

Complaint

IN THE MATTER OF

**PROGRESSIVE CHEVROLET COMPANY
AND
PROGRESSIVE MOTORS, 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. C-4578; File No. 142 3133
Complaint, June 13, 2016 – Decision, June 13, 2016*

This consent order addresses Progressive Chevrolet Company's and Progressive Motors, Inc.'s lease advertisements. The complaint alleges that respondents violated Section 5(a) of the Federal Trade Commission Act because they failed to disclose, and/or failed to disclose adequately, that their advertised offers required a minimum credit score that is greater than the credit score of the majority of consumers. The complaint also alleges that respondents' leasing advertisements violated the Consumer Leasing Act and Regulation M by failing to disclose or to disclose clearly and conspicuously required terms. The consent order prohibits respondents from advertising the amount of any monthly payment, periodic payment, initial payment, or down payment, or the length of payment term, unless the representation is non-misleading, and respondents clearly and conspicuously disclose all qualifications or restrictions on the consumer's ability to obtain the represented terms, including qualifications or restrictions based on the consumer's credit score.

Participants

For the *Commission*: Michael B. Rose.

For the *Respondents*: David Brown, Stockamp Brown LLC.

COMPLAINT

The Federal Trade Commission, having reason to believe that Progressive Chevrolet Company, a corporation, also d/b/a Progressive Auto Group, Progressive Jeep, and Progressive Chrysler, and Progressive Motors, Inc., a corporation, also d/b/a Progressive Ram and Progressive Chrysler Jeep Dodge Inc. (collectively, "Respondents"), have violated the provisions of the Federal Trade Commission Act, the Consumer Leasing Act

Complaint

(“CLA”), and its implementing Regulation M, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Progressive Chevrolet Company is an Ohio corporation with its principal office or place of business at 8000 Hills and Dales Road, Massillon, Ohio 44646. Respondent offers automobiles for sale or lease to consumers.

2. Respondent Progressive Motors, Inc. is an Ohio corporation with its principal office or place of business at 7966 Hills and Dales Road, Massillon, Ohio 44646. Respondent offers automobiles for sale or lease to consumers.

3. Respondents have disseminated or caused to be disseminated advertisements to the public that promote 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.

4. The acts and practices of Respondents alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

5. Since at least April 2014, Respondents have disseminated or have caused to be disseminated advertisements to the public promoting the leasing of automobiles online and in print, including but not necessarily limited to the attached Exhibit A. The nearly full-page advertisement contains the following statements and depictions:

Sign & Drive Leases
ZERO DOWN!!!!!!

ALL LEASES ARE
Zip, Zero, Zilch – Nothing Down

6. The advertisement displays two columns – Progressive Chevrolet Company, on the left, advertises three new 2014 Chevrolet vehicles and Progressive Motors, Inc., on the right, advertises six new 2014 Chrysler vehicles. Each pictured vehicle states a lease cost per month. There is no stated length of the lease within close proximity of each vehicle. With each pictured

Complaint

vehicle are the statements repeated from the beginning of the ad: “Sign & Drive” and “Zip, Zero, Zilch – Nothing Down.” These phrases are repeated at least 10 times within the advertisement. Only at the bottom of the advertisement, in fine print and not in close proximity to the advertised vehicles, does the advertisement disclose the term of the lease, that the payment does not include tax, title, and fees, and that the offer is “[s]ubject to 800 beacon [sic] score or higher with approved credit.”

7. The typical consumer does not have an 800 BEACON score or higher. BEACON scores are one type of credit score upon which auto financing entities have relied, and as such are a type of an industry-specific credit score. The typical consumer does not understand what a BEACON score is or know that fewer than 20% of consumers have a BEACON score of 800 or higher. Moreover, the typical consumer does not understand or know what an industry-specific credit score is or how it may differ from a generic credit score.

FEDERAL TRADE COMMISSION ACT VIOLATIONS
Count I**Deceptive Failure to Disclose, and/or Failure to Disclose Adequately, A Material Condition to Obtaining the Lease Monthly Payment**

8. In lease advertisements, including but not necessarily limited to Exhibit A, Respondents have represented, expressly or by implication, that consumers can lease the advertised vehicles at the down payment and monthly payment amounts prominently stated in the advertisements.

9. Respondents failed to disclose, and/or failed to disclose adequately, that typical consumers cannot qualify for the advertised terms. This information would be material to consumers in deciding whether to visit Respondents’ dealerships and/or whether to lease an automobile from Respondents. The failure to disclose, and/or failure to disclose adequately, that few consumers will qualify, in light of the representations made, was, and is, a deceptive practice.

Complaint

10. Respondents' practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

**VIOLATION OF 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 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. Respondents' advertisements promoting consumer leases, including but not necessarily limited to those described in Paragraphs 5 and 6, are subject to the requirements of the CLA and Regulation M.

