

Complaint

IN THE MATTER OF

**TXVT LIMITED PARTNERSHIP,
D/B/A TROPHY NISSAN**

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

Docket No. C-4508; File No. 142 3117

Complaint, February 12, 2015 – Decision, February 12, 2015

This consent order concerns TXVT Limited Partnership's ("Trophy") advertising of the purchase, financing, and leasing of its motor vehicles. The respondent is a motor vehicle dealer. According to the complaint, Trophy advertised that when a consumer trades in a used vehicle in order to purchase a new vehicle and pays \$1.00, Trophy will pay off the balance of any loan or lease agreement on the trade-in vehicle and the consumer will have no remaining obligation for any amount of that loan or lease. Instead, Trophy included the negative equity from the trade-in vehicle within the total loan amount for the newly purchased vehicle. The complaint alleges that Trophy's representation is false or misleading in violation of Section 5 of the FTC Act. The order prohibits Trophy from misrepresenting in any advertisement the material terms of any promotion or other incentive, including that it will pay off a consumer's trade-in or the cost of leasing or purchasing a vehicle. Trophy is also prohibited from failing to clearly and conspicuously disclose material terms of its promotions or other incentives and must comply with the Consumer Leasing Act and Regulation M and the Truth in Lending Act and Regulation Z.

Participants

For the *Commission*: *Ambar Chavez and Luis Gallegos.*

For the *Respondent*: *Deanya K. Cocanougher, Cantey Hanger LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that TXVT Limited Partnership, a Texas Limited Partnership, doing business as Trophy Nissan ("Respondent") has violated provisions of the Federal Trade Commission Act ("FTC Act"), the Consumer Leasing Act ("CLA") and its implementing Regulation M, and the Truth in Lending Act ("TILA") and its implementing Regulation

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Z, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a Texas Limited Partnership with its principal place of business at 5031 North Galloway Avenue, Mesquite, Texas 75150. 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 2014, 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 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. 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.

6. Such advertisements have been placed in local Dallas newspapers, including The Dallas Morning News and the Spanish-language newspaper Al Dia; on local television networks; on Respondent’s website, www.trophynissan.com, and on social media websites, including Facebook and Twitter.

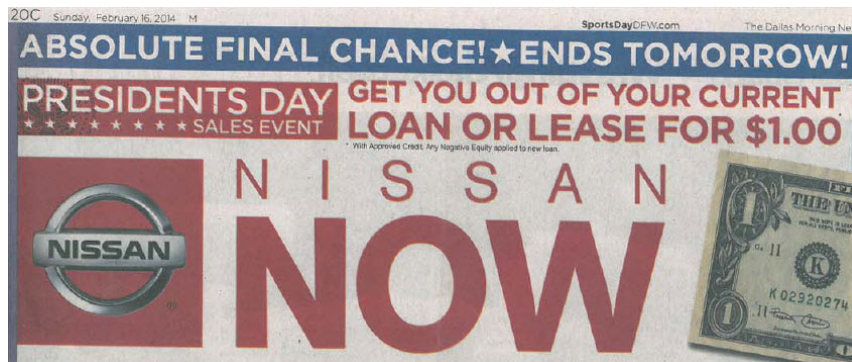
“NISSAN NOW” SALES EVENT

7. Respondent ran an advertising campaign entitled the “Nissan Now” sales event. This campaign included advertisements in Dallas Morning News, attached as Exhibit A; video commercials placed on local television stations and on

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Respondent's website, attached as Exhibit B, with screen captures attached as Exhibit C; and advertisements placed on Respondent's Facebook and Twitter pages, attached as Exhibit D. The advertisements all contained similar statements and depictions.

8. For example, the following statement and depiction appeared in the advertisement in The Dallas Morning News:



The prominent offer to "GET YOU OUT OF YOUR LOAN OR LEASE FOR \$1.00" was followed by small, fine print that stated "With Approved Credit. Any Negative Equity applied to the new loan." (Exhibit A).

9. A similar offer was made in a video commercial for Respondent. In the video, a narrator stood between two vehicles waving a \$1.00 bill and stated:

"Stuck with a high car payment? Owe more on your vehicle than it's worth? Trophy Nissan can set you free for a buck! During our Nissan Now event, you can get out of your current loan or lease for just \$1.00."

