVideo Image Screenshot:Scrolling Text Block Screenshot:

Offers end 1/2/13. Sorento: Priced with all applicable Manufacturer rebates and incentives. Does not include tax, title, acquisition, registration or doc fees. Soul: APR financing available, subject to credit approval by Kia Motors Finance (KMF) [Hyundai Motor Finance (HMF) in Massachusetts and D.C.], through KMF/HMK, to very well qualified buyers and not available on balloon financing. Only a limited number of customers will qualify for advertised APR. Down payment will vary depending on APR. Bonus Cash from KMF/HMF must be applied as a down payment. Must take delivery from a participating dealer and from retail stock from 9/5/2012 to 1/2/2013. New vehicles only. This incentive is for a limited time offer on eligible Kia vehicles and may not be combined with other special offers except where specified. Dealer contribution may vary and could affect actual monthly payment. Finance contract must be signed and dated no later than 1/2/2013. Truth in Lending Act Disclosure: Down payment will vary with APR and credit. For example, 1.9% APR with \$2500 down payment provides for 36 monthly payments of \$28.6 per \$1000 financed for qualified buyers. The rates described are for estimation purposes only; you may not be able to finance at this rate. Sportage: APR financing available, subject to credit approval by Kia Motors Finance (KMF) [Hyundai Motor Finance (HMF) in Massachusetts and D.C.], through KMF/HMK, to very well qualified buyers and not available on balloon financing. Only a limited number of customers will qualify for advertised APR. Down payment will vary depending on APR. Bonus Cash from KMF/HMF must be applied as a down payment. Must take delivery from a participating dealer and from retail stock from 9/5/2012 to 1/2/2013. New vehicles only. This incentive is for a limited time offer on

Complaint

Exhibit C

Exhibit C

[Video Copy of the Advertisement Described In Paragraph 6]

Complaint

Exhibit D

Website Advertisement Contains Video and Still Image:Text Block Appearing Near the End of the Website Video Advertisement:

Complaint

Video Screen at the Conclusion of the Video: Text Block at the Bottom of the Webpage:



Page 3 (Exhibit D)

Exhibit E

Exhibit E

[Video Depicting A User Navigating Through the Advertisement
and Its Links Described In Paragraph 7]

Complaint

Exhibit F

Courtesy Kia Landing Page – www.courtesykia.com



Landing page after clicking on the banner advertisement above:



Decision and Order

Web page after clicking on a car listed in inventory and then clicking on the "Disclaimer" link:



Page 3 (Exhibit F)

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having heretofore issued its Administrative Complaint charging Respondent Courtesy Auto Group, Inc., hereinafter referred to as Respondent, with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45 (“FTC Act”), Section 184 of the Consumer Leasing Act, 15 U.S.C. §1667c, and Section 213.7 of Regulation M, 12 C.F.R. §213.7, and Respondent having been served with a copy of the Complaint, together with a notice of contemplated relief; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid Complaint, a statement that the signing of said Consent

Decision and Order

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 Secretary of the Commission having thereafter withdrawn the matter from adjudication in accordance with Commission Rule 3.25(c), 16 C.F.R. § 3.25(c); and

The Commission having considered the matter and having thereupon accepted the executed Consent Agreement and placed such Agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure described in Commission Rule 3.25(f), the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order):

1. Respondent, Courtesy Auto Group, Inc., is a Massachusetts corporation with its principal office or place of business at 11 Scott Street, Attleboro, MA 02703.
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 Courtesy Auto Group, Inc., and its successors and assigns.

Decision and Order

- 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.
- D. “Consumer lease” shall mean a contract in the form of a bailment or lease for the use of personal property by a natural person primarily for personal, family, or

Decision and Order

household purposes, for a period exceeding four months and for a total contractual obligation not exceeding the applicable threshold amount, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, as set forth in Section 213.2 of Regulation M, 12 C.F.R. § 213.2, 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:

Decision and Order

- A. Misrepresent the cost of:
1. Leasing a vehicle, including but not necessarily 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; or
 2. 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
- 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 consumer lease, 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 inception, 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

Decision and Order

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. Part 213, as amended, and the Consumer Leasing Act, 15 U.S.C. §§ 1667-1667f, as amended.

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,

Decision and Order

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.

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. Courtesy Auto Group, Inc.

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

Decision and Order

representative of the Commission, it shall submit additional true and accurate written reports.

VII.

This order will terminate on May 1, 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, Commissioner McSweeney not participating.

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 Courtesy Auto Group, 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.

Respondent is a motor vehicle dealer. According to the FTC Complaint, Respondent has advertised that consumers can pay \$0 up-front to lease a car for a specific monthly payment amount. The complaint alleges that, in fact, the advertised payment amounts exclude substantial fees, including but not limited to an acquisition fee. 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 Consumer Leasing Act and Regulation M for failing to disclose the costs and terms of certain leases offered, 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) 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; or (2) 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. Part I.B prohibits the Respondent from misrepresenting

Analysis to Aid Public Comment

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

Part II 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 II prohibits any other violation of CLA and Regulation M.

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

**VISANT CORPORATION,
JOSTENS, INC.,
AND
AMERICAN ACHIEVEMENT CORPORATION**

COMPLAINT AND FINAL ORDER IN REGARD TO ALLEGED
VIOLATIONS OF SECTION 5 OF THE FEDERAL TRADE COMMISSION
ACT AND SECTION 7 OF THE CLAYTON ACT

*Docket No. 9362; File No. 141 0033
Complaint, April 17, 2014 – Decision, May 7, 2014*

The complaint alleges that the acquisition of American Achievement Corporation by Jostens, Inc., a subsidiary of Visant Corporation, would have anti-competitive effects in the markets for high school and college class rings in the United States. The Order dismisses the Complaint because the parties abandoned the transaction.

Participants

For the *Commission*: Christopher Abbott, Maggie DiMoscato, Michelle Fetterman, Stephanie Greco, Peter Herrick, William Huynh, Amy Posner, Stephanie Reynolds, Jenny Schwab, Mark Seidman, and Stelios Xenakis.

For the *Respondents*: Ellen L. Frye and Joseph F. Tringali, Simpson Thacher & Bartlett LLP; and Jeffrey D. Ayer, Molly S. Boast, Ali M. Stoettelwerth, and Jonathan R. Yarowsky, Wilmer Cutler Pickering Hale and Dorr LLP.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by the Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondents Visant Corporation (“Visant”), Jostens, Inc. (“Jostens”), and American Achievement Corporation (“AAC”), having executed a stock purchase agreement in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, which if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it