Count II

**Failure to Disclose, and/or Failure to Disclose, Clearly and
Conspicuously, Required Lease Information**

13. Respondents' lease advertisements, including but not necessarily limited to Exhibit A, stated a monthly payment amount, a CLA triggering term, but failed to disclose, and/or failed to disclose clearly and conspicuously, certain additional terms required by the Consumer Leasing Act and Regulation M, including one or more of the following terms:

- 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. The number, amounts, and due dates or periods of scheduled payments under the lease;
- d. A statement of whether or not a security deposit is required; and

Complaint

- e. A statement that an extra charge may be imposed at the end of the lease term where the consumer's liability (if any) is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

14. The lease disclosures required by Regulation M, if provided, are not clear and conspicuous because they appear in fine print and/or in an inconspicuous location.

15. Therefore, the practices set forth in Paragraphs 13 and 14 of this complaint have violated 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.

THEREFORE, the Federal Trade Commission this thirteenth day of June, 2016, has issued this complaint against Respondents.

By the Commission.

Complaint

Exhibit A

Sign & Drive Leases **ALL LEASES ARE**
ZERO DOWN!!!!!! **Zip, Zero, Zilch - Nothing Down!**

2014 CHEVY CRUZE LT  169 PER MO. Includes 2 years free maintenance	2014 JEEP COMPASS  199 PER MO. Zip Zero Zilch - Nothing Down!
2014 MALIBU LT  199 PER MO. Includes 2 years free maintenance	2014 JEEP CHEROKEE  299 PER MO. Zip Zero Zilch - Nothing Down!
2014 EQUINOX LT  249 PER MO. Includes 2 years free maintenance	2014 DODGE JOURNEY  279 PER MO. Zip Zero Zilch - Nothing Down!
ProgressiveChevrolet.com Chevy Runs Deep PROGRESSIVE CHEVROLET 8000 HILLS AND DALES NW • MASSILLON OH 44646 1-800-376-4167	2014 CHRYSLER 300  299 PER MO. Zip Zero Zilch - Nothing Down!
	2014 CHRYSLER TOWN & COUNTRY  329 PER MO. Zip Zero Zilch - Nothing Down!
	2014 JEEP GR. CHEROKEE  379 PER MO. Zip Zero Zilch - Nothing Down!
	ProgressiveDodge.com CHRYSLER Jeep RAM PROGRESSIVE CHRYSLER • JEEP • DODGE 7966 HILLS AND DALES NW • MASSILLON OH 44646 1-800-580-7886

payments based on 48 month 15,000 mile per year lease plus tax title and fees. 25 cents over mileage penalty. Lease price and sale price may be different due to thousands or discounts that do not combine. Subject to 400 credit score or higher with approved credit. Special financing programs available for lower credit scores. Additive equity may affect amount financed. Pictures for illustration purposes. EXPRES-4502014.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of the Respondents named in the caption hereof, and the Respondents having been furnished thereafter with a copy of a draft of a complaint which the East Central Region-Cleveland proposed to present to the Commission for its consideration and which, if issued, would charge the Respondents with violations of the Federal Trade Commission Act (“FTC Act”), the Consumer Leasing Act (“CLA”), and its implementing Regulation M; and

The Respondents, their attorney, and counsel for the Commission having thereafter executed an Agreement Containing a Consent Order (“consent agreement”), which includes: a statement by the Respondents that they neither admit nor deny any of the allegations in the draft complaint except as specifically stated in the consent agreement, and, only for purposes of this action, admit the facts necessary to establish jurisdiction; and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the Respondents have violated the FTC Act, the CLA, and its implementing Regulation M, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comment received from an interested person, 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 Progressive Chevrolet Company is an Ohio corporation with its principal office or place of business at 8000 Hills and Dales Road, Massillon, Ohio 44646. Respondent offers automobiles for sale or lease to consumers.

Decision and Order

2. Respondent Progressive Motors, Inc. is an Ohio corporation with its principal office or place of business at 7966 Hills and Dales Road, Massillon, Ohio 44646. Respondent offers automobiles for sale or lease to consumers.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

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

- A. Unless otherwise specified, “Respondents” shall mean Progressive Chevrolet Company, Progressive Motors, Inc., and their 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.

Decision and Order

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 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” shall mean:
1. Any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;

Decision and Order

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 Respondents and their officers, agents, representatives, and employees shall not, directly or indirectly, expressly or by implication:

- A. In an advertisement concerning the leasing or financing of a motor vehicle, represent the amount of any monthly payment, periodic payment, initial payment, or down payment, or the length of any payment term, unless the representation is non-misleading, and the advertisement clearly and conspicuously discloses all qualifications or restrictions on the consumer's ability to obtain the represented terms, including but not limited to qualifications or restrictions based on the consumer's credit score. *Provided, further,* that, if a majority of consumers likely will not be able to meet a stated credit score qualification or restriction, the advertisement must clearly and conspicuously disclose that fact.
- B. Misrepresent the cost of:
 1. Purchasing a vehicle with financing, including but not 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

Decision and Order

2. Leasing a vehicle, including but not 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.
- C. Misrepresent any other material fact about the price, sale, financing, or leasing of any motor vehicle.