While the above statement was made, small text that was difficult to distinguish from the background was displayed on the screen for approximately two seconds. The text stated the following:

"With Approved Credit. Any Negative Equity applied to new loan. Offer ends [unreadable] See dealer for details." (Exhibits B-C).

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10. On Respondent's Facebook and Twitter social media sites, Respondent claimed:

"\$1 GETS YOU OUT OF YOUR CURRENT LOAN OR LEASE!"



This ad did not contain any other text describing the sales offer. (Exhibit D).

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11. Contrary to the claims made in the advertisements, consumers who had outstanding loan balances on trade-in vehicles could not get out of their loan for \$1.00. In addition to \$1.00, they would have to pay the amount of the outstanding loan balance. Further, consumers with leases could not get of their leases for \$1.00. In addition to \$1.00, they would have to pay other amounts, such as lease termination fees.

12. Respondent's Nissan Now advertisement attached as Exhibit A also promoted automobiles for lease or sale.



The prominent offers of “\$18,888 or \$179 Per Month Lease” were followed by small, fine print that stated:

With approved credit. Lease for 39 mo. \$3,779 down. \$0 Security deposit, based on 12k miles per year. An extra charge may be imposed at end of lease. Residual 48%.

With approved credit. Lease for 39 mo. \$3,059 down. \$0 Security deposit, based on 12k miles per year. An extra charge may be imposed at end of lease. Residual 48%.

Thus, despite the prominent claim that consumers could lease a car for only \$179 a month, the total amount due at lease signing was unclear because any costs and fees in addition to the down payment required at lease signing were not disclosed.

13. Respondent's advertisement attached as Exhibit A also promoted the availability of closed-end credit for motor vehicle transactions.

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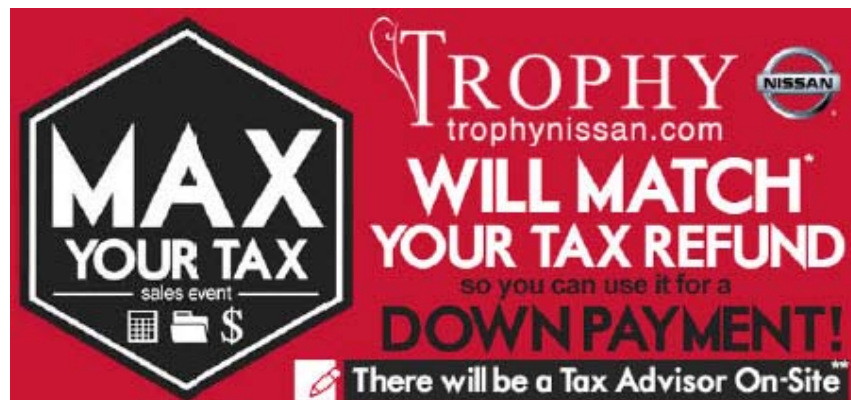
The prominent offer of “\$19 DOWN DELIVERS” was followed by small, fine print at the bottom of the advertisement that stated:

Not Responsible For Errors In Photography Or Typography. † Based on 2013 Certified Nissan Registrations. 1) \$19 cash down with approved above average credit. See Dealer for Details. Example: \$19 down, for 60 months at 6.9% APR financing. Based on STK#AC125197 All Prices plus tax, title, license and \$150 doc fee. All Leases with Approved Above Average Credit Must Finance Thru Nissan Motor Acceptance Corporation. All vehicles subject to prior sale. All offers end of business 2/18/14.

Thus, only in fine print did the Respondent include the financing term, APR, and other required terms.

“MAX YOUR TAX” SALES EVENT

14. Respondent ran an advertising campaign entitled the “Max Your Tax” sales event. One of the “Max Your Tax” advertisements that was placed on Respondent’s website, www.trophynissan.com, attached as Exhibit E, contained the following statement:



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A statement was included at the bottom of the advertisement, in small, fine print that said Respondent would only match tax refunds up to \$1,000 and would not provide tax advice:

* Trophy Nissan will match your tax Refund up to \$1,000 when used a down payment on any new or used vehicle.. ** Trophy Nissan will not provide tax advice and recommends that you obtain your own independent tax advisor, such as Express Autoservices, for your specific individual circumstances. *** Based on 2013 Certified Nissan registrations. Photos for illustration purposes only. Not responsible for errors in typography or photography. All offers end 3/3/14.

15. Respondent's advertisement attached as Exhibit E also promoted the availability of closed-end credit for motor vehicle transactions.

THE #1 NISSAN CERTIFIED PRE-OWNED DEALER IN THE NATION!

Nissan Certified Pre-Owned Vehicles

\$19¹ DOWN DELIVERS OR PAY JUST \$269² PER MONTH

1) \$19 cash down with approved above average credit. See Dealer for Details. Example: \$19 down, for 60 months at 6.9% APR financing. Based on STK#CL940924. Offer ends 3/3/14. 2) 2013 NISSAN ALTIMA, STX#DN551599, payments of \$269/mo for 72 months, 10% down, plus tax, title, license, equity and \$150 doc fee. With approved credit. Offer ends 3/3/14.

The prominent offer of “\$19 DOWN DELIVERS OR PAY JUST \$269 PER MONTH” was followed by small, fine print that stated:

1) \$19 cash down with approved above average credit. See Dealer for Details. Example: \$19 down, for 60 months at 6.9% APR financing. Based on STK#CL940924. Offer ends 3/3/14. 2) 2013 Nissan Altima, STX#DN551599, payments of \$269/mo for 72 months, 10% down, plus tax, title, license, equity and \$150 doc fee. With approved credit. Offer ends 3/3/14.

Thus, only in fine print did the Respondent include the financing term, APR, and other required terms.

SPANISH LANGUAGE ADVERTISEMENT

16. Respondent placed an advertisement in the Spanish-language newspaper Al Dia, attached as Exhibit F, that depicted numerous automobiles offered for sale or lease.

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The advertisement included a prominent offer to lease a Nissan Sentra S for \$100. At the bottom, the advertisement included the following small, fine print in English:

*Disclaimer: 2013 Nissan Sentra S Model #12063 VIN #DL750677, one or more at this price, MSRP \$17,385 36 Month Lease \$3,264 Due at Signing \$0 Security Deposit Residual \$11,916.85 New 2014 Nissan Altima 2.5s, Model #13114, VIN#231533, one or more at this price, MSRP: \$23,680, Nissan Factory Rebate: \$1,000, Dealer Discount: \$3,692, Sales Price \$18,568, Price plus tax, title, license and \$150 doc fee. New 2013 Nissan Rogue S, Model #22113, VIN#542967, one or more at this price, MSRP: \$21,540, Nissan Factory Rebate: \$500, Dealer Discount: \$2,052, Sales Price: \$18,988, Price plus tax, title, license and \$150 doc fee. Offer ends 3/2/14.

The fine print language reads in English:

Disclaimer: 2013 Nissan Sentra S Model #12063 VIN #DL750677, one or more at this price, MSRP \$17,385 36 Month Lease \$3,264 Due at Signing \$0 Security Deposit Residual \$11,916.85 New 2014 Nissan Altima 2.5s, Model #13114, VIN#231533, one or more at this price, MSRP: \$23,680, Nissan Factory Rebate \$1,000 Dealer Discount: \$3,692, Sales Price \$18,568, Price plus tax, title, license and \$150 doc fee. New 2013 Nissan Rogue S, Model #22113, VIN#542967, one or more at this price, MSRP \$21,540, Nissan Factory Rebate: \$500, Dealer Discount \$2,052, Sales Price: \$18,988, Price plus tax, title, license and \$150 doc fee. Offer ends 3/2/14. (Exhibit F).

Thus, despite the prominent claim in Spanish that consumers could lease a car for only \$100 a month, a consumer would actually have to pay thousands of dollars up-front to lease the car.

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FEDERAL TRADE COMMISSION ACT VIOLATIONS

COUNT I

MISREPRESENTATION THAT \$1.00 GETS YOU OUT OF
YOUR CURRENT LOAN OR LEASE

17. In advertisements, including but not necessarily limited to those described in Paragraphs 7 through 11, Respondent represented, expressly or by implication, that consumers could end their current loan or lease with a payment of only \$1.00.