II.

IT IS FURTHER ORDERED that Respondents and their officers, agents, representatives, and employees shall not, in connection with any advertisement for any consumer lease, directly or indirectly, 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 prior to or at consummation or by delivery, if delivery occurs after consummation;
 3. the number, amounts, and timing of scheduled payments;
 4. whether or not a security deposit is required; and
 5. that an extra charge may be imposed at the end of the lease term where the consumer's liability (if any) is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

Decision and Order

- 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 Respondents shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation;
- C. All evidence in their 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 Respondents shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order, with any electronic signatures complying with the

Decision and Order

requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.* Respondents 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 Respondents 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 Respondents learn less than thirty (30) days prior to the date such action is to take place, Respondents 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, N.W., Washington, D.C. 20580. The subject line must begin: *In re Progressive Chevrolet Company and Progressive Motors, Inc.*

VI.

IT IS FURTHER ORDERED that Respondents, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit additional true and accurate written reports.

Analysis to Aid Public Comment

VII.

This order will terminate on June 13, 2036, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

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

Provided, further, that if such complaint is dismissed or a federal court rules that a 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 Progressive Chevrolet Company and Progressive Motors, Inc. The proposed consent order has been placed on the public record

Analysis to Aid Public Comment

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 respondents are motor vehicle dealers. According to the FTC complaint, respondents advertised that consumers could lease the advertised vehicles at the monthly payment amounts prominently stated in their advertisements. The complaint alleges that respondents violated Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), because they failed to disclose, and/or failed to disclose adequately, that the offer requires a minimum credit score that is greater than the credit score of the majority of consumers. This information would be material to consumers in deciding whether to visit respondents' dealerships and/or whether to lease an automobile from respondents. The complaint also alleges that respondents' leasing advertisements violated the Consumer Leasing Act (CLA) and Regulation M by failing to disclose or to disclose clearly and conspicuously required terms. Specifically, respondents' advertisements prominently stated the monthly payment amounts for a vehicle lease—a triggering term under the CLA—but failed to disclose, or inconspicuously disclosed at the bottom of the ad in much smaller type, the required information set forth by the CLA. The proposed order is designed to prevent the respondents from engaging in similar deceptive practices in the future.

- Part I.A. addresses the Section 5 allegation by prohibiting respondents from advertising the amount of any monthly payment, periodic payment, initial payment, or down payment, or the length of payment term, unless the representation is non-misleading, and respondents clearly and conspicuously disclose all qualifications or restrictions on the consumer's ability to obtain the represented terms, including qualifications or restrictions based on the consumer's credit score. Additionally, if a majority of consumers likely will not be able to meet a credit score qualification or restriction stated in the advertisement,

Analysis to Aid Public Comment

respondents must clearly and conspicuously disclose that fact.

- Part I.B.1. provides that the respondents shall not misrepresent the cost of financing the purchase of an automobile, including by misrepresenting 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.
- Part I.B.2. provides that the respondents shall not misrepresent the cost of leasing an automobile, including by misrepresenting 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.
- Part I.C. provides that the respondents shall not misrepresent any other material fact about the price, sale, financing, or leasing of any automobile.
- Part II of the order addresses the CLA and Regulation M allegations by prohibiting lease advertisements that:
 - 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:
 - that the transaction advertised is a lease;
 - the total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;
 - the number, amounts, and timing of scheduled payments;
 - whether or not a security deposit is required; and

Analysis to Aid Public Comment

- that an extra charge may be imposed at the end of the lease term where the consumer's liability (if any) is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.
- 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.
- Part III requires respondents to keep copies of relevant advertisements and materials containing representations.
 - Part IV requires that respondents provide copies of the order to certain of their 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 respondents 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

VERY INCOGNITO TECHNOLOGIES, INC.**D/B/A****VIPVAPE**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4580; File No. 162 3034**Complaint, June 21, 2016 – Decision, June 21, 2016*

This consent order addresses Very Incognito Technologies, Inc.'s representations to consumers concerning its participation in the Asia-Pacific Economic Cooperation Cross Border Privacy Rules system. The complaint alleges that Vipvape falsely represented that it was a participant in the APEC CBPR system when, in fact, it never sought or obtained certification. The consent order prohibits Vipvape from making misrepresentations about its participation in any privacy or security program sponsored by a government or any self-regulatory or standard-setting organization, including, but not limited to, the APEC CBPR system.

Participants

For the *Commission*: *Monique F. Einhorn*.

For the *Respondent*: *Raphael Pepe, CEO, pro se*.

COMPLAINT

The Federal Trade Commission (“Commission” or “FTC”), having reason to believe that Very Incognito Technologies, Inc., a corporation, has violated the Federal Trade Commission Act (“FTC Act”), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Very Incognito Technologies, Inc., also doing business as Vipvape, is a California corporation with its principal office or place of business at 2261 Market Street, # 498 San Francisco, CA 94114.
2. Respondent makes and distributes hand-held vaporizers.