18. In truth and in fact, in numerous instances, consumers could not end their current loan or lease for only \$1.00. Instead, the balance of any loan or lease obligation after trading in the vehicle was added to the consumer's new loan. Accordingly, Respondent's representation as alleged in Paragraph 17 was, and is, false and misleading.

19. 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).

COUNT II

FAILURE TO DISCLOSE ADEQUATELY THAT TROPHY
WOULD MATCH YOUR INCOME TAX REFUND ONLY UP
TO \$1,000

20. In advertisements, including but not necessarily limited to those described in Paragraph 14, Respondent represented, expressly or by implication, that Respondent would match consumers' income tax refund for use as a down payment on an automobile. These advertisements did not disclose adequately additional terms pertaining to the offer, such as that Respondent would match only up to \$1,000 of consumers' income tax refund. The existence of these additional terms was material to consumers in deciding whether to purchase a vehicle. The failure to disclose adequately these additional terms, in light of the representation made, was, and is, a deceptive practice.

21. 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).

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COUNT III
FAILURE TO DISCLOSE OR DISCLOSE ADEQUATELY IN
LEASE ADVERTISING

22. In lease advertisements, including but not necessarily limited to those described in Paragraphs 12 and 16, Respondent represented, expressly or by implication, that consumers could lease the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount.

23. These advertisements did not disclose or disclose adequately additional terms pertaining to the lease offer, such as the total amount of any payments due at lease inception. The existence of these additional terms was material to consumers in deciding whether to lease a vehicle. The failure to disclose or disclose adequately these additional terms, in light of the representation made, was, and is, a deceptive practice.

24. 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).

VIOLATION OF THE CONSUMER LEASING ACT AND
REGULATION M

25. 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 the several terms, such as the amount of any payment ("CLA triggering terms"). 15 U.S.C. § 1667c; 12 C.F.R. § 213.7.

26. Respondent's advertisements promoting consumer leases, including but not necessarily limited to those described in Paragraph 12 and 16, are subject to the requirements of the CLA and Regulation M.

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COUNT IV

FAILURE TO DISCLOSE OR TO DISCLOSE CLEARLY AND
CONSPICUOUSLY REQUIRED LEASE INFORMATION

27. Respondent's advertisements promoting consumer leases, including but not necessarily limited to those described in Paragraphs 12 and 16, included CLA triggering terms, but 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.

28. Therefore, the practices set forth in Paragraph 27 of this Complaint violated Section 184 of the CLA, 15 U.S.C. § 1667c, and Section 213.7 of Regulation M, 12 C.F.R. § 213.7.

VIOLATION OF THE TRUTH IN LENDING ACT AND
REGULATION Z

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

30. Respondent's advertisements promoting closed-end credit, including but not limited to those described in Paragraphs 13 and 15, are subject to the requirements of the TILA and Regulation Z.

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COUNT V
FAILURE TO DISCLOSE OR TO DISCLOSE CLEARLY AND
CONSPICUOUSLY REQUIRED CREDIT INFORMATION

31. Respondent's advertisements promoting closed-end credit, including but not limited to, those described in Paragraphs 13 and 15, included TILA triggering terms, but failed to disclose, or to 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.

32. Therefore, the practices set forth in Paragraph 31 of this Complaint 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 twelfth day of February, 2015, has issued this complaint against Respondent.

By the Commission.

EXHIBIT A

[illegible]

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EXHIBIT B

Video Advertisement Available at
https://www.ftc.gov/system/files/documents/cases/trophy_nissan_exhibit_b_-_nissan_now_commercial.avi

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EXHIBIT C

Complaint

EXHIBIT D

NISSAN
NOW

\$1

GETS YOU
OUT OF YOUR CURRENT
LOAN OR LEASE!



Brand New 2014 Nissan
ALTIMA 2.5 S
MODEL#13114 VIN#EC272027
One or more at this price

MSRP: \$23,940
Nissan Rebate: \$1,000
Dealer Discount: \$3,952

\$18,988

TROPHY 
trophynissan.com

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EXHIBIT D

NISSAN
NOW

\$1 **GETS YOU**
OUT OF YOUR CURRENT
LOAN OR LEASE!

Brand New 2014 Nissan
ALTIMA 2.5 S

MODEL#13114 VIN#EC272027,
One or more at this price

MSRP: \$23,940
Nissan Rebate: \$1,000
Dealer Discount: \$3,952

\$18,988

CLICK HERE
For Details

TROPHY
trophynissan.com

Complaint

EXHIBIT E



TROPHY
trophynissan.com

WILL MATCH YOUR TAX REFUND
so you can use it for a
DOWN PAYMENT!

There will be a Tax Advisor On-Site*

Brand New 2014 Nissan ALTIMA 2.5 S
Model#12104 VMZ219918 One or more at this price



MSRP: \$23,880
NISSAN REBATE: \$1,000
DEALER DISCOUNT: \$3,952

\$18,988 OR **\$179**
Per Month Lease

Lease for 36 mo. \$2,000 down, \$0 Security deposit, based on 12,000 miles per year. An extra charge may be imposed at end of lease. With approved credit. Price plus tax, title, license and \$180 doc fee. See dealer for details.

Brand New 2013 Nissan ROGUE S
Model#22113 VMKCV55278 One or more at this price



MSRP: \$23,265
NISSAN REBATE: \$586
DEALER DISCOUNT: \$1,877

\$18,988 OR **\$179**
Per Month Lease

Lease for 36 mo. \$2,775 down, \$0 Security deposit, based on 12,000 miles per year. An extra charge may be imposed at end of lease. With approved credit. Price plus tax, title, license and \$180 doc fee. See dealer for details.

Brand New 2014 Nissan VERSA 1.6L
MSRP: \$13,105
DEALER DISCOUNT: \$1,105



\$11,999

Model#11154 VMFUELB6049 One or more at this price

Brand New 2013 Nissan SENTRA SV
Model#12013 VMFUDL795871, One or more at this price



\$100 Per Month LEASE

Home of the \$100 NISSAN

MSRP \$17,985. 24 Month Lease \$3,284 due at signing \$0 Security Deposit. Pre-tax \$11,974.85, with approved credit. An extra charge may be imposed at end of lease. Price plus tax, title, license and \$180 doc fee. See dealer for details.

THE #1 NISSAN CERTIFIED PRE-OWNED DEALER IN THE NATION!

Nissan Certified Pre-Owned Vehicles



\$19 DOWN DELIVERS OR PAY JUST **\$269** PER MONTH

\$1,919 cash down with approved above average credit. See Dealer for Details. Example: \$19 down, for 60 months at 5.9% APR financing, based on 37464.446324. Other ends 37144. 2) 2013 NISSAN ALTIMA, 614406301000, payments of \$269/mo for 72 months, 10% down, plus tax, title, license, equity and \$180 doc fee. With approved credit. Offer ends 3/31/14.

Call Now to Schedule your VIP test drive.

TROPHY
trophynissan.com

* Trophy Nissan will match your tax refund up to \$1,000 toward down payment on any new or used vehicle. ** Trophy Nissan will not provide tax advice and recommends that you obtain your own independent tax advice, such as Express Autoservice, for your specific individual circumstances. *** Based on 2013 Certified Nissan registrations. Photos for illustrative purposes only. Not responsible for errors in typing, copy or photography. All offers end 3/31/14.

635 & Galloway in Mesquite
214-295-9264

EXHIBIT F[illegible]

Decision and Order

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of Respondent named in the caption hereof, and Respondent having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violation of the Federal Trade Commission Act (“FTC Act”), the Truth in Lending Act (“TILA”), and the Consumer Leasing Act (“CLA”); and

Respondent, Respondent’s counsel, and counsel for the Commission having thereafter executed an agreement containing 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 has reason to believe that Respondent has violated the FTC Act, the TILA, and the CLA, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such consent agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure prescribed in 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 TXVT Limited Partnership, is a Texas limited partnership, doing business as Trophy Nissan, with its principal place of business at 5031 North Galloway Avenue, Mesquite, Texas 75150.
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.

Decision and Order

ORDER**DEFINITIONS**

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

1. Unless otherwise specified, “Respondent” shall mean TXVT Limited Partnership, doing business as Trophy Nissan, and its successors and assigns.
2. “Advertisement” shall mean a commercial message in any medium that directly or indirectly promotes a consumer transaction.
3. “Clearly and conspicuously” shall mean as follows:
 - a. 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.
 - b. 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.
 - c. In a television or video advertisement, an audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade, and appear on the screen for a duration, and in a location, sufficient for an ordinary consumer to read and comprehend it.

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- d. In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.
 - e. 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.
- 4. “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.
 - 5. “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.
 - 6. “Lease inception” shall mean prior to or at consummation of the lease or by delivery, if delivery occurs after consummation.
 - 7. “Material” shall mean likely to affect a person’s choice of, or conduct regarding, goods or services.
 - 8. “Motor vehicle” or “vehicle” shall mean:
 - a. Any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;
 - b. Recreational boats and marine equipment;

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- c. Motorcycles;
- d. Motor homes, recreational vehicle trailers, and slide-in campers; and
- e. 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 that Respondent will pay any particular amount of the remaining loan or lease obligation on a used motor vehicle that a consumer trades in (“trade-in vehicle”) to purchase, finance, or lease another motor vehicle, including by representing that the Respondent will pay the entire remaining obligation on the trade-in vehicle when the consumer will actually be responsible for paying that amount;
- B. Misrepresent the material terms of any promotion or other incentive, and the nature, value, or amount of a promotion or other incentive, including, but not limited to, that Respondent will match a consumer’s tax refund for use as the down payment on the purchase of a vehicle;
- C. Misrepresent the cost of:
 - 1. 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

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2. Purchasing a vehicle with financing, including but not necessarily limited to, the amount or percentage of the down payment, and the repayment obligation over the full term of the loan, including any balloon payment; or
- D. Misrepresent any other material fact about the price, sale, financing, or leasing of any vehicle.

II.

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, make any representation about any promotion or other incentive including, but not limited to, that Respondent will match a consumer's tax refund for use as the down payment on the purchase of a vehicle, without disclosing clearly and conspicuously, the terms and limitations of such promotion or other incentive.

III.

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;

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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.

IV.

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;
- 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.

V.

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 promotion 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.

VI.

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 marketing or advertising 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

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shall deliver this order to current personnel with thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after such person assumes such position or responsibilities.

VII.

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. TXVT Limited Partnership, d/b/a Trophy Nissan.

VIII.

IT IS FURTHER ORDERED that Respondent, with 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.

IX.

Decision and Order

This order will terminate on February 12, 2035, 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 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 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 TXVT Limited Partnership, d/b/a Trophy Nissan. The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the FTC will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

The Respondent is a motor vehicle dealer. The matter involves its advertising of the purchase, financing, and leasing of its motor vehicles. According to the FTC complaint, Respondent has advertised that when a consumer trades in a used vehicle in order to purchase a new vehicle and pays \$1.00, Respondent will pay off the balance of any loan or lease agreement on the trade-in vehicle such that the consumer will have no remaining obligation for any amount of that loan or lease. The complaint alleges that in fact, when a consumer trades in a used vehicle with negative equity (i.e., the loan or lease balance on the vehicle exceeds the vehicle’s value), pays \$1.00, and purchases another vehicle, Respondent does not pay off the balance of the loan or lease agreement on the trade-in vehicle such that the consumer will have no remaining obligation for any amount of that loan or lease agreement. Instead, the Respondent includes the negative equity from the trade-in in the loan for the newly purchased vehicle. The complaint alleges therefore that the representation is false or misleading in violation of Section 5 of the FTC Act.

The complaint also alleges that Respondent has advertised that Respondent would match consumers’ income tax refund for use as a down payment on an automobile. The complaint alleges that Respondent’s advertisement did not disclose adequately additional terms pertaining to the offer, such as that Respondent would match only up to \$1,000 of consumers’ income tax refund. The complaint alleges therefore that the failure to disclose adequately the additional terms is deceptive in violation of Section 5 of the FTC Act.

Analysis to Aid Public Comment

The complaint further alleges that Respondent advertised that consumers could lease advertised vehicles at terms prominently stated in the advertisements, including, but not necessarily limited to, the monthly payment amount. The complaint alleges that Respondent's advertisements did not disclose or disclose adequately additional terms pertaining to the lease offer, such as the total amount of any payments due at lease inception. The complaint alleges that these additional terms were material to consumers in deciding whether to lease a vehicle. The complaint alleges therefore that the failure to disclose or disclose adequately the additional terms is deceptive in violation of Section 5 of the FTC Act.

In addition, the complaint alleges violations of the Consumer Leasing Act ("CLA") and Regulation M for failing to disclose or to disclose clearly and conspicuously certain costs and terms when advertising leases. Finally, the complaint alleges violations of the Truth in Lending Act ("TILA") and Regulation Z for failing to disclose or to disclose clearly and conspicuously certain costs and terms when advertising credit.

The proposed order is designed to prevent the Respondent from engaging in similar deceptive practices in the future. Part I.A of the proposed order prohibits the Respondent from misrepresenting that it will pay any particular amount of the remaining loan or lease obligation on a consumer's trade-in vehicle used to purchase, finance, or lease another motor vehicle, including representing that the Respondent will pay the entire remaining obligation on the trade-in vehicle when the consumer will actually be responsible for paying that amount. Part I.B of the proposed order prohibits Respondent from misrepresenting the material terms of any promotion or other incentive, and the nature, value, or amount of a promotion or other incentive, including, but not limited to, that Respondent will match a consumer's tax refund for use as the down payment on the purchase of a vehicle. Part I.C prohibits the Respondent from misrepresenting the cost of: (1) 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 (2)

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purchasing a vehicle with financing, including but not necessarily limited to, the amount or percentage of the down payment, and the repayment obligation over the full term of the loan, including any balloon payment. Part I.D 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 prohibits Respondent from making any representation about any promotion or other incentive including, but not limited to, that Respondent will match a consumer's tax refund for use as the down payment on the purchase of a vehicle, without disclosing clearly and conspicuously, the terms and limitations of such promotion or other incentive.

Part III of the proposed order requires Respondent to clearly and conspicuously make all of the disclosures required by CLA and Regulation M if they state relevant trigger terms, including the monthly lease payment or the amount of any payment or that any or no initial payment is required at lease inception. In addition, Part III prohibits any other violation of CLA or Regulation M.

Part IV of the proposed order requires that the Respondent clearly and conspicuously make all of the disclosures required by TILA and Regulation Z if they state 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 IV 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 IV also prohibits any other violation of TILA and Regulation Z.

Part V of the proposed order requires Respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements. Part VI requires that Respondent provide copies of the order to certain of their personnel. Part VII requires notification to the Commission regarding changes in corporate structure that might affect compliance obligations under the order. Part VIII requires the Respondent to file compliance

Analysis to Aid Public Comment

reports with the Commission. Finally, Part IX 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

PROFESSIONAL SKATERS ASSOCIATION

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

Docket No. C-4509; File No. 131 0168

Complaint, February 13, 2015 – Decision, February 13, 2015

This consent order addresses the provisions in the Professional Skaters Association (“PSA”) code of ethics that limit competition among its members. PSA is a non-profit trade association whose members include approximately 6,400 ice skating coaches who teach, train, and coach skaters at all levels – from beginners to elite skaters. Many of PSA’s members teach and coach skaters for a fee. The Complaint alleges that PSA violated Section 5 of the FTC Act by restraining competition among coaches of ice skating through adoption and enforcement of the no-solicitation provision of PSA’s Code of Ethics. This is in effect an agreement among competitors not to compete. The consent order requires PSA to stop restraining its members from soliciting work and competing on the basis of price. It also requires the group to change its code of ethics, publicize its settlement with the FTC, and implement an antitrust compliance program.

Participants

For the *Commission*: *Karen A. Mills.*

For the *Respondent*: *Jennifer Burt and David Shulman, Davis Law Office; and Gregory Merz, Gray Plant Mooty.*

COMPLAINT

The Federal Trade Commission (“Commission”), pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, and by virtue of the authority vested in it by said Act, having reason to believe that the Professional Skaters Association (“Respondent” or “PSA”), a corporation, has violated and is violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint, stating its charges as follows: