

Complaint

IN THE MATTER OF

**TRAFFIC JAM EVENTS, LLC.
AND
DAVID J. JEANSONNE II**

COMPLAINT AND FINAL ORDER IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE
FEDERAL TRADE COMMISSION ACT AND SECTION 144 OF THE TRUTH IN LENDING ACT

*Docket No. 9395; File No. X200041
Complaint, August 7, 2020 – Decision, October 25, 2021*

This order addresses Traffic Jam Events, LLC.’s advertisements for the sale of motor vehicles on behalf of auto dealerships. The complaint alleges that Traffic Jam Events, LLC. deceptively represented that consumers are receiving COVID-19 stimulus relief from the federal government and that consumers have won a prize which can be collected by visiting a particular motor vehicle dealership where no prize was available. The complaint also alleges that Respondent failed to disclose or failed to disclose clearly and conspicuously the terms for close-end credit transactions. Under the order Respondent is prohibited from advertising, marketing, promoting, selling, or leasing automobiles and prohibits misrepresentation in any future marketing that violates the FTC or Truth in Lending Acts.

Participants

For the *Commission*: Michael Tankersley and Sanya Shahrabi

For the *Respondents*: L. Etienne Balart [Jones Walker LLP]

COMPLAINT

The Federal Trade Commission, having reason to believe that Traffic Jam Events, LLC, a limited liability company, and David J. Jeansonne II, individually and as an officer of Traffic Jam Events, LLC (collectively, “Respondents”), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Traffic Jam Events, LLC (“Traffic Jam Events”) is a Louisiana limited liability company with its principal place of business at 2232 Idaho Avenue, Kenner, LA 70062.
2. Respondent David J. Jeansonne II, is the owner, managing member, and president of Traffic Jam Events, LLC. Individually or in concert with others, he controlled, had the authority to control, or participated in the acts and practices of Traffic Jam Events, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of Traffic Jam Events.
3. Respondents have advertised, marketed, promoted, or offered for sale or lease, and sold or leased motor vehicles for or on behalf of auto dealerships nationwide. Respondents create advertising, offer direct mail marketing services, and staff tent sales events to automotive dealerships.

Complaint

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. Defendants’ Business Activities

5. Respondents have disseminated or caused to be disseminated deceptive advertisements and promotional materials, including advertisements purporting to provide COVID-19 stimulus relief to consumers.

6. Beginning in or around March 2020, Respondents’ advertisements sought to lure consumers to dealerships under the guise that valuable government relief related to COVID-19 was available at designated locations for a short period of time.

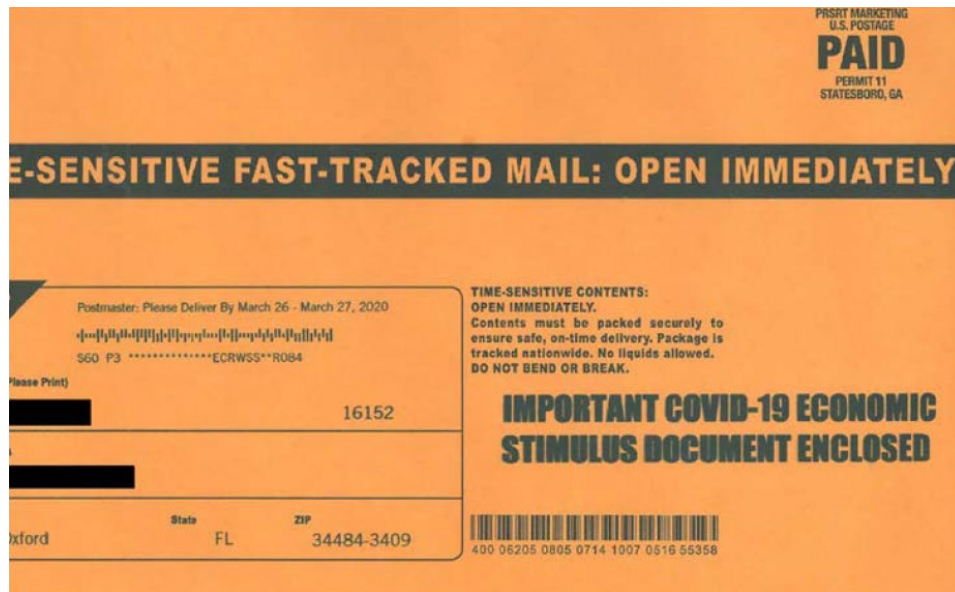
7. The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), P.L. 116-136, was enacted on March 27, 2020 to provide immediate assistance to individuals, families, and businesses affected by the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak. The CARES Act provides a \$1,200 stimulus payment to individuals and a \$2,400 payment for married couples, with an additional \$500 payment per qualifying child. Relief begins phasing out when incomes exceed \$75,000 for individual filers and \$150,000 for joint filers.

8. In addition to the monetary relief, the CARES Act provides deferrals on payments for federally-backed mortgages and federal student loans. While it does not provide relief relating to auto loans or auto-related financing, some coronavirus relief proposals have considered such relief.

9. Respondents’ deceptive advertisements include an advertisement used for a Florida auto sales event. The advertising materials contain the following statements and depictions:

- a. “TIME-SENSITIVE” mailer purporting to contain “IMPORTANT COVID-19 ECONOMIC STIMULUS DOCUMENTS.”

Complaint



(Exhibit A, Florida mailer envelope).

- b. The notice contained in the mailer states at the top in bold: “URGENT: COVID19 ECONOMIC AUTOMOTIVE STIMULUS PROGRAM RELIEF FUNDS AVAILABLE • ALL PAYMENTS DEFERRED FOR 120 DAYS.” The notice header also includes a barcode with a notice number that claims to relate to “COVID-19 STIMULUS (INDIVIDUAL)” and a watermark depicting a likeness of the Great Seal of the United States.



(Exhibit B, COVID-19 Stimulus notice containing Great Seal in mailer)

- c. Below the header information, the notice claims in bold that “[a] special COVID19 Economic Automotive Stimulus Program with relief funds and other incentives will be held at 5925 SW 20th St., Bushnell, FL 33513.” A highlighted box touts specific relief similar to the CARES Act relief, including thousands in relief funds and payment deferrals.

Complaint

At the specified relief headquarters, the following incentives may be available to ALL residents of Bushnell, FL:

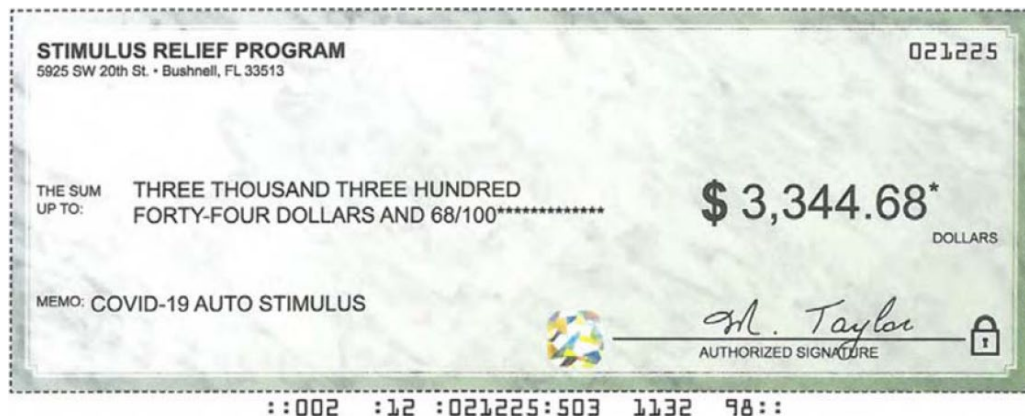
- **0% A.P.R. financing for 60 months.** A variety of vehicles (cars, trucks, SUVs, etc.) will have 0% A.P.R. financing available with little to no money down. ⁽¹⁾
- **All payments will be deferred for 120 days.** Do not make a car payment for 120 days/4 months. ⁽²⁾
- **Receive a \$100 Walmart  Gift Card with every vehicle purchase.** Extra funds to be used for any other needs you may have during this time. ⁽³⁾
- **Thousands in Relief Funds with this notice.** Receive additional discounts on your vehicle purchase – check the enclosed documentation for your funds.

- d. The notice repeatedly describes the location as “relief headquarters,” “your designated temporary 10-day site,” and “designated local headquarters.” In particular, the notice represents that consumers “must claim these stimulus incentives at your designated temporary 10-day site: 5925 SW 20th St., Bushnell, FL 33513.”
- e. The notice additionally purports to describe “Mandatory qualifications to receive Stimulus Relief Funds:”

Mandatory qualifications to receive Stimulus Relief Funds:

- 1) **Must be permanent U.S. resident.**
- 2) **Must have valid driver’s license.**
- 3) **Annual Income cannot exceed \$91,300.00.**

- f. Respondents also have included a supposed check issued by “Stimulus Relief Program” with the memo field stating “COVID-19 AUTO STIMULUS” and a space to endorse the check on the back.



(Exhibit C, copy of the purported check contained in mailer)

10. Respondents disseminated a similar “TIME-SENSITIVE” mailer purporting to contain “IMPORTANT COVID-19 ECONOMIC STIMULUS DOCUMENTS” to entice consumers to a Chrysler Dodge dealership in Dothan, Alabama (Exhibit D).

Complaint

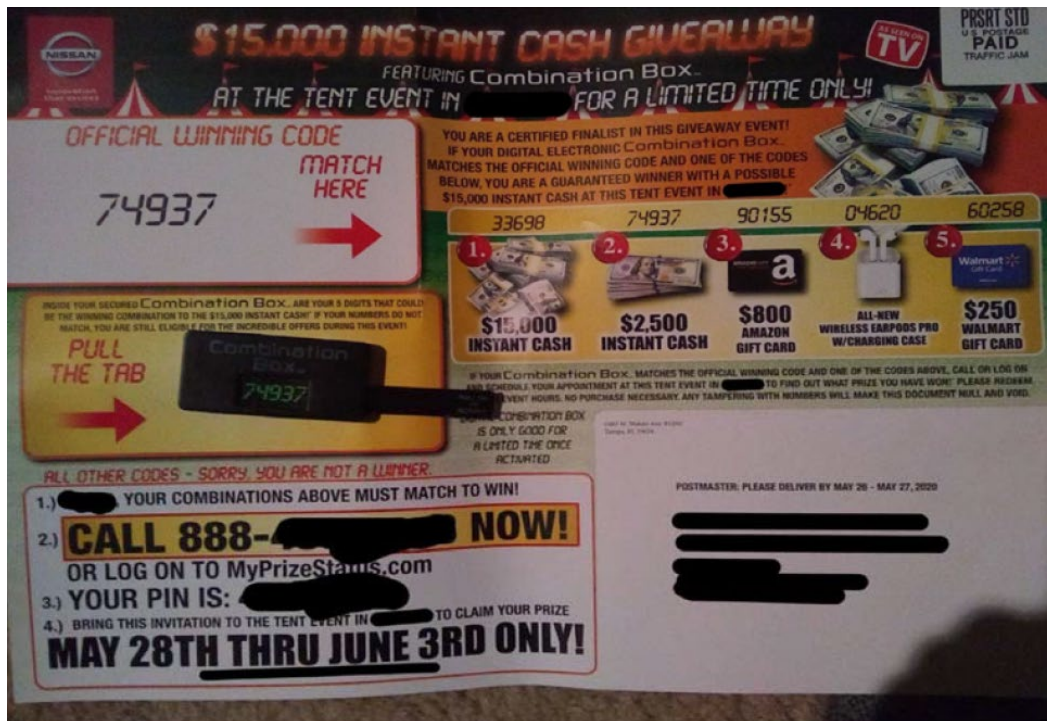


11. Respondents proposed additional advertising campaigns to at least one dealership touting “STIMULUS RELIEF FUNDS AND GIVEAWAYS.” The advertisements represented that “THIS STIMULUS MONEY IS BEING ALLOCATED TO THE AUTOMOTIVE INDUSTRY SO THAT YOU, THE PUBLIC CAN BUY A VEHICLE AT NEVER BEFORE SEEN PRICES.” The proposed advertisements repeatedly described “STIMULUS RELIEF HEADQUARTERS” (Exhibit E).

12. Respondents have also disseminated or have caused to be disseminated advertisements and promotional materials claiming that recipients have won prizes to lure individuals and families to auto sales events. For example, as part of an auto sales events from May 28 through June 3, 2020, Respondents disseminated or caused to be disseminated a promotion that lists an “OFFICIAL WINNING CODE,” indicates that the prize for that code is “\$2,500 INSTANT CASH,” and invites consumers to pull a tab to see if the code in their “Combination Box” is the same code. The promotion represents, “If your digital electronic combination box matches the official winning code and one of the codes below, you are a guaranteed winner. . . .”

- a. Below is the promotion, with the tab pulled, indicating that the Combination Box code is the WINNING CODE:

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(Exhibit F, prize advertisement (redacted by consumer))

- b. On the reverse side, in fine print at the bottom of the advertisement, the seventh line states, contrary to the claim that the consumer with a matching code is a “guaranteed winner” of “\$2,500 INSTANT CASH,” that consumers must visit the dealership to see if they have won a prize, and that they only have 1/52000 odds of winning \$2,500 cash even if their Combination Box contained the winning code.

13. Respondents have been subject to state law enforcement actions for deceptive advertising. The Florida Attorney General sued Respondents on April 23, 2020 over the advertisement described in Paragraph 9. Previously, Indiana and Kansas brought actions against Respondent Traffic Jam Events alleging that Respondent’s advertisements represented that consumers had won substantial prizes that could be claimed at auto sales events when, in fact, they had not, resulting in consent agreements. The Indiana agreement is signed by Respondent David Jeansonne II on behalf of Respondent Traffic Jam Events.

14. Respondents have also disseminated advertisements that fail to clearly and conspicuously disclose terms required by federal law. The COVID-19 notice for the Florida sales event described above and included as Exhibit B advertises various vehicles for sale, purportedly as part of the “COVID-19 Economic Stimulus Program” provided by “participating dealers in the area.” The notice states particular terms, such as the down payment amount and monthly payment for the vehicles, without clearly and conspicuously disclosing other required terms, such as the repayment terms and annual percentage rate.

Complaint

VIOLATIONS OF THE FTC ACT**Count I****Respondents' Deceptive Representations Regarding Government Relief**

15. In connection with the advertising, marketing, promotion, or offering for sale, or sale of motor vehicles, Respondents have represented, directly or indirectly, expressly or by implication, that consumers are receiving official COVID-19 stimulus information; that consumers are receiving COVID-19 stimulus relief, including stimulus checks; and that Respondents are affiliated or otherwise associated with, or approved by, the government.

16. In fact, consumers are not receiving important COVID-19 stimulus information; consumers are not receiving COVID-19 stimulus relief, including stimulus checks and Respondents are not affiliated with, or approved by, the government. Therefore, the representations set forth in Paragraph 15 are false or misleading.

Count II**Respondents' Deceptive Representations Regarding Prize Winnings**

17. In connection with the advertising, marketing, promotion, or offering for sale, or sale of motor vehicles, Respondents have represented, directly or indirectly, expressly or by implication, that consumers have won a specific prize that can be collected by visiting a particular dealership.

18. In fact, consumers have not won the specific prize. Therefore, the representations set forth in Paragraph 17 are false or misleading.

19. The acts and practices of Respondents as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

VIOLATIONS OF TILA AND REGULATION Z

20. Under Section 144 of the TILA and Section 226.24(d) of Regulation Z, 12 C.F.R. § 226.24(d), as amended, advertisements promoting closed-end 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").

21. Respondents' advertisements promote closed-end credit, including but not necessarily limited to those described in Paragraphs 9-10, and Respondent Traffic Jam Events is subject to the requirements of the TILA and Regulation Z.

Complaint

Count III

22. In numerous instances, Respondents' advertisements promoting closed-end credit, including, but not limited to, those described in Paragraphs 9-10, have included TILA triggering terms, but have failed to disclose, or failed to disclose clearly and conspicuously, TILA 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; and
- c. The "annual percentage rate," using that term, and, if the rate may be increased after consummation, that fact.

23. Therefore, Respondents' acts or practices as set forth in Paragraph 22 violate 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.

NOTICE

You are notified that on Tuesday, May 4, 2021, at 10:00 a.m., at the Federal Trade Commission offices, 600 Pennsylvania Avenue, NW, Room 532-H, Washington, DC 20580, an Administrative Law Judge of the Federal Trade Commission will hold a hearing on the charges set forth in this Complaint. At that 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 you are afforded the opportunity to file with the Federal Trade Commission ("Commission") an answer to this Complaint on or before the 14th day after service of the Complaint upon you. An answer in which the allegations of the Complaint are contested must 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 § 3.46 of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings.

Complaint

Failure to answer timely will be deemed to constitute a waiver of your right to appear and contest the allegations of the Complaint and will 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 will hold an initial prehearing scheduling conference to be held not later than 10 days after the answer is filed by the last answering respondent in the Complaint. 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 days after the answer is filed by the last answering respondent. Rule 3.31(b) obligates counsel for each party, within five days of receiving a respondent's answer, to make certain initial disclosures without awaiting a formal discovery request.

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 based on the adjudicative proceedings in this matter and such other factors as are relevant to consider the necessity and appropriateness of such action.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that Respondents have violated or are violating Section 5 of the FTC Act, as amended, Section 144 of the TILA and Section 226.24(d) of Regulation Z, 12 C.F.R. § 226.24(d), as amended, the Commission may order such relief against Respondents as is supported by the record and is necessary and appropriate, including but not limited to:

1. A prohibition on advertising and marketing concerning auto vehicles, government relief, or prizes, sweepstakes, and promotions.
2. A prohibition on misleading representations in connection with the advertising, marketing, promoting, or offering for sale of any product or services.
3. Relief requiring clear and conspicuous disclosures in connection with any advertisement for the extension of consumer credit, and relief in compliance with the Truth in Lending Act.
4. A requirement that Respondents must send appropriate notification of the order to any affected persons.

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5. A requirement that, for a period of time, Respondents must send acknowledgments of the order to the Commission.
6. A requirement that, for a period of time, Traffic Jam Events and David J. Jeansonne must provide prior notice to the Commission of all new business activity.
7. A requirement to file periodic compliance reports with the Commission.
8. Requiring that Respondents' compliance with the order may be monitored for a term to be determined by the Commission.
9. Any other relief appropriate to correct or remedy the effects of the Respondents' deceptive practices or of any or all of the conduct alleged in the complaint.

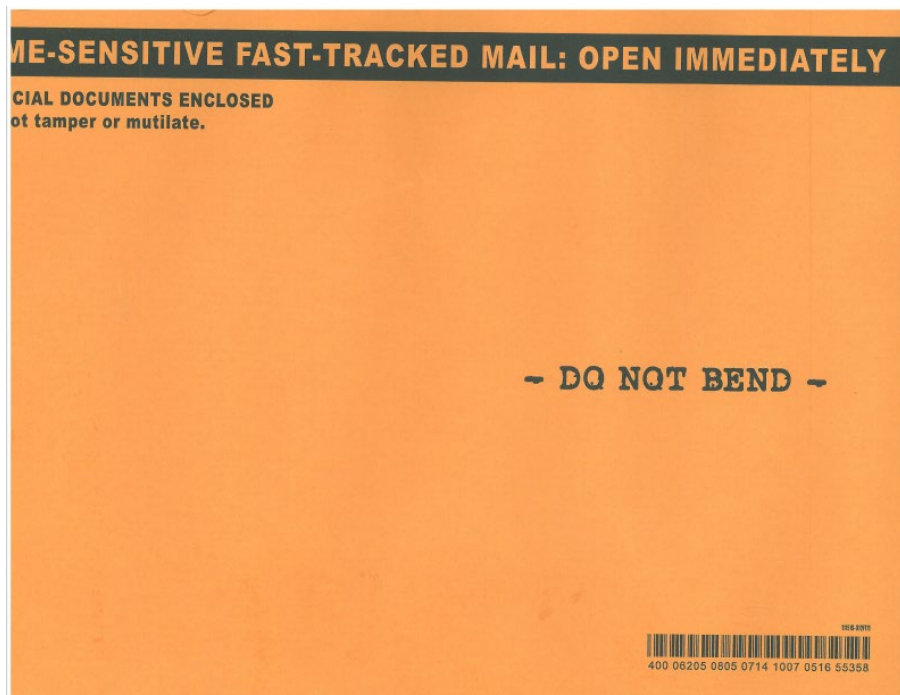
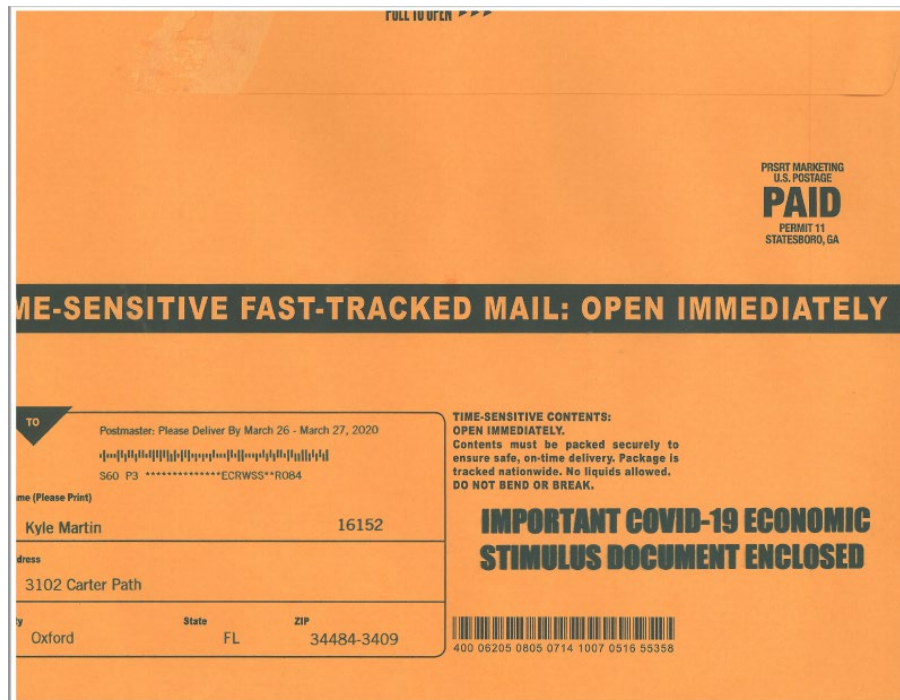
IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, DC, this 7th date of August, 2020.

By the Commission, Commissioner Slaughter not participating.

FEDERAL TRADE COMMISSION DECISIONS
VOLUME 172

Complaint

EXHIBIT A



Complaint

EXHIBIT B

URGENT: COVID-19 ECONOMIC AUTOMOTIVE STIMULUS PROGRAM
RELIEF FUNDS AVAILABLE • ALL PAYMENTS DEFERRED FOR 120 DAYS



Eligible Dates:
March 27th thru
April 5th, 2020



COVID-19 STIMULUS (INDIVIDUAL)
 NOTICE NO. FB02-021225-096781

DATE: 3/25/20
 NOTICE NO: FB02-021225-096781
 SUBJECT: COVID-19 STIMULUS (INDIVIDUAL)
 DESCRIPTION: URGENT NOTICE - READ IMMEDIATELY

Dear Florida residents,

A special COVID-19 Economic Automotive Stimulus Program with relief funds and other incentives will be held at 5925 SW 20th St., Bushnell, FL 33513, across the street from Walmart 🌟, March 27th thru April 5th, 2020. This program has been established to help local residents purchase automobiles with 120 days until first payment during these challenging times with special discounts, credit and finance opportunities to drastically reduce your out-of-pocket costs.

At the specified relief headquarters, the following incentives may be available to ALL residents of Bushnell, FL:

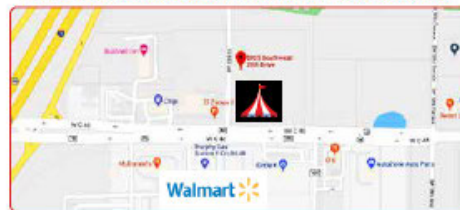
- 0% A.P.R. financing for 60 months. A variety of vehicles (cars, trucks, SUVs, etc.) will have 0% A.P.R. financing available with little to no money down. (1)
- All payments will be deferred for 120 days. Do not make a car payment for 120 days/4 months. (2)
- Receive a \$100 Walmart 🌟 Gift Card with every vehicle purchase. Extra funds to be used for any other needs you may have during this time. (3)
- Thousands in Relief Funds with this notice. Receive additional discounts on your vehicle purchase – check the enclosed documentation for your funds.

You must claim these stimulus incentives at your designated temporary 10-day site: 5925 SW 20th St., Bushnell, FL 33513, across the street from Walmart 🌟. Bring this notice to collect all of these program benefits toward your vehicle purchase.

Please bring this notice to your designated local headquarters:

5925 SW 20th St.
Bushnell, FL 33513
Across the street from Walmart 🌟!

MAP OF TEMPORARY 10-DAY RELIEF SITE:



Eligible dates: March 27th thru April 5th, 2020

Monday–Saturday:

9:00am until all attendees have been assisted.

Sunday:

11:00am until all attendees have been assisted.

Look for the set-up tents and speak to an event representative upon your arrival.

Complaint

URGENT: COVID-19 ECONOMIC AUTOMOTIVE STIMULUS PROGRAM
RELIEF FUNDS AVAILABLE • ALL PAYMENTS DEFERRED FOR 120 DAYS

Mandatory qualifications to receive Stimulus Relief Funds:

- 1) Must be permanent U.S. resident.
- 2) Must have valid driver's license.
- 3) Annual Income cannot exceed \$91,300.00.

This COVID-19 Economic Automotive Stimulus Program will include hundreds of quality, clean cars, trucks, vans and SUVs from participating dealerships in the area. Bring this notice to the relief temporary 10-day site at 5925 SW 20th St., Bushnell, FL 33513, across the street from Walmart  and choose any of the available vehicles. Here are a couple examples of the more popular vehicles in-stock - with hundreds more available:

Mercedes-Benz M-Class
\$0 down \$116 per mo.[®]

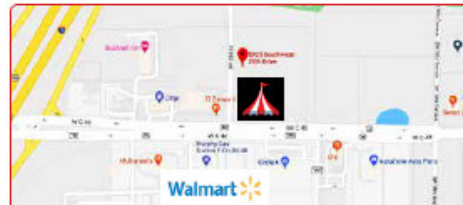
Nissan Versa
\$0 down \$133 per mo.^{ms}

- **0% A.P.R. financing for 60 months.** A variety of vehicles (cars, trucks, SUVs, etc.) will have 0% A.P.R. financing available with little to no money down. ⁽¹⁾
- **All payments will be deferred for 120 days.** Do not make a car payment for 120 days/4 months. ⁽²⁾
- **Receive a \$100 Walmart  Gift Card with every vehicle purchase.** Extra funds to be used for any other needs you may have during this time. ⁽³⁾
- **Thousands in Relief Funds with this notice.** Receive additional discounts on your vehicle purchase – check the enclosed documentation for your funds.

Stimulus Temporary 10-Day Relief Site:
5925 SW 20th St. • Bushnell, FL 33513
Across the street from Walmart 🌻!

MAP OF TEMPORARY 10-DAY RELIEF SITE:

Eligible dates: March 27th thru April 5th, 2020
Monday–Saturday:
9:00am until all attendees have been assisted.
Sunday:
11:00am until all attendees have been assisted.
Look for the set-up tents and speak to an event representative upon your arrival.



DATE: 03/25/20
NOTICE NO: FB02-021225-096781
ACCOUNT TYPE: COVID-19 STIMULUS (INDIVIDUAL)

1. 0% APR applied on select models for up to 60 months. Finance charges subject to lender's approval with approved credit. Interest accrues from date of purchase. 2. Finance one (1) \$100 gift card to Walmart with any vehicle purchase during the event days. 3. \$0 down, plus tax, title and license, \$113 per month example: 2009 Mercedes-Benz C-Class with APR 2.99% \$7,399.72 due at 3.95% APR with approved credit. 4. \$0 down, plus tax, title and license, \$133 per month example: 2010 Nissan Versa with APR 2.99% \$4,490.72 due at 3.95% APR with approved credit. New Nissan Auto Sales employees and associates, mail house, and other employees and customers of these businesses are eligible. Additional restrictions may apply. Finance charges will be assessed on all plans in compliance with state regulations on April 30, 2008. Nissan Finance is subject to prior sale. Void where prohibited by law. All offers end 5/1/08.

Complaint

EXHIBIT C

STIMULUS RELIEF PROGRAM 5925 SW 20th St. • Bushnell, FL 33513		021225
THE SUM UP TO:	THREE THOUSAND THREE HUNDRED FORTY-FOUR DOLLARS AND 68/100*****	\$ 3,344.68* DOLLARS
MEMO: COVID-19 AUTO STIMULUS		
  AUTHORIZED SIGNATURE		
::002 :12 :021225:503 1132 98::		

STIMULUS RELIEF PROGRAM

021225

Date	Type	Reference	Original Amt.	Balance Due	Payment
03/25/20	Stimulus Fund	BUSHN-021225	3,344.68	0.00	3,344.68

STIMULUS RELIEF PROGRAM

week ending 04/05/2020

3,344.68

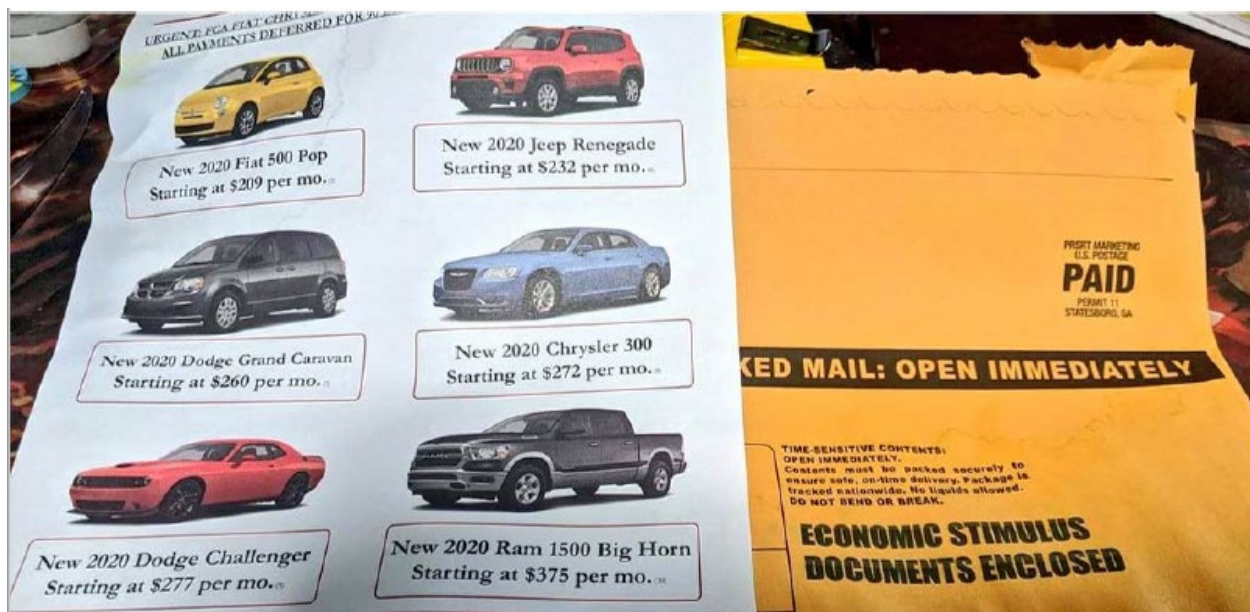
FOR RECIPIENT'S RECORDS

021225

Complaint



EXHIBIT D



Complaint

EXHIBIT E

\$30,000 STIMULUS PRIZES GIVEAWAY

MATCH & WIN!

IF YOU HAVE A ROW OF MATCHING SYMBOLS, YOU ARE A GUARANTEED WINNER!

ALL SIX SYMBOLS MUST MATCH ACROSS TO WIN. IF YOU DO NOT HAVE A ROW OF MATCHING SYMBOLS—SORRY, YOU ARE NOT A WINNER.

YOUR PIN IS: <CONFCODE>
APRIL 10TH THRU 15TH ONLY!

SPONSORED BY LASTNAME, C/P 45TH, WESTWOOD, FL 33609

IF YOU HAVE A ROW OF SYMBOLS THAT MATCHES ONE OF THE PRIZE COMBINATIONS BELOW, CALL OR LOG ON AND SCHEDULE YOUR APPOINTMENT AT NEW WAVE AUTO SALES TO FIND OUT WHAT PRIZE YOU HAVE WON!

TO SEE IF YOU'VE WON!

HOW TO PLAY: CHOW WIN!
 1. MATCH 6 SYMBOLS
 2. LIFT TO OPEN
 3. WIN! (IF YOU HAVE A ROW OF MATCHING SYMBOLS)

STIMULUS RELIEF EVENT HOURS:
 MONDAY-SATURDAY: 9AM UNTIL THE LAST CUSTOMER IS SERVED
 SUNDAY: 11AM UNTIL THE LAST CUSTOMER IS SERVED

PRIZE COMBINATIONS

	\$30,000.00 STIMULUS CASH
	\$1,500.00 INSTANT CASH
	\$800.00 WALMART GIFT CARD
	ALL-NEW WIRELESS EARPODS PRO W/CHARGING CASE
	\$250.00 AMAZON GIFT CARD

GRAND PRIZE!

MANDATORY QUALIFICATIONS TO RECEIVE STIMULUS FUNDS BELOW:
 1) MUST BE PERMANENT U.S. RESIDENT. 2) MUST HAVE VALID DRIVER'S LICENSE. 3) ANNUAL INCOME CANNOT EXCEED \$91,000.00.

VALID ONLY AT: NEW WAVE AUTO SALES
 8000 PARK BLVD. N. - PINELLAS PARK, FL 33781

101

TO: _____
 FROM: _____
 AMOUNT: \$ 3,344.68

UP TO: THREE THOUSAND THREE HUNDRED FORTY-FOUR AND 00/100 DOLLARS

DATE: AUTOMOTIVE STIMULUS

M. Taylor

VOID WHERE PROHIBITED. CERTIFICATE IS NOT VALID FOR CASH. THIS IS NOT A CHECK. THIS IS NOT A CASHIER'S RECEIPT. Amount paid cannot exceed prize amount. Cannot be used in conjunction with any other offer. Expires April 15th, 2020.

STIMULUS RELIEF HEADQUARTERS

NEW WAVE AUTO SALES

8000 PARK BLVD. N.

PINELLAS PARK, FL 33781

Complaint

NEW WAVE AUTO SALES

STIMULUS RELIEF

URGENT NEWS: STIMULUS RELIEF FUNDS AND GIVEAWAYS COMING TO PINELLAS PARK!
 MASSIVE AUTOMOTIVE STIMULUS FUNDS AND SPECIAL DISCOUNTS WILL BE AVAILABLE AT NEW WAVE AUTO SALES! THIS STIMULUS MONEY IS BEING ALLOCATED TO THE AUTOMOTIVE INDUSTRY SO THAT YOU, THE PUBLIC CAN BUY A VEHICLE AT NEVER BEFORE SEEN PRICES!
DO NOT HESITATE TO BE AT THIS SITE!

TRADE-IN AND TRADE-UP WITH \$6,000 OVER KBB VALUE FOR ALL TRADE-INS NOW!

JUST A COUPLE EXAMPLES OF THE MASSIVE STIMULUS RELIEF DISCOUNTS AT THIS EVENT!

\$116
per mo.
WITH \$0 DOWN!!

MERCEDES-BENZ M-CLASS

\$133
per mo.
WITH \$0 DOWN!!

NISSAN VERSA

HUNDREDS MORE IN STOCK WITH SPECIAL SAVINGS!

100% CREDIT APPROVAL IS OUR GOAL!

SLOW CREDIT, BAD CREDIT, BANKRUPTCY... LOCAL BANK REPS WILL BE ON-SITE!

**STIMULUS RELIEF HEADQUARTERS:
 NEW WAVE AUTO SALES
 8000 PARK BLVD. N.
 PINELLAS PARK, FL 33781**

FLAT SCREEN TV GIVEAWAY

TO BE HELD SUNDAY, APRIL 26TH AT 3:00PM.

CONGRATULATIONS TO JAKEB MCGINNIS, THE LATEST GRAND PRIZE WINNER!

STIMULUS RELIEF HEADQUARTERS:

8000 PARK BLVD. N. • PINELLAS PARK, FL 33781

MONDAY-SATURDAY: 9AM UNTIL THE LAST CUSTOMER IS SERVED

SUNDAY: 11AM UNTIL THE LAST CUSTOMER IS SERVED

Complaint

<FIRSTNAME LASTNAME>

\$30,000
INSTANT CASH
STIMULUS GIVEAWAY!
IF YOUR CODES MATCH,
CALL 1-800-251-1527 OR LOG ON
TO MyPrizeStatus.com NOW!
THE PRIZES

AS SEEN ON TV

MATCH HERE
74937
AND WIN!

If your code above matches your Combination Box, below and one of the Prize Combinations, you are a WINNER with a possible \$30,000 Instant Cash! Call or log on now and schedule your appointment at New Wave Auto Sales to find out what prize you've won!

PULL THE TAB ON YOUR Combination Box. TO REVEAL YOUR 5-DIGIT ELECTRONIC COMBINATION. IF YOUR COMBINATION MATCHES THE CODE ABOVE AND ONE OF THE PRIZE COMBINATIONS, YOU ARE A GUARANTEED WINNER WITH A POSSIBLE \$30,000 INSTANT CASH!

Combination Box
74937
PULL TAB TO ACTIVATE

PRIZE COMBINATIONS:

	03563
	74937
	39207
	04620
	59081

STIMULUS RELIEF HEADQUARTERS:
NEW WAVE AUTO SALES
8000 PARK BLVD. N.
PINELLAS PARK, FL 33781

Complaint

PINELLAS PARK STIMULUS RELIEF SITE

CONGRATULATIONS TO
JAKEB MCGINNIS, THE
LATEST GRAND PRIZE WINNER!

STIMULUS RELIEF HEADQUARTERS:
8000 PARK BLVD. N. • PINELLAS PARK, FL 33781

SPECIAL STIMULUS RELIEF SAVINGS AVAILABLE!
LIMIT TWO (2) VEHICLES PER HOUSEHOLD AT THIS EVENT!

**MAKE NO PAYMENTS FOR
120 DAYS**
ALL PAYMENTS DEFERRED!

**BONUS 50" BIG
SCREEN TV GIVEAWAY**
TO BE HELD SUNDAY, APRIL 26TH AT 3:00PM (ET)

0% APR.
AVAILABLE INSTANTLY!

**WE ARE GOING TO GIVE
YOU WHAT YOUR CAR IS
ACTUALLY WORTH!**

PAYMENTS \$116 PER MO. WITH \$0 DOWN
TO TAKE HOME THIS MERCEDES-BENZ M-CLASS!

OR PAY \$133 PER MO. WITH \$0 DOWN
GOING ON NOW, TO BRING HOME THIS NISSAN VERSA!

MANDATORY QUALIFICATIONS TO RECEIVE EARLY COVID-19 STIMULUS FUNDS BELOW:
1) MUST BE PERMANENT U.S. RESIDENT, 2) MUST HAVE VALID DRIVER'S LICENSE, 3) ANNUAL INCOME CANNOT EXCEED \$91,500.00.

VALID ONLY AT: NEW WAVE AUTO SALES
8000 PARK BLVD. N. • PINELLAS PARK, FL 33781

101

ISSUED NAME: _____
TO: _____
(PLEASE
FILL IN
COMPLETELY)

ADDRESS: _____
CITY, ST, ZIP: _____

\$3,400.00 MAXIMUM PAYOUT
\$ 3,344.68

UP TO THE
AMOUNT OF: THREE THOUSAND THREE HUNDRED FORTY-FOUR AND 68/100***

MEMO: AUTO STIMULUS RELIEF

VOID where prohibited; certificate has no cash value, non-negotiable certificate. This is not a check.
Only valid if presented upon registration. Amount good toward select pre-owned vehicles. Cannot be
used in conjunction with any other offers. Expires April 26th, 2020.

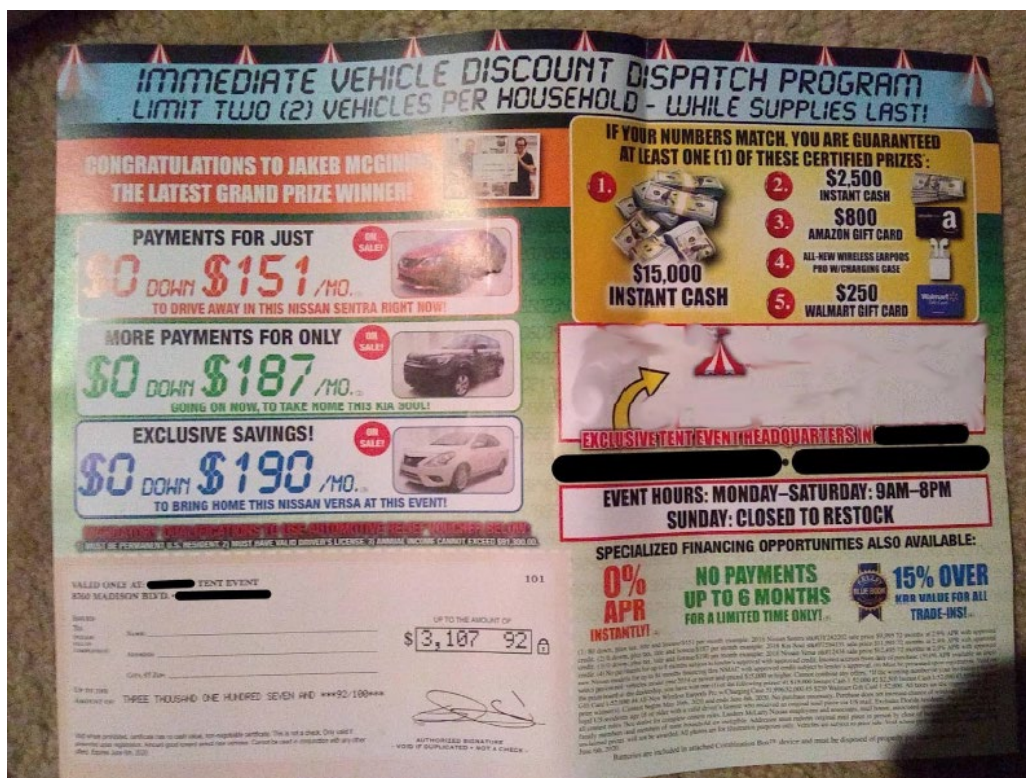
FOR: _____
AUTHORIZED SIGNATURE
- VOID IF DUPLICATED - NOT A CHECK -

STIMULUS RELIEF HEADQUARTERS:
**NEW WAVE
AUTO SALES**
8000 PARK BLVD. N.
PINELLAS PARK, FL 33781

MON.-SAT: 9AM UNTIL THE LAST CUSTOMER IS SERVED • SUN: 11AM UNTIL THE LAST CUSTOMER IS SERVED

(1) \$0 down, plus tax, title and license \$116 per month example: 2008 Mercedes-Benz M-Class #071620462, sale price \$7,300.72, monthly at 3.9% APR with approved credit. (2) \$0 down, plus tax, title and license \$133 per month example: 2010 Nissan Versa #0160872, monthly at 3.9% APR with approved credit. (3) No payments for 120 days subject to lender's approval with approved credit. Interest accrues from date of purchase. (4) 50" Big Screen TV Giveaway available on select vehicles with approved credit subject to lender's approval. (5) Must register and be present to win TV drawing on April 26th, 2020 at 3:00pm. Cannot combine any offers. *If the winning number on your invitation matches the prize board at the dealership, you have won one (1) of the following prizes: \$1 \$20,000 Instant Cash \$1,200,000 \$2 \$1,500 Instant Cash \$1,500,000 \$3 \$500 Walmart Gift Card \$1,500,000 \$4 \$100 Amazon Gift Card \$1,500,000 \$5 \$200 Amazon Gift Card \$1,500,000. All taxes are the responsibility of the prize winner(s). The winner(s) that you matched does not give you a choice, but an opportunity to win a prize. Contest begins April 2nd, 2020 and ends May 3rd, 2020. No purchase necessary. Prizes are not transferable. Prizes are good for legal US residents age 18 or older with a valid driver's license who received an original mail piece via US mail. Participants agree to all contest rules. See dealer for complete contest rules. New Wave Auto Sales employees and associates, retail hosts, associated sponsors or agencies, and their family members and members of same household are ineligible. Addresses must contain original mail piece in person by close of business May 3rd, 2020. Any unclaimed prizes will not be awarded. All photos are for illustration purposes only. Vehicles are subject to prior sale. Void where prohibited by law. All offers end May 3rd, 2020. Batteries are included in attached Combination Box™ device and must be disposed of properly per state regulations.

EXHIBIT F



Opinion of the Commission

OPINION OF THE COMMISSION

By COMMISSIONER Christine S. Wilson, for the Commission.

Respondent Traffic Jam Events, LLC and its owner and president, Respondent David J. Jeansonne II (collectively, “Respondents”), conduct direct mail marketing on behalf of car dealerships. Compl. ¶¶ 2-3; Answer at 1 and ¶¶ 1-3.¹ The Complaint in this proceeding asserts that Respondents conducted two forms of deceptive marketing campaigns in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45 *et seq.* (prohibiting “unfair or deceptive act[s] or practice[s]”). Compl. ¶¶ 5-12, 15-19. Complaint Counsel allege that these campaigns took place in multiple states. *See, e.g.*, Compl. ¶¶ 9 (Florida), 10 (Alabama), PX4 Att. 2 (Texas). The Complaint also asserts that Respondents violated Section 144 of the Truth in Lending Act (“TILA”), 15 U.S.C. § 1664, and the associated Section 226.24(d) of Regulation Z, 12 C.F.R. § 226.24(d), as amended, by advertising closed-end credit while failing properly to disclose certain required terms such as the amount or percentage of the down payment or the annual percentage rate. Compl. ¶¶ 14, 22-23. Complaint Counsel seek issuance of a cease and desist order pursuant to FTC Act § 5. Compl. at 9 (Notice of Contemplated Relief); Mot. at 35-38 and Proposed Order.

The parties conducted pretrial proceedings before the Chief Administrative Law Judge (“ALJ”) during September 2020 – September 2021.² On August 14, 2021, Complaint Counsel moved for summary decision pursuant to Commission Rule 3.24, 16 C.F.R. § 3.24. Respondents timely opposed the Motion. As explained below, we have determined that summary decision should be granted.

¹ We use the following abbreviations for documents in this Opinion:

Compl.	Complaint (Aug. 7, 2020)
Answer	Answer and Defense of Respondents Traffic Jam Events, LLC, and David J. Jeansonne II (Sept. 7, 2020)
Mot.	Complaint Counsel’s Motion for Summary Decision (Aug. 14, 2021)
CC Fact Stmt.	Complaint Counsel’s Statement of Material Facts As to Which There Is No Genuine Issue for Trial, appended to Mot. (Aug. 14, 2021)
PX	Complaint Counsel’s exhibit to Mot.
Opp.	Respondent’s Memorandum in Opposition to Complaint Counsel’s Motion for Summary Decision (Sept. 7, 2021)
Reply	Reply in Support of Complaint Counsel’s Motion for Summary Decision (Sept. 8, 2021)

² During the course of the pretrial proceedings, the ALJ granted motions to compel discovery on October 28, 2020 (Complaint Counsel’s motion), December 16, 2020 (Complaint Counsel’s motion), and July 15, 2021 (Respondents’ motion); granted Complaint Counsel’s Motions to Determine Sufficiency of Responses to Requests for Admission on August 11, 2021 and September 20, 2021; and sanctioned Respondents for failure to comply with his discovery orders on June 29, 2021 and August 9, 2021. At one point the Commission removed the case from adjudication, pausing it from December 28, 2020, through May 3, 2021, to allow for consideration of a proposed consent agreement that did not ultimately bear fruit. *See* Order Returning the Matter to Adjudication and Setting a New Evidentiary Hearing Date (May 3, 2021).

Opinion of the Commission

I. THE ALLEGATIONS OF THE PLEADINGS

Respondent Traffic Jam Events, LLC is a Louisiana limited liability company with its principal place of business in Kenner, Louisiana. Answer at 12 ¶ 1. Respondent Jeansonne is the owner, managing member, and president of Traffic Jam Events. *Id.* ¶ 2.

Respondents create advertising, offer direct mail marketing services, and staff tent sale events for automotive dealerships. *Id.* ¶ 3. Respondents have advertised, marketed, sold and offered for sale or lease, motor vehicles on behalf of auto dealerships nationwide. *Id.*

The Complaint alleges three types of unlawful conduct by Respondents. Count I alleges that, beginning in or around March 2020, Respondents disseminated deceptive advertisements designed to lure consumers to auto dealerships under the guise that government relief related to COVID-19 was available at designated locations for a short period of time. Compl. ¶¶ 5-6. Respondents' advertisements allegedly included an advertisement for a Florida auto sales event that purported to be "TIME-SENSITIVE" and to contain "IMPORTANT COVID-19 ECONOMIC STIMULUS DOCUMENTS." *Id.* ¶ 9. According to the Complaint, the mailers contained various other indicia to connote official government status, such as a barcode labeled "COVID-19 STIMULUS (INDIVIDUAL)" and containing a notice number, and a watermark containing the Great Seal of the United States. *Id.* The notice allegedly provided an address in Bushnell, Florida, which it described as a "relief headquarters" and "designated local headquarters," and further stated that the consumer "must claim these stimulus incentives at your designated temporary 10-day site." *Id.* In at least some instances, the Complaint alleges, Respondents included in their mailer a purported check issued by "Stimulus Relief Program" with "COVID-19 AUTO STIMULUS" in the memo line and a space for an endorsement on the back. *Id.* Respondents allegedly disseminated at least one other similar COVID-19 stimulus mailer to entice consumers to an auto dealership in Dothan, Alabama. Compl. ¶ 10.

Count II of the Complaint alleges that Respondents disseminated deceptive mailings claiming that recipients had won prizes in order to lure them to auto sales events. Compl. ¶ 12. For example, from May through June 2020, the Complaint alleges, Respondents disseminated a "\$15,000 INSTANT CASH GIVEAWAY" mailer that invited consumers to match their listed "official winning code," a code in a "Combination Box," and a code next to the specific prize of \$2,500. *Id.* The mailer allegedly states that the matching codes mean the consumer is a "guaranteed winner"; however, only on the reverse side in fine print, contrary to the claim that the consumer is a "guaranteed winner," does the mailer reveal that the consumer must visit the dealership to see if they have won a prize, and that they only have 1/52000 odds of winning \$2,500 cash even if their Combination Box contains the winning code. *Id.*

Count III of the Complaint alleges that Respondents disseminated advertisements that violated TILA by failing clearly and conspicuously to disclose certain lending terms. Compl. ¶¶ 14, 20-23. For example, Respondents' COVID-19 mailer for the Florida sales event allegedly states particular terms for credit such as a down payment amount and monthly payment for vehicles, without clearly and conspicuously disclosing other required terms such as the repayment term and the annual percentage rate. *Id.* at 14.

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Respondents' Answer admitted that the COVID-19 and the prize notification mailers were sent, Answer at 1-3, but denied that any mailings were deceptive or violated TILA. *Id.* at 2, 7, 11-12.

The Louisiana TRO Action: Several weeks before issuance of the Complaint in this proceeding, Complaint Counsel filed a civil action in the Eastern District of Louisiana seeking an injunction against the COVID-19 mailer pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). *FTC v. Traffic Jam Events, LLC, et al.*, Case No. 2:20-cv-01740 (E.D. La.) (filed Jun. 16, 2020). The court held a telephonic hearing on a motion for a temporary restraining order on June 25, 2020. The court declined to grant the preliminary relief for reasons inapplicable to this administrative proceeding. Specifically, the court found that Complaint Counsel had not shown that Respondents were (currently) “violating or [] about to violate” a provision of law enforced by the Commission, Order and Reasons (Jun. 26, 2020) at 7, a requirement for a § 13(b) injunction case in federal court. 15 U.S.C. § 53(b). But Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), governs the FTC’s administrative actions, like this one. That section applies whenever the Commission has reason to believe that a person, partnership, or corporation “*has been or is*” using any unfair method of competition or unfair or deceptive act or practice, 15 U.S.C. § 45(b) (emphasis supplied), a standard met here. *See also AMG Capital Mgmt., LLC v. FTC*, 141 S. Ct. 1341, 1348 (2021) (purpose of § 13(b) is to stop seemingly unfair practices while the Commission determines their lawfulness in an administrative forum). The district court emphasized that the sole issue it decided was the Commission’s entitlement to a temporary restraining order under § 13(b), which it deemed an “extraordinary remedy,” Order and Reasons at 23, and it emphasized that it was “mak[ing] no finding regarding whether the FTC will succeed . . . in proving that Defendants have previously violated any provision of law enforced by the FTC.”¹ *Id.* at 24. This latter determination, the court stated, “carries its own penalties.” *Id.* Thus, we turn with fresh eyes to this case, which arises under our Section 5(b) relief authority encompassing past and current conduct.

II. STANDARD FOR SUMMARY DECISION

We review Complaint Counsel’s motion for summary decision pursuant to Rule 3.24 of our Rules of Practice, 16 C.F.R. § 3.24. Our analysis is analogous to that applied to motions for summary judgment under Federal Rule of Civil Procedure 56. *See In re McWane, Inc. & Star Pipe Prods., Ltd.*, 2012 WL 4101793, at *5 (FTC Sept. 14, 2012); *In re Polygram Holding, Inc.*, 2002 WL 31433923, at *1 (FTC Feb. 26, 2002). “A party moving for summary decision must show that ‘there is no genuine issue as to any material fact’ and that it is ‘entitled to judgment as a matter of law.’” *In re Benco Dental Supply Co.*, 2018 WL 6338485, at *2 (FTC Nov. 26, 2018) (quoting Commission Rule 3.24 and Fed. R. Civ. P. 56).

As with a summary judgment motion, the party seeking summary decision “bears the initial responsibility of . . . identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)

¹ The court also made no findings about the prize mailings or the alleged TILA violations, which were not before it.

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(internal quotations omitted). Commission Rule 3.24 provides that the movant must file a “separate and concise statement of the material facts as to which the moving party contends there is no genuine issue for trial.” 16 C.F.R. § 3.24(a)(1). Provided the movant meets this initial burden, the party opposing the motion “may not rest upon the mere allegations or denials of his or her pleading” but must instead “set forth specific facts showing that there is a genuine issue of material fact for trial.” 16 C.F.R. § 3.24(a)(3); *Carozza v. CVS Pharmacy, Inc.*, 992 F.3d 44, 56 (1st Cir. 2021). The non-movant must set forth these facts by filing its own, separate and concise counter-statement of facts. 16 C.F.R. § 3.24(a)(2).

In evaluating the existence of a dispute for trial, we are required to resolve all factual ambiguities and draw all justifiable inferences in the light most favorable to the party opposing the motion. *Benco Dental Supply Co.*, 2018 WL 6338485, at *3; *McWane, Inc.*, 2012 WL 4101793, at *5; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Where the “evidence [favoring the non-moving party] is merely colorable, or is not significantly probative, summary judgment may be granted.” *Id.* at 249-50. However, “[i]f reasonable minds might differ on the inferences arising from undisputed facts, then the court should deny summary judgment.” *Impossible Elecs. Techniques, Inc. v. Wackenhut Protective Sys., Inc.*, 669 F.2d 1026, 1031 (5th Cir. 1982).

For the reasons stated below, we have determined to grant summary decision. As to Counts I and II, we find that the Respondents have failed to raise a genuine dispute of material fact regarding whether the challenged advertisements are deceptive, false, and the claims therein material to consumers. As to Count III, we find that Respondents have failed materially to dispute that Traffic Jam created and disseminated advertisements that failed to make the clear and conspicuous disclosures required by TILA. We further find Complaint Counsel have demonstrated, and Respondents have failed to raise a genuine dispute, that individual Respondent Jeansonne had authority and control over Respondent Traffic Jam Events and participated in its conduct regarding the pertinent advertisements, and we therefore find that summary decision is appropriate against both the individual and corporate Respondents for all three counts. Finally, we find that Complaint Counsel’s proposed Order is appropriate and necessary to prevent further violations by the Respondents, and we therefore issue it.

III. FACTS ABOUT WHICH THERE IS NO GENUINE DISPUTE

Before we turn to summarizing the facts about which there is no triable dispute, we offer a note about our process. As required by Commission Rule 3.24, Complaint Counsel as the Movant identified the facts they claim are undisputed and supported those facts with record citations in a separate Statement of Material Facts. 16 C.F.R. § 3.24(a). Respondents do not make a serious attempt to controvert these facts. Respondents chose not to file a counter-statement of facts as required by the Rule. 16 C.F.R. § 3.24(a)(2). The statement should have identified “those material facts as to which [Respondents] contend[] there exists a genuine issue for trial.” *Id.* The non-movant’s statement of material facts is no mere procedural nicety, but goes to the heart of the non-movant’s task on summary decision which is to demonstrate with evidence the need for a trial. *See Coseme-Rosado v. Serrano-Rodriguez*, 360 F.3d 42, 45-46 (1st Cir. 2004) (failure to submit counter-statement of facts, with citations to the record, justifies accepting the initial statement of facts as true). In any event, as explained herein, we have carefully considered each of the

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arguments that Respondents raised in their Opposition memorandum, and we find these arguments are fully capable of resolution on summary decision.

Respondents raise several legal arguments. First, as to Counts I and II, they contest the Commission's authority to act, which they contend is limited by 5 U.S.C. § 45(n). *Opp.* at 4-7. They also challenge Complaint Counsel's showing of the materiality of the claims in their advertisements. *Id.* at 7-8. As to Count III, they challenge the applicability of TILA to advertisers such as Respondents. *Id.* at 12-13. Respondent Jeansonne denies responsibility for the acts and practices of Traffic Jam Events. *Id.* at 12. Finally, Respondents also challenge the Commission's authority to award the relief sought by Complaint Counsel. *Opp.* at 13-14.

Legal issues such as those raised by Respondents are appropriate for summary disposition. *See Cremona v. R.S. Bacon Veneer Co.*, 433 F.3d 617, 620 (8th Cir. 2006) (case that involves only questions of law is "particularly appropriate" for summary judgment); *see also* 10A Fed. Prac. & Proc. Civ. (Wright & Miller) (4th Ed.) § 2712 (summary judgment can dispose of actions that involve only a question of law.) Respondents' arguments regarding materiality, which involve the application of law to the undisputed contents of the advertisements, are equally appropriate for summary decision. Courts and the Commission regularly use the summary decision process to analyze the lawfulness of potentially deceptive advertisements. *See, e.g., FTC v. Direct Marketing Concepts*, 569 F.Supp.2d 285, 300, 303 (D. Mass 2008), *aff'd*, 624 F.3d 1 (1st Cir. 2010) (analyzing the "net impression" of advertisement on summary judgment); *FTC v. Gill*, 71 F.Supp.2d 1030, 1043-44 (C.D. Cal. 1999) (same); *In re Jerk LLC*, 159 F.T.C. 885, 892-909 (2015) (analyzing deceptive advertising, including materiality, on summary decision), *aff'd in relevant part sub nom. Fanning v. FTC*, 821 F.3d 164 (1st Cir. 2016); *California Naturel*, 2016 WL 7228668, at *5-6 (Dec. 5, 2016) (conducting "facial analysis" of claims in advertising).

Based on our review of the Motion and the Opposition, with consideration of the uncontroverted facts, we find that Complaint Counsel have established the following beyond genuine dispute.

A. The Commission's Jurisdiction Over Respondents

Respondents create advertising, offer direct mail marketing services, and staff tent sale events for automotive dealerships. CC Fact Stmt. ¶ 5. Respondents' sales staff calls dealerships in different states to obtain new business, and Respondents have used email blasts to promote their products and services nationwide. *Id.* at ¶ 6.

Respondents' mailers have been disseminated to consumers throughout the United States. *Id.* at ¶ 7. Since at least July 2015, in the course of generating mailers to promote automotive sales events, Respondent Traffic Jam Events has employed the services of printers located in California and Florida. *Id.*

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B. State Law Enforcement Actions Regarding Prize Mailings

In 2010, Respondent Traffic Jam Events entered into a consent order with the State of Kansas to resolve allegations that it had violated the Kansas Consumer Protection Act by disseminating mailings that implied consumers had the winning number for a grand prize drawing when they did not. CC Fact Stmt. ¶ 46. The order required payment of \$25,000 and permanently enjoined Respondent from committing the acts or practices described in the complaint. *Id.* at ¶ 48.

In 2013, Respondent Traffic Jam Events entered another consent order with the State of Kansas that permanently enjoined Respondent from entering any consumer transactions in the State, due to asserted violations of the first order. *Id.* at ¶ 49. The order also required payment of \$20,000. *Id.*

In February 2019, Respondent Traffic Jam Events entered into a consent order with the State of Indiana to resolve allegations that Respondent had contracted with automotive dealers to send mailings to thousands of Indiana consumers misrepresenting that they had won a specific prize. *Id.* at ¶¶ 51-52. The order prohibits deceptive prize promotions and is signed by Respondent Jeansonne. *Id.* at ¶ 52.

C. COVID-19 Stimulus Mailer

In March 2020, Respondents designed a direct mail advertising campaign based on COVID-19 government relief. CC Fact Stmt. ¶ 9. The material facts of the mailings are uncontested.

Respondent Jeansonne acknowledged in testimony the COVID-19 relief mailers as his “brainchild.” *Id.* at ¶ 10. The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law on March 27, 2020 to provide financial assistance to individuals, families, and businesses. *Id.* at ¶ 9. Around this time, Respondents sent an email blast to dealerships nationwide promoting a direct mail advertisement to consumers that would tout a COVID-19 stimulus relief mailer “on an official letter format.” *Id.* at ¶ 11.

Respondents’ COVID-19 stimulus relief mailer was distributed to approximately 35,000 consumers. *Id.* at ¶ 12. The mailer promoted an auto dealership, New Wave Auto Sales, also known as MK Automotive, in Bushnell, Florida. *Id.*

The mailers bore characteristics that were designed to associate them with a government program, including:

- a. The mailers were sent in manila envelopes that stated “Official Documents Enclosed” “Do not tamper or mutilate” on one side and “IMPORTANT COVID-19 ECONOMIC STIMULUS DOCUMENT ENCLOSED” on the other. *Id.* Both sides of the envelopes contained bar codes and stated in bold font, “TIME-SENSITIVE FAST-TRACKED MAIL: OPEN IMMEDIATELY.” *Id.*

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- b. The enclosed notice stated at the top in bold: “URGENT: COVID-19 ECONOMIC AUTOMOTIVE STIMULUS PROGRAM RELIEF FUNDS AVAILABLE • ALL PAYMENTS DEFERRED FOR 120 DAYS.” *Id.*
- c. The notice header also included a barcode with a notice number that claims relate to “COVID-19 STIMULUS (INDIVIDUAL)” and a watermark depicting the Great Seal of the United States. *Id.*
- d. A box on the notice touted specific relief similar to the CARES Act, including thousands in relief funds and payment deferrals. *Id.* The notice repeatedly described the location as “relief headquarters,” “your designated temporary 10-day site,” and “designated local headquarters.” *Id.*
- e. The notice represented that consumers “must claim these stimulus incentives at your designated temporary 10-day site” and provided an address in Bushnell, FL. *Id.*
- f. The notice also included a list of “Mandatory qualifications to receive Stimulus Relief Funds”: 1) Must be permanent U.S. resident. 2) Must have a valid driver’s license. 3) Annual Income cannot exceed \$91,300. *Id.*
- g. The mailer also included a mock check issued by “Stimulus Relief Program.” *Id.* The check’s memo field stated “COVID-19 AUTO STIMULUS” and included an “AUTHORIZED SIGNATURE” with a watermark of a lock; the back of the check included the statement “ORIGINAL DOCUMENT” and a space to endorse on the back with the instruction “DO NOT WRITE, STAMP OR SIGN BELOW THE LINE. RESERVED FOR FINANCIAL BANK USE.” *Id.*

Images from the Bushnell, Florida mailer are attached to this Opinion as Appendix A.

Beginning on or around March 25, 2020, Respondent Traffic Jam Events disseminated or caused to be disseminated another COVID-19 mailer to 18,103 consumers in Alabama. CC Fact Stmt. ¶ 13. The mailer was used for a sales event for the dealership Dothan Chrysler Dodge Jeep Ram Fiat in Dothan, Alabama. *Id.* The mailers were sent in manila envelopes that state in bold font “ECONOMIC STIMULUS DOCUMENTS ENCLOSED” on one side and “TIME SENSITIVE FAST-TRACKED MAIL: OPEN IMMEDIATELY” on both sides *Id.*

D. The Prize Advertisements

Respondents do not dispute that Traffic Jam Events generated so-called “combination box” prize mailings to promote auto dealerships in at least six states. CC Fact Stmt. ¶¶ 17-18; *see also*, Opp. Ex. 4 (Lilley Dep.) 31:15-19 (referring to “combination box” mailer as a “saturation mailing”). The mailing for Landers McLarty Toyota in Madison, Alabama, attached to Respondents’ Answer, provides an example. Answer, Ex. C. Images from the Landers McLarty

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Toyota prize promotion are attached to this Opinion as Appendix B. The mailer states: “If your digital electronic combination box matches the official winning code and one of the codes below, you are a guaranteed winner with a possible \$15,000 INSTANT CASH” Answer, Ex. C. Respondent Traffic Jam admits that the mailer was sent to residents in Alabama in May 2020. PX4 at Request for Admission 27. The practice of Respondent Traffic Jam was to design the mailers, obtain approval from the dealer, then direct a printing company to produce and mail the pieces. Opp. Ex. 4 (Lilley Dep.) 37:17-23; *see also* PX13, 19 (examples of printer records containing mailing instructions); PX 28, 29 (examples of postal statements); CC Fact Stmt. 30 (uncontested assertion of numerous ads disseminated by Respondents).

The Madison, Alabama advertisement lists an “OFFICIAL WINNING CODE” of 74937. CC Fact Stmt. ¶ 20. Below the OFFICIAL WINNING CODE is a Combination Box code. *Id.* The OFFICIAL WINNING CODE and the Combination Box code match. *Id.* In fact, the Combination Box code was always 74937 on all mailers and it always matched the official winning code. Opp. Ex. 4 (Lilley Dep.) 109:15-24. An arrow points rightward from the “Official winning code match here” to a selection of prizes. CC Fact Stmt. ¶ 21. Following that arrow, to the right of the “OFFICIAL WINNING CODE” and Combination Box code is a prize panel featuring five prizes with codes above each one. *Id.* The \$2,500 INSTANT CASH prize lists the number 74937 and matches both the “OFFICIAL WINNING CODE” and the Combination Box code. *Id.* at ¶ 22.

The reverse side of the advertisement includes fine print in the bottom right corner. *Id.* at 23. The fine print disclaimer states: “If the winning number on your invitation matches the prize board at the dealership, you have won one (1) of the following prizes: #1 \$15,000 Instant Cash 1:52,000 #2 \$2,500 Instant Cash 1:52,000 #3 \$800 Amazon Gift Card 1:52,000 #4 All-New Wireless Earpods Pro w/Charging Case 51,996:52,000 #5 \$250 Walmart Gift Card 1:52,000.” *Id.* at 24. The cost for the earpods depicted in these advertisements is around \$6.00. *Id.* at 27.

The mailer lists a telephone number and website that consumers can use to verify their prize and schedule a time to come to the dealership. *Id.* at ¶ 28. Above that information is the consumer’s first name, followed by “your combinations above must match to win!” Answer Ex. C. Consumers who call or go online are congratulated and told that they are indeed a winner and need to visit the dealership to claim their prize. PX14 (prize call script sample) (“Wow!!! My computer just verified that your code is a winner! To claim your prize, you must bring your invitation to Test Demo Dealership as shown on your invitation, during the sale dates and hours where your code will be verified and prize awarded.”); PX15 (website screenshot).

In reality, the “official winning code” was not that at all: rather, to win, the consumer needed to match a different, unique number hidden within the ad to a different set of numbers on a prize board at the dealership. Opp. Ex. 4 (Lilley Dep.) at 59:15-18; PX2 (Jeansonne Dep.) 163:18-20. The unique number is hard to find because it is printed in fine print in inconspicuous locations. Even Respondent Jeansonne himself had trouble finding it: when asked if the ad stated that the prize board number was the number consumers had to match, he gravitated toward connecting the prominent combination code and “official winning code” numbers of 74937 with the matching number associated with the \$2,500 prize: “It says right here, If your digital electronic combination box matches the official winning code and one of the codes below, you’re a

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guaranteed winner with a possible \$15,000 instant cash. So you look at it, you have 74937. You have 74937; and then when you go in – I see where you’re going, that it’s above the 2,500 [dollars.]” CC Fact Stmt. 25. Jeansonne was asked if there was any disclaimer on the page, and replied, “No, I don’t see that.” PX2 (Jeansonne Dep.) at 165:1-4.

Respondents do not contest that Traffic Jam created and disseminated other prize mailers that were similar to the Madison, Alabama example. For example, one October 2020 “Match & Win” mailer entitled “\$20,000 Instant Cash Giveaway” used pull-tabs in lieu of a combination box. Mot. at 22 and PX8. The mailer instructed the recipient to “PULL THE TABS TO SEE IF YOU’VE WON” and that “IF YOU HAVE A ROW OF MATCHING SYMBOLS, YOU ARE A GUARANTEED WINNER!*” The pull tabs showed matching 777s, which appeared on a prize panel next to \$2,500 INSTANT CASH. *Id.* Another variation was the “\$10,000 Pre-Loaded Instant Money Card Giveaway” disseminated in November 2020. PX9. Behind the scratch off was the number 74937, which corresponded with the winning number 74937 and matched the \$2,500 INSTANT CASH prize. *Id.*

Consumers recorded numerous complaints with public websites, the Better Business Bureau, and law enforcement agencies regarding the mailers. CC Fact Stmt. ¶¶ 59-61, 63, 65-66. Consumers complained that they had been “scammed to come into [a dealership] with a promotion saying that I had won \$1,500 instant cash.” *Id.* at ¶ 59. A consumer who matched the three numbers with a valuable prize, checked by phone that they had won, and then was told that the bar code number determined their prize, commented that “this is misleading advertising and is just a bait to get you into [the] dealership.” PX 1 Att. JJ. As one consumer explained, “displaying your prizes right next to the codes always implies correlation. I drive for an hour to be told that, despite sitting right next to one another, those are not the prizes for those codes. The fine print did not convey that, either. Walked in for money, came out with bootlegged airpods.” PX 1 Att. KW; *see also* PX 1 Atts. JJ, JU (customers explaining that the matching prize codes were withdrawn upon appearing at the dealer).

Facts suggest that Respondents understood that consumers would misperceive the mailers to mean that they had actually won. Former employee William Lilley describes many of the advertisements as “aggressive” prize panels. CC Fact Stmt. ¶ 31. By “aggressive,” he means advertisements where “you get customers that, you know, sometimes perceive that they won a certain prize because of, you know, the way the prize is and the numbers are laid out.” *Id.*

E. The Alleged TILA Violations

Visual inspection of Respondents’ mailings shows that Respondents have regularly created advertisements to aid, promote, or assist closed-end credit transactions.¹ *See, e.g.,* Answer Ex. C (describing monthly payment amounts for credit offers); PX1 at Atts. G-BI, CI-JE. Such

¹ The advertisements were for “closed-end credit” because for auto loans, creditors do not make additional credit available as consumers repay their balances. 12 C.F.R. §§ 1026.2(a)(10), (20).

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advertisements are thus subject to Section 144 of TILA, 15 U.S.C. § 1664 and its implementing regulation, Section 1026.24 of Regulation Z, 12 C.F.R. § 1026.24.

TILA and Regulation Z require advertisements for closed-end credit to disclose certain terms when “triggering terms” appear in the ad. Specifically, if an ad contains an amount or percentage of a down payment, the amount or number of installment payments, the amount of any finance charge, or the period of repayment, then the ad must also state additional terms such as the terms of repayment and the annual percentage rate (“APR”), using that term. 15 U.S.C. § 1664(d); 12 C.F.R. § 1026.24(d). These disclosures must be set forth “clearly and conspicuously.” 12 C.F.R. § 1026.24(b).

Respondents’ advertisements follow a pattern: monthly payment amounts appear prominently in colorful type, while other credit terms such as APR and number of monthly payments appear in a different part of the ad, in obscure, small type. CC Fact Stmt. ¶ 33.

In some advertisements, the monthly payment appears prominently on the first page and the number of payments and APR appear on a separate page, buried at the bottom, in minute type. *Id.* at ¶ 34.

In other advertisements, financing with 0% APR or a low APR appears in colorful, prominent type, in close proximity to images of vehicles and monthly payment amounts – but the fine print states that the APR for the vehicles pictured in the ad is substantially higher. *Id.* at ¶ 35.

In some instances, the advertisements state a monthly payment amount but do not disclose the down payment or the number of monthly payments. PX4, Request for Admission 24 Att. 24.

Respondent Traffic Jam Events admits creating these advertisements. Amended Response to Req. for Admission 31 (PX4 at 16). Both Traffic Jam Events and Respondent Jeansonne deny legal responsibility for the advertisements, arguing that the dealers are responsible. *Id.*²

F. Respondent Jeansonne’s Participation in and Control of the Activities of Respondent Traffic Jam Events

As noted previously, Respondent Jeansonne is the owner, managing member, and president of Respondent Traffic Jam Events. Answer, ¶ 2. Jeansonne considered himself a “strategist” at the company whose duties were to “oversee all departments.” PX 2 (Jeansonne Dep.) 20:12-13. He had a broad range of responsibilities, “dipping [his] foot in sales, dipping [his] foot in a mail piece, dipping [his] foot in operations, dipping [his] foot in adequate procedures.” *Id.* at 20:21-25. Jeansonne exercised control over Traffic Jam Events’ hiring and firing decisions. CC Fact Stmt. ¶ 39. He set payment amounts and approved payment methods for the mailing pieces. *Id.* at ¶ 40. It was protocol for direct mail advertisements, indeed for “anything that ever left the company,” to

² At least some dealers, in turn, appear to blame Respondents. *See, e.g.*, PX16 (Better Business Bureau Dec.) attachment, dealer apologizing to a consumer for the “misunderstanding”; “[t]his event was handled by a third party vendor and they have stated the bar code is only there to validate the authenticity of the game piece in the event someone wins the large prizes.” PX16 at 6.

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“always” go past Jeansonne’s email first. Opp. Ex. 4 (Lilley Dep.) at 103:20-108:3. Jeansonne does not contest these facts, nor his involvement in the specific mailings described below.

Jeansonne involved himself in the decision making for the advertising challenged here. He acknowledged that the COVID-19 stimulus relief mailers were his “brainchild” and that he “did the creation.” CC Fact Stmt. ¶¶ 43, 41. Jeansonne explained to a dealer that “the catch phrase right now s [*sic*] Stimulus Relief Funds. People are somewhat running from COVID-19. . . . but everyone is running to Stimulus Relief Funds.” *Id.* at ¶ 43. In a discussion with a dealer about how strongly to word the mailer, Jeansonne wrote, “Mike, this is what I do and the piece is legal. If we are going to start watering down the pieces it won’t work.” PX26.

Jeansonne provided input on one mailer, stating “I would like (Especially on the Pulltab piece) to see a little more emphasis on the obvious, there has been a lot of stimulus money allocated to the automotive industry to allow YOU the public to buy a vehicle at never before seen prices!! Do not hesitate to be at this site.” CC Fact Stmt. ¶ 43. Jeansonne’s employee responded to him saying, “updated pieces with more Stimulus verbiage,” noting “[o]n the pull tab piece I added a lot more Stimulus relief stuff and included all the verbiage you sent over in the newspaper clipping on the back.” *Id.* Moreover, Jeansonne testified that he made the decision to pay upfront for the development and dissemination of the mailers. PX17 at 44:13-14.

Regarding the prize mailers, Jeansonne exercised authority and control by settling state law enforcement actions. CC Fact Stmt. ¶ 42; PX2 (Jeansonne Dep.) 182:5-7. He was involved in communications with the printers and dealers about the telephone scripts, the success or failure of promotions, the type of glue-on pieces to use, the timing of mail drops, and other issues. CC Fact Stmt. ¶ 44; PX19-PX23.

IV. ANALYSIS

A. The Commission Has Jurisdiction Over the Challenged Advertising Activity

Under the FTC Act, the Commission has jurisdiction over persons, partnerships, and corporations using unfair or deceptive acts or practices “in or affecting commerce.” 15 U.S.C. § 45(a). Traffic Jam describes itself as offering “industry-leading direct-response mail and staffed-event campaigns for dealerships across the U.S.A.” CC Fact Stmt. ¶ 6. Respondents promoted their services by email blast to dealers across the country and disseminated the challenged mailings to tens of thousands of consumers. *Id.* ¶¶ 6, 12; Opp. at 3 (acknowledging dissemination of COVID-19 mailer to 35,000 consumers for a tent sale in Florida and 10,000 for a tent sale in Alabama). Respondents have utilized the services of printers in multiple states to produce mailings. CC Fact Stmt. ¶ 7. We find that we have jurisdiction over Respondents’ allegedly deceptive advertising activities pursuant to Section 5 of the FTC Act.

We also have jurisdiction over Respondents’ alleged TILA violations. Section 108(c) of TILA, 15 U.S.C. § 1607(c), authorizes the Commission to enforce compliance by any person with TILA’s requirements, “irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act.” For the purpose of our exercise

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of enforcement authority, Section 108(c) deems a violation of any requirement imposed by TILA to be a violation of a requirement imposed by the FTC Act. *Id.* We thus have jurisdiction to address Respondents' alleged violations of TILA.

B. Respondents Have Violated Section 5 of the FTC Act As Alleged in Counts I and II

1. Legal Standard

"An advertisement is deceptive if it contains a representation or omission of fact that is likely to mislead a consumer acting reasonably under the circumstances, and that representation or omission is material to a consumer's purchasing decision." *POM Wonderful LLC*, 2013 WL 268926, at *18 n.5 (FTC Jan. 16, 2013), *aff'd sub nom. POM Wonderful, LLC v. FTC*, 777 F.3d 478 (D.C. Cir. 2015); *see also, In re California Naturel, Inc.*, 2016 WL 7228668, at *5; *FTC Policy Statement on Deception*, 103 F.T.C. 174, 175 (1984) ("Deception Statement"), appended to *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984). We thus utilize a three-part inquiry to evaluate whether, as a matter of law: (1) the advertising conveyed the claims alleged in the complaint; (2) the claim was false or misleading; and (3) the claim was material. *California Naturel*, 2016 WL 7228668, at *5; *FTC v. Direct Marketing Concepts, Inc.* 569 F. Supp. 2d at 297; *see also FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095-6 (9th Cir. 1994).

Claims may be express or implied: express claims are those that directly state the representation at issue, while implied claims are any that are not express. *In re: Kraft, Inc.*, 114 F.T.C. 40, 120 (1991), *aff'd sub nom. Kraft, Inc. v. FTC*, 970 F.2d 311 (7th Cir. 1992). Absent an explicit representation, the Commission may determine whether the advertisement in question makes a representation by considering whether, from the point of view of a reasonable consumer-viewer, the "net impression" of the advertisement is to make such a representation. *In re Jerk LLC*, 159 F.T.C. at 891; *Direct Marketing Concepts*, 569 F. Supp.2d at 298; *Removatron Int'l Corp. v. FTC*, 884 F.2d 1489, 1497 (1st Cir. 1989) (looking to "common-sense net impression" of an advertisement). Extrinsic evidence is unnecessary if the claim is reasonably clear from the face of the advertisement. *POM Wonderful*, 2013 WL 268926, at *20-21. The analysis looks at the net impression created by the interaction of all of the different elements in the ad, rather than the impact of each or a few elements. *In re Thompson Med. Co.*, 104 FTC 648, 793 & n.17 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986).

Both express and implied claims may be deceptive. *Fedders Corp. v. FTC*, 529 F.2d 1398, 1402-03 (2nd Cir. 1976). "Deception may be accomplished by innuendo rather than by outright false statements." *FTC v. Wilcox*, 926 F. Supp. 1091, 1098 (S.D. Fla. 1995), quoting *Regina Corp. v. FTC*, 322 F.2d 765, 768 (3rd Cir. 1963); *FTC v. Capital Choice Consumer Credit, Inc.*, No. 02-21050 CIV, 2003 WL 25429612, at *4 (S.D. Fla. Jun. 2, 2003). Furthermore, false advertising can be based on deceptive visual representations. *Sterling Drug, Inc. v. FTC*, 741 F.2d 1146, 1152, 1154 (9th Cir. 1984).

Turning to the second element, the determination of whether a representation or omission is deceptive turns on whether it is likely to mislead, not whether it has caused actual deception.

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Deception Statement at 176; *Thompson Med. Co., Inc. v. FTC*, 791 F.2d at 197; *Trans World Accounts, Inc. v. FTC*, 594 F.2d 212, 214 (9th Cir. 1979) (“[p]roof of actual deception is unnecessary to establish a violation of Section 5”). The question is whether the claim is likely to mislead a consumer acting reasonably under the circumstances. *Southwest Sunsites, Inc. v. FTC*, 785 F.2d 1431, 1436 (9th Cir. 1986); *FTC v. Wilcox*, 926 F. Supp. at 1098.

The third element is materiality. A representation is considered “material” if it “involves information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding, a product.” *FTC v. Cyberspace.com LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006) (quotation omitted); see also *Kraft, Inc. v. FTC*, 970 F.2d at 322; *In re Jerk LLC*, 159 FTC at 891. Express claims are presumed material, see *FTC v. Pantron I Corp.*, 33 F.3d at 1095-96, and consumer action based on express statements is presumptively reasonable. See *FTC v. Five-Star Auto Club, Inc.*, 97 F.Supp.2d 502, 528 (S.D.N.Y. 2000) (citations omitted). Where evidence exists that a seller intended to make an implied claim, the Commission will infer materiality. Deception Statement at 182. The Commission also presumes materiality where claims relate to central characteristics of the product or service such as its purpose, safety, efficacy, or cost. *Id.*; *In re Thompson Med. Co.*, 104 F.T.C. at 816-17.

2. Count I: COVID-19 Stimulus Relief Mailer

Applying our three-part test, we find that Complaint Counsel have succeeded in demonstrating that the Respondents’ COVID-19 stimulus relief mailers constituted deceptive advertising in violation of the FTC Act. Respondents disseminated the ads at or near the enactment of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), CC Fact Stmt. ¶ 9, at a time when many Americans may have expected a relief check based on widespread press coverage of the Act. Through a combination of express and implied claims, the mailers sought to convey that they originated from, or were affiliated with, a government stimulus program. The envelope stated, in bold letters, “IMPORTANT COVID-19 ECONOMIC STIMULUS DOCUMENTS ENCLOSED,” and the enclosed notice stated “URGENT: COVID-19 ECONOMIC AUTOMOTIVE STIMULUS PROGRAM RELIEF FUNDS AVAILABLE · ALL PAYMENTS DEFERRED FOR 120 DAYS.” CC Fact Stmt. ¶ 12. The notice header contained a barcode with the legend “COVID-19 STIMULUS (INDIVIDUAL)” and “URGENT NOTICE – READ IMMEDIATELY.” Topping off the implied connection with an official stimulus program, the mailers included a watermark depicting the Great Seal of the United States and contained an ersatz check purported to be from the “Stimulus Relief Program” with “COVID-19 AUTO STIMULUS” in the memo line. *Id.* The mailing directed the recipient to appear at a “relief headquarters,” the “designated local headquarters,” or “your designated temporary 10-day site” in order to claim benefits. *Id.*

Looking at all the elements together, we find that the overall net impression is that the mailers originated from, or were associated with, a government stimulus program; that they provided official information regarding government stimulus benefits; and that they offered an opportunity for receiving COVID-19 stimulus relief, including an auto stimulus check. Respondents created and disseminated the mailer in the spring of 2020 when the news and public discourse in this country were consumed by discussion of the government stimulus package and

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how it might mitigate the effects of the global coronavirus pandemic. Through a series of references to COVID-19 stimulus, relief, and benefits and by using indicia of official correspondence, Respondents exploited this climate and created an impression of government affiliation and relief.

As to the second element, we can readily dispense with the mailers' claim as false. Respondents are private actors who acknowledge that the U.S. government did not authorize or approve the stimulus mailer. PX4, Response to Request for Admission 26.

The third element is materiality. We find that representations designed to induce consumers to leave home and attend an automobile tent sale in the midst of a global pandemic, prompted by the understanding that they would receive a benefit from a government relief program designed to alleviate the effects of that pandemic, are "likely to affect the consumer's conduct" and are therefore material. *See* Deception Statement at 175; *Cyberspace.com*, 453 F.3d at 1201 (solicitations created the misleading impression that checks were a refund, when in reality they signed consumers up for services); *In re Jerk LLC*, 159 F.T.C. at 907-08 (representations about the source of content posted on a social media website were material to users).

Respondents' counter-arguments are unavailing.

a. Attributes of Purported Stimulus Check

Respondents argue that the mock stimulus check could not have deceived any consumer because it did not include the name of a financial institution; it contained disclaimers stating "no cash value" and "This is not a check"; and it showed no actual payee.³ Opp. at 8. First, as to the disclaimers, Respondents appear to be referring to statements in tiny font on the back of the check. The check image proffered by Complaint Counsel bears no disclaimer. *Compare* CC Fact Stmt. ¶ 12(g) (front of check; no disclaimer); Compl. Ex. C (same); Answer at 9 (enlarged version of text, possibly from the back of the check, appears to show disclaimers described by Respondents).⁴ Furthermore, courts have repeatedly held that fine print disclaimers may not overcome a clear net impression created by an ad. *See, e.g., FTC v. Grant Connect, LLC*, 827 F. Supp. 2d 1199, 1214, 1220 (D. Nev. 2011), *aff'd in part, rev'd in part on other grounds* 763 F.3d 1094 (9th Cir. 2014) (disclosures in fine print may not overcome an advertisement's deceptive net impression); *Cyberspace.com*, 453 F.3d at 1200-01 (fine print notices on reverse side of check did not overcome net impression that the check was a refund or rebate); *FTC v. QT, Inc.*, 448 F.Supp.2d 908, 924 (sprinkling of small-print disclaimers insufficient to overcome net impression of infomercial); *see also, FTC v. Brown & Williamson Tobacco Corp.*, 778 F.2d 35, 43 (D.C. Cir. 1985) (disclaimer did not alter prominent claim); *Removatron Int'l Corp. v. FTC*, 884 F.2d at 1497 (disclaimers

³ Respondents also argue that the checks did not have the amount "written out," Opp. at 8, but upon inspecting the sample check, we are persuaded that the amount is typed out similar to a government or commercial printed check.

⁴ The exemplar of a *prize mailer* that Respondents attached to their Answer did contain a purported check stating on the front (in tiny print) "[t]his is not a check," but here we are dealing with the Covid-19 Stimulus Relief mailer, not the prize mailer. With regard to the prize mailers, Complaint Counsel based their theory of deception on the layout and representations of the game text, not on the presence of a purported check. Compare Answer Ex. C p.2 to Compl. Ex. C.

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ineffective “unless they are sufficiently prominent and unambiguous to change the apparent meaning of the claims and to leave an accurate impression”) (citation omitted). Respondents point to other check attributes that also fail to overcome the net impression. Specifically, the lack of a financial institution would be unremarkable on a federal government check, and the absence of a payee could have been addressed when the consumer appeared at the designated “relief headquarters” to claim the benefits.

In any event, Respondents’ arguments regarding the check are a diversion. The question at issue is whether consumers acting reasonably would likely have regarded the challenged mailings as associated with a government stimulus program and as providing official information about an opportunity for receiving COVID-19 stimulus relief. Complaint Counsel assert that the purported check is one portion of the mailings that contributes to the overall net impression of the COVID-19 advertisement. The evidence is ample for that purpose. Complaint Counsel have demonstrated that the mailer as a whole – including but not limited to the manila envelope stating “IMPORTANT COVID-19 ECONOMIC STIMULUS DOCUMENT ENCLOSED,” other quasi-official language, the Great Seal of the United States, the mock check with space to endorse, and the direction to attend a “relief headquarters” and a “designated temporary 10-day site” – was likely to mislead a consumer acting reasonably.

b. Absence of Actual Deception

As to both deceptiveness and materiality, Respondents rely heavily on what they claim is a lack of proof of actual deception. Misstating the legal standard, Respondents claim that “no reasonable consumer acting reasonably under the circumstances *was* misled or deceived.” Opp. at 2 (emphasis supplied); *but see* Deception Statement, 103 FTC at 175 (advertisements “likely to mislead” are unlawful). In other variations of this argument, Respondents assert that any deception in enticing consumers to a car dealership is not material because it does not relate to the purchase or lease of an automobile, Opp. at 10; that very few consumers attended the sales, *id.* at 2-3; and that consumer complaints about “fake checks” show that consumers were not, in fact, deceived, *id.* at 8, 10-11.

Respondents appear to concede that approximately 40 people did attend the Florida and Alabama tent sales, Opp. at 10, and Complaint Counsel do, in fact, produce several customer complaints regarding Respondents’ COVID-19 stimulus mailer and a press report alerting the public to the fake stimulus checks. CC Fact Stmt. ¶¶ 60, 62, 64. Complainants expressed frustration that the checks were not the stimulus payments they purported to be. This suggests that actual deception, although not necessary, did occur. But in any event, Respondents’ arguments contradict the long-established law of deceptive advertising, that holds that Complaint Counsel need not show actual deception. *See* Section IV.b.1 above.

We are similarly unpersuaded by Respondents’ additional argument that their mailings were designed to bring consumers to an auto sales site and are therefore distinct from any deception in the actual buyer-seller (or lessor-lessee) transaction for the car. Anticipating such arguments, the law defines a material misrepresentation as one that is “likely to affect a consumer’s choice of *or conduct regarding* a product.” Deception Statement, 103 F.T.C. at 182 (emphasis supplied);

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see, e.g., *POM Wonderful LLC*, 2013 WL 268926, at *52; *Cyberspace.com*, 453 F.3d at 1201; cf. *In re Household Sewing Mach. Co.*, 76 F.T.C. 207, 239 (1969) (the problem with bait-and-switch is not that the consumer always takes the bait, but that it serves as an “opening gambit to get the salesman over the doorstep”). We are satisfied that a consumer’s decision to attend an automobile sales event, during a global pandemic, constitutes relevant “conduct regarding a product” sufficient to establish materiality.

c. 15 U.S.C. § 45(n) Is Not a Barrier to Relief

Respondents devote significant space in their brief arguing that the Commission is without authority to act due to the provisions of 15 U.S.C. § 45(n). Opp. at 4-7. For cases brought under our unfairness authority, Section 45(n) requires that the act or practice “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.” Contrary to Respondents’ argument, that subsection simply does not apply in this deception case. Section 5 establishes deception and unfairness as two distinct grounds for Commission enforcement. *American Fin. Servs. Ass’n v. FTC*, 767 F.2d 957, 979 n.27 (D.C. Cir. 1985); *FTC v. Cantkier*, 767 F.Supp.2d 147, 153 (D.C. Dist. 2011). Congress passed the statute that became § 45(n) because it was concerned about the perceived breadth and undefined nature of the Commission’s enforcement under its unfairness authority. See *FTC v. Wyndham Worldwide Corp.*, 799 F.3d 236, 243-44 (3d Cir. 2015) (discussing history of unfairness policy and § 45(n)); *American Fin. Servs. Ass’n v. FTC*, 767 F.2d at 969 (describing history of 1980 policy statement later embodied in § 45(n)). It is therefore no accident that § 45(n) by its plain language restricts itself to unfairness cases only. The section affects neither the Commission’s authority to bring an enforcement action against deception nor the elements of such a case. *Cantkier*, 767 F.Supp.2d at 153; *FTC v. Lights of America Inc.*, SACV 10-1333 JVS (MLGx), 2011 WL 13308569, at *5 (Apr. 29, 2011); see *CyberSpace.com LLC*, 453 F.3d at 1199 n.2. We therefore reject Respondents’ claim that Complaint Counsel must demonstrate actual or likely substantial consumer injury.

3. Count II: Respondents’ Deceptive Prize Advertisements

Complaint Counsel’s uncontroverted facts establish that Respondents’ prize advertisements violated Section 5. The advertisements stated that the consumer needed to match three unique numbers in order to win, then showed all three numbers as a match, with the third number appearing next to a valuable prize. The advertisements thus represented, and a consumer acting reasonably under the circumstances would understand, that he or she had won a specific, valuable prize. This impression would be confirmed when, as directed by the ad, the consumer called a telephone operator or visited a website that, in turn, would confirm that the consumer was a winner. Only upon appearing at the dealership would the consumer learn that he or she had not won the indicated prize, but, if anything, some other nominal door prize based on matching a fourth number with a “prize board.” CC Fact Stmt. ¶¶ 24-27; Opp. Ex. 4 (Lilley Dep.) at 59:15-18; PX2 (Jeansonne Dep.) 163:18-20. As one consumer succinctly explained, this is “misleading advertis[ing] and is just a bait to get you into [the] dealership.” PX 1 Att. JI.

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Having found that the advertisements made false representations, we now turn to the final element, materiality. Telling consumers that they have won a valuable prize, such as \$2,500 instant cash, in order to lure them to a car sale is doubtless material, as the information is important to consumers and capable of influencing their decision about how to proceed. *See, e.g., Cyberspace.com*, 453 F.3d at 1201 (relying on Deception Statement, 103 F.T.C. at 182); *Kraft*, 970 F.2d at 322 (same). Several consumers complained that they had driven far out of their way to claim the prize that the ads represented they had won. *See, e.g.,* PX1 Atts. KW, KX, KY (loss of “time, money and frustration”). Indeed, the goal of these ads was to get consumers to appear at the dealership when they might not otherwise do so, potentially at substantial inconvenience, and at risk to their health, and the ads were therefore material. As the Supreme Court has stated, “[i]n the absence of factors that would distort the decision to advertise, we may assume that the willingness of a business to promote its products reflects a belief that consumers are interested in the advertising.” Deception Statement, 103 F.T.C. at 182, *quoting Central Hudson Gas & Elec. Co. v. PSC*, 447 U.S. 557, 567 (1980).

Respondents make no attempt to controvert the facts that underpin Count II, and offer only a token defense on materiality. Respondents submit that the recipient of each mailer received at least one prize if they showed up at the dealer, and furthermore that there was at least one grand prize winner in each advertisement. Opp. at 11. Putting aside for the moment that Respondents’ method appears to have been to represent to consumers that they won a valuable *second-place* prize such as \$2,500 or \$5,000 cash, *see, e.g.,* CC Fact Stmt. ¶ 21 and PX1 Atts. AH-AQ, the fact that consumers may have been offered an item of trivial value is not a defense to materiality. A promised cash payout of \$2,500 would likely affect consumer behavior significantly more than would a \$6 pair of earbuds. *See* PX1 Att. KW (consumer drove for an hour, “walked in for money, walked out with bootlegged airpods”); *see also, FTC v. Standard Education Soc’y*, 302 U.S. 112, 113-117 (1937) (finding it unlawful to deceive consumers into believing that a product was being given away); *accord Kalwajtys v. FTC*, 237 F.2d 654, 655-6 (7th Cir. 1956) (noting that consumers were told that they were members of a “selected” group of consumers receiving free products); *FTC v. Dayton Family Prods.*, 2016 WL 1047353, at *8, 10 (D. Nev., Mar 16, 2016) (holding that the fact that consumers received booklets on a chance to enter a sweepstakes and in some instances money orders for less than \$2 did not change the misleading nature of the representations). In addition, the presence of at least one grand prize winner in no way mitigates the deception of the other consumers, who were told they had won a specific, valuable prize but, in fact, had not.

Finally, for the same reasons stated in regard to Count I above, we reject Respondents’ arguments that mailings designed to lure consumers to an auto dealership do not affect consumer conduct with regard to a product and that 15 U.S.C. § 45(n) prevents us from acting in this deception case. We therefore grant summary decision on Count II.

C. Respondents Have Violated TILA as Alleged in Count III

Complaint Counsel demonstrated that Respondents created and disseminated many dozens if not hundreds of advertisements to “aid, promote, or assist” closed-end credit transactions, and that these ads violate TILA by failing properly to disclose required loan terms. Respondents’ advertisements contained “triggering terms” in the form of monthly payment amounts next to the

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image of a vehicle. *See, e.g.*, PX 1 Atts. F-BI, CI-JE. Rather than making the required “clear[] and conspicuous[]” disclosures of the additional required terms, such as the term of repayment and the annual percentage rate (“APR”), the ads disclosed this information, if at all, in small print in another part of the ad. Complaint Counsel’s evidence of these ads stands uncontroverted, and we may evaluate as a matter of law whether the disclosures are conspicuous. *Burghy v. Dayton Racquet Club, Inc.*, 695 F. Supp.2d 689, 696 (S.D. Oh. 2010) (collecting cases). Under TILA, “conspicuous” means “obvious to the eye” or “plainly visible.” *See Applebaum v. Nissan Motor Acceptance Corp.*, 226 F.3d 214, 220 (3rd Cir. 2000) (interpreting “clear and conspicuous” requirement in Consumer Leasing Act, embodied in TILA); *Gilberg v. Calif. Check Cashing Stores, LLC*, 913 F.3d 1169, 1176 (9th Cir. 2019) (conspicuous pursuant to TILA means “readily noticeable to the consumer”). Disclosures in tiny print, condensed text, or in difficult-to-find locations are not conspicuous under TILA. *See Barrer v. Chase Bank USA, N.A.*, 566 F.3d 883, 891-92 (9th Cir. 2009) (TILA disclosure buried in dense fine print five pages after related disclosure was not clear and conspicuous as a matter of law); *accord, Tucker v. New Rogers Pontiac, Inc.*, No. 03 C 862, 2003 WL 22078297, at *5 (N.D. Ill. Sept. 9, 2003) (rejecting claims that disclosures that appear in barely legible, smallest-sized font on the document are conspicuous).

Respondents do not contest the content of the ads, nor do they argue that the disclosures are clear and conspicuous. Instead, Respondents argue that TILA does not apply to them because they do not offer credit. Opp. at 12-13, citing 15 U.S.C. § 1602 (definition of “creditor”). This argument misses the mark. Complaint Counsel brought a claim under Section 144 of TILA, 15 U.S.C. § 1664, which facially applies to “any advertisement to aid, promote, or assist directly or indirectly” any consumer credit transaction other than an open end credit plan (emphasis supplied); *see also*, 12 C.F.R. § 1026.2 (“advertisement” defined as “a commercial message in any medium that promotes, directly or indirectly, a credit transaction”).

There are, as Complaint Counsel acknowledges, some TILA duties that apply only to creditors. *See, e.g.*, 15 U.S.C. §§ 1638(a), 1669(a)(1), 1666a. The advertising obligations are not among them. 15 U.S.C. § 1664; *see also*, 12 C.F.R. § 1026.24(a) (2021) (applying Regulation Z to “an advertisement for credit”; no limitation to creditors); *compare* 12 C.F.R. § 1026.18 (“the creditor shall disclose the following information . . .”) to 12 C.F.R. § 1026.24 (“If an advertisement states a rate of finance charge, it shall state the rate as an ‘annual percentage rate’ . . .”). We note that the staff interpretation of Regulation Z, issued by the Federal Reserve, states, “Persons covered. All *persons* must comply with the advertising provisions in §§ 226.16 and 226.24,⁵ not just those that meet the definition of creditor in 226.2(a)(17). Thus . . . others who are not themselves creditors must comply with the advertising provisions of the regulation if they advertise consumer credit transactions.” 12 C.F.R. Part 226 Supp. I § 226.2(a)(2) ¶ 2 (emphasis in original). We find this to be a reasonable interpretation of the statutory text and we reach the same conclusion.

Respondents further point to language in Regulation Z stating that, “in general,” it applies to those who extend credit. Opp. at 13. However, the use of the phrase “in general” implies that

⁵ Due to a non-substantive re-numbering of Regulation Z effective December 30, 2011, these sections are now numbered 12 C.F.R. §§ 1026.16, 1026.24, and 1026(a)(17). *See* 76 Fed. Reg. 79767 (Dec. 22, 2011).

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there are particular circumstances that differ. As discussed above, advertisements are just such an area, based on the statute's reference to "any advertisement" to aid, promote, etc., any extension of consumer credit. 15 U.S.C. § 1664(a) (emphasis supplied).

D. Respondent Jeansonne Is Individually Liable

Citing no legal authority and without controverting Complaint Counsel's facts, Respondents nonetheless assert that Complaint Counsel's showing of David J. Jeansonne II's individual liability falls short. Opp. at 12. After due consideration, we reject this argument.

An individual is liable for a business entity's deceptive acts or practices if the individual either had the authority to control or participated directly in the acts or practices at issue. *E.g.*, *FTC v. IAB Mktg. Assocs.*, 746 F.3d 1228, 1233 (11th Cir. 2014); *FTC v. Freecom Commc'ns, Inc.*, 401 F.3d 1192, 1204 (10th Cir. 2005); *FTC v. Amy Travel Servs., Inc.*, 875 F.2d 564, 573 (7th Cir. 1989), *overruled in part on other grounds by AMG Capital Mgmt, LLC v. FTC*, 141 S. Ct. at 1348-49. Here, Complaint Counsel have demonstrated both. As the owner, managing member, and president of Respondent Traffic Jam Events, Mr. Jeansonne does not contest that he "overs[aw] all departments," exercising day-to-day control over hiring, firing, and other corporate affairs while simultaneously "dipping [his] foot in" operational matters such as sales, mailings, and what he called "adequate procedures." CC Fact Stmt. ¶¶ 38-40; PX2 at 20:13, 21-25.

Respondent Jeansonne also involved himself in the particular mailings disseminated by Traffic Jam Events. The uncontested testimony of his former employee established that nothing left Traffic Jam Events without going through Mr. Jeansonne's email inbox first. Opp. Ex. 4 (Lilley Dep.) at 103:20-108:3. Indeed, Mr. Jeansonne portrayed the COVID-19 stimulus mailers as his personal "brainchild," PX17 at 50:3-4, and he participated in their design. CC Fact Stmt. ¶ 43. He even explained to a dealer that those mailers should not be "water[ed] down" or they "won't work." *Id.* at ¶11; PX26. As to the prize mailers, Mr. Jeansonne similarly had input on their design, CC Fact Stmt. ¶ 44, and knowledge of their content as he settled multiple state enforcement actions alleging deceptive conduct related to these mailers. PX2 at 180:6-7, 19-21.

We find that Complaint Counsel have established Respondent Jeansonne's individual liability for Traffic Jam Events' deceptive acts and practices. We therefore find that summary decision is appropriate against both Respondents on all three counts.

V. RELIEF

The Commission has wide discretion in its choice of a remedy in addressing unlawful practices. *Jacob Siegel Co. v. FTC*, 327 U.S. 608, 611 (1946). A cease and desist order is appropriate if the Commission determines that the order is sufficiently clear and reasonably related to the unlawful practices at issue. *In re POM Wonderful*, 2013 WL 268926, at *62 (citing *Colgate-Palmolive Co.*, 380 U.S. 374, 392, 394-95 (1965)).

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Where appropriate the Commission may order “fencing-in” relief, which refers to provisions that are “broader than the conduct that is declared unlawful.” *Telebrands Corp. v. FTC*, 457 F.3d 354, 356 n.5 (4th Cir. 2006). *See FTC v. Nat’l Lead Co.*, 352 U.S. 419, 431 (1957) (“[T]hose caught violating the [FTC] Act must expect some fencing in.”) Thus, in carrying out its function of preventing unlawful conduct, the Commission “is not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past” but “must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity.” *FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952). The Commission has the power to forbid acts that are lawful, when necessary “to prevent a continuance of the unfair competitive practices that are found to exist.” *FTC v. Nat’l Lead Co.*, 352 U.S. at 430.

When determining whether an order is reasonably related to the unlawful practices, the Commission considers three factors: “(1) the seriousness and deliberateness of the violation; (2) the ease with which the violative claim may be transferred to other products; and (3) whether the Respondent has a history of prior violations.” *Stouffer Foods Corp.* 118 F.T.C. 746, 811 (F.T.C. 1994); *see also, POM Wonderful*, 2013 WL 268926, at *62. “The reasonable relationship analysis operates on a sliding scale – any one factor’s importance varies depending on the extent to which the others are found.” *Telebrands*, 457 F.3d at 358. In applying the three-part analysis, the Commission considers the circumstances of the violation as a whole, and not merely the presence or absence of any one factor. *Kraft, Inc. v. FTC*, 970 F.2d at 327-28 (upholding the FTC’s imposition of fencing-in relief, despite absence of prior violations by Kraft, in light of seriousness, deliberateness, and transferability of violations).

Here, Complaint Counsel’s proposed Order prohibits three areas of conduct. Part I prohibits Respondents from engaging in businesses that involve advertising, marketing, promoting, distributing, offering for sale or lease, or selling or leasing motor vehicles. Part II prohibits Respondents from misrepresenting any material fact in connection with advertising, marketing, promoting, or offering for sale or lease any product or service, including but not limited to matters such as affiliation with or financial relief from the government, or prizes or sweepstakes. Part III, in its essence, prohibits Respondents from violating Section 144 of TILA or Regulation Z by stating the amount 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 also clearly and conspicuously disclosing all of the additional required terms.⁶ Part III also forbids Respondents from representing a rate of finance charge without stating the term as an annual percentage rate or APR.

Applying the Commission’s three-part test, we find first that the Respondents’ violations were sufficiently serious and deliberate to warrant the requested relief. The COVID-19 stimulus mailers used deception to lure consumers to attend public sales events during a public health emergency, preying on their need for government assistance at a time when many individuals (including persons with health vulnerabilities) were attempting to avoid any unnecessary public events. As Mr. Jeansonne explained, “People are somewhat running from COVID-19 . . . but

⁶ The additional required terms are: the amount or percentage of the down payment, the terms of repayment, and the annual percentage rate (“APR”), including any potential increase of the APR post-transaction.

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everyone is runing (sic) for and to Stimulus Relief Funds.” PX6; CC Fact Stmt. ¶ 43. Respondents’ email blast to dealers expressly touted the ads as using “an official letter format.” CC Fact Stmt. ¶ 11. The mailers featured, not merely one or two, but numerous attributes seeking to create a perception of government affiliation (U.S. government watermark, purported check, direction to appear at “stimulus headquarters,” manila envelope with bold “STIMULUS DOCUMENT ENCLOSED,” etc.). Respondents justified these strong features on grounds that “[i]f we are going to start watering down the pieces it won’t work.” PX26. And as egregious as the mailers were, Mr. Jeansonne stated to a federal judge that the mailers were “so watered down” that in his view they were a “flop.” PX17 (TRO Hear’g Transcript) at 44:12-13. All of this suggests the seriousness and deliberateness of the conduct that justifies the fencing-in relief.

The persistence with which Respondents pursued their prize mailing campaigns also is notable. Respondents persisted in the unlawful mailings despite entering consent orders with the States of Kansas in 2010 and 2013 for prize and credit violations (the latter order banning Respondents from doing business in the state), and with Indiana for the prize violations in 2019. PX1, Atts. LX – LZ, MA. The state actions, at a minimum, alerted Respondents’ to the potential deception concerns raised by their advertising. Yet Respondent Jeansonne testified that he did not change his company’s practices in other states because of the Kansas consent orders. PX2 at 181:25-182:7. Similarly, Mr. Jeansonne said he made no changes to Traffic Jam Events’ mailers because of Indiana’s law enforcement action, except to include language in the emails to dealers attempting to shift responsibility to them. *Id.* at 186:16-24; *see also* 185:2-3 (“[We] implement[ed] at the bottom of his email that it’s up to you, Mr. Dealer. We’re not responsible.”). The determination to continue their advertising campaigns without modification despite the state actions reflects a deliberate choice to employ practices challenged by law enforcement as deceptive. Moreover, even without the enforcement actions, Respondents knew the prize ads were misleading some consumers because consumers complained directly to them: Mr. Jeansonne’s former employee acknowledged receiving complaints from “customers that, you know, sometimes perceive that they won a certain prize because of, you know, the way the prize is and the numbers are laid out.” PX3 at 70:23-71:1.

All three of the violations – the egregious COVID-19 mailers, the voluminous prize mailers, and the TILA violations numbering in the many dozens if not hundreds after Respondents had already encountered law enforcement in the Kansas order – support the need to ban the Respondents from the auto industry in this case. *See FTC v. Nat’l Lead Co.*, 352 U.S. at 430 (on appeal from a Commission order, “the Court is obliged not only to suppress the unlawful practice but to take such reasonable action as is calculated to preclude the revival of the illegal practices”); *cf. FTC v. Gill*, 265 F.3d at 957-58 (in federal court action, affirming a ban on engaging in the credit repair business due to systematic and repeated violations); *FTC v. Somenzi*, No. 16-cv-07101, 2017 WL 6049371, at *7-8 (C.D. Cal. Jul. 24, 2017) (default judgment including a lifetime ban on participating in or assisting others in engaging in prize promotion schemes, due to cognizable danger of recurrent violation); *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975, 1009-10 (N.D. Cal. 2010) (ban on telephonic billing); *FTC v. Publ’g Clearing House, Inc.*, No. CV-S-94-623, 1995 WL 367901, at *4 (D. Nev. May 12, 1995) (ban on participating in any telephone premium promotion).

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Applying the second part of the remedy analysis, we find that in the absence of complete relief, Respondents readily could transfer their deceptive practices to markets other than the sale or lease of motor vehicles. Bogus prize mailers could be used to tout any product that consumers typically buy in-person or through the mail. In a similar vein, fake promises of government largesse could lure customers to in-person sales for a variety of products, particularly where they are told they must present themselves at a “headquarters” during a limited time to claim what is due them. The ease of transferability, along with the elements described for factor one above, particularly supports Parts II and III of Complaint Counsel’s proposed order (ban on deception in any industry; ban on TILA violations in any advertisement). The remedy seeks to “close all roads to the prohibited goal” of deceiving consumers. *FTC v. Ruberoid Co.*, 343 U.S. at 473.

Given the strength of our findings under the first two factors, we need not make a finding under the third – whether the Respondents have a history of prior violation; the first two factors alone are enough to support the relief sought by Complaint Counsel.⁷ Here we know of three prior state challenges to Respondents’ advertising activities, two in Kansas and one in Indiana. Although these actions were settled without liability findings, in *Telebrands*, we found that a pattern of narrow settlements, if ineffective in stopping unlawful conduct, could help establish the need for broader relief.⁸ Federal courts similarly consider the “failure of prior enforcement efforts in . . . stopping unlawful activity” when considering how broad a remedy to impose.⁹ Applying these standards, we believe the Respondents’ committing multiple violations despite entering three consent orders involving similar conduct to the violations at issue here supports the imposition of broad fencing-in relief.

In sum, we find that Respondents have demonstrated a commitment to their pattern of conduct and a willingness to mislead in ways that are widely transferable. The Order’s clear limitations on Respondents’ conduct, including the ban on participation in the automotive industry, are appropriate and no broader than necessary to prevent recurrence of the violations.

VI. CONCLUSION

We have determined to grant Complaint Counsel’s Motion for Summary Decision. Complaint Counsel have met their burden to demonstrate that Respondents violated Section 5 of the FTC Act as alleged in Counts I and II, and TILA as alleged in Count III. Respondents have failed to raise a genuine issue of material fact as to these claims, and their statutory defenses lack merit. Respondent Jeansonne is individually liable for the violations along with Respondent Traffic Jam Events. We conclude that Complaint Counsel are entitled to summary decision as to both Respondents as a matter of law. Finally, we enter the accompanying Final Order, in the form of Complaint Counsel’s proposed Order as a necessary and appropriate measure to prevent further violations.

⁷ See *Telebrands*, 457 F.3d at 362 (seriousness/deliberateness and transferability were sufficient to justify fencing-in relief); *Kraft, Inc. v. FTC*, 970 F.2d at 327-28 (approving application of fencing-in relief despite absence of prior violations, in light of seriousness, deliberateness, and transferability of violations).

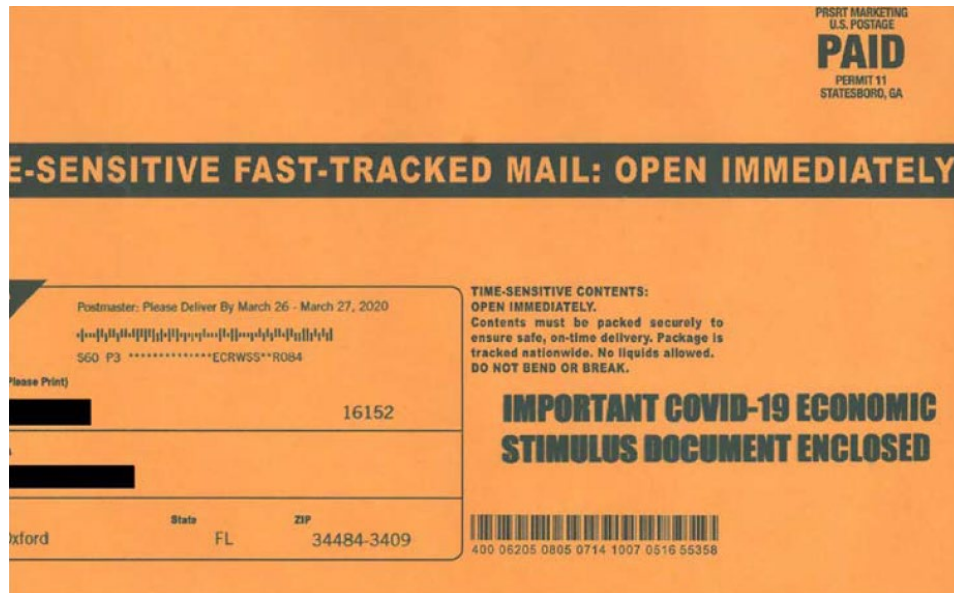
⁸ *Telebrands Corp.*, 140 F.T.C. 278, 340 (2005)

⁹ *FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 1013, 1018 (N.D. Ind. 2000); see also, *FTC v. Wilcox*, 926 F. Supp. 1091, 1103 (S.D. Fla. 1995); *FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 536-37 (S.D.N.Y. 2000).

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APPENDIX A



URGENT: COVID-19 ECONOMIC AUTOMOTIVE STIMULUS PROGRAM
RELIEF FUNDS AVAILABLE • ALL PAYMENTS DEFERRED FOR 120 DAYS

Eligible Dates:
March 27th thru
April 5th, 2020



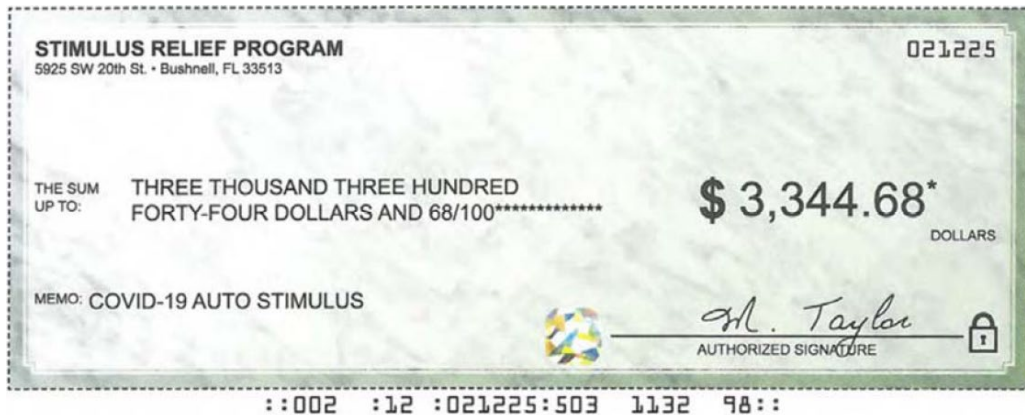
COVID-19 STIMULUS (INDIVIDUAL)
NOTICE NO. FB02-021225-096781

DATE: 03/25/20
NOTICE NO: FB02-021225-096781
ACCOUNT TYPE: COVID-19 STIMULUS (INDIVIDUAL)
DESCRIPTION: URGENT NOTICE - READ IMMEDIATELY

At the specified relief headquarters, the following incentives may be available to ALL residents of Bushnell, FL:

- **0% A.P.R. financing for 60 months.** A variety of vehicles (cars, trucks, SUVs, etc.) will have 0% A.P.R. financing available with little to no money down.⁽¹⁾
- **All payments will be deferred for 120 days.** Do not make a car payment for 120 days/4 months.⁽²⁾
- **Receive a \$100 Walmart Gift Card with every vehicle purchase.** Extra funds to be used for any other needs you may have during this time.⁽³⁾
- **Thousands in Relief Funds with this notice.** Receive additional discounts on your vehicle purchase – check the enclosed documentation for your funds.

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APPENDIX B

\$15,000 INSTANT CASH GIVEAWAY
FEATURING Combination Box.
AT THE TENT EVENT IN MADISON FOR A LIMITED TIME ONLY!

OFFICIAL WINNING CODE
74937
MATCH HERE

YOU ARE A CERTIFIED FINALIST IN THIS GIVEAWAY EVENT! IF YOUR DIGITAL ELECTRONIC Combination Box MATCHES THE OFFICIAL WINNING CODE AND ONE OF THE CODES BELOW, YOU ARE A GUARANTEED WINNER WITH A POSSIBLE \$15,000 INSTANT CASH AT THIS TENT EVENT IN MADISON!

33698	74937	90155	04620	60258
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- \$15,000 INSTANT CASH**
- \$2,500 INSTANT CASH**
- \$800 AMAZON GIFT CARD**
- ALL-NEW WIRELESS EARPODS PRO W/CHARGING CASE**
- \$250 WALMART GIFT CARD**

INSIDE YOUR SECURED Combination Box... ARE YOUR 5 DIGITS THAT COULD BE THE WINNING COMBINATION TO THE \$15,000 INSTANT CASH! IF YOUR NUMBERS DO NOT MATCH, YOU ARE STILL ELIGIBLE FOR THE INCREDIBLE OFFERS DURING THIS EVENT!

PULL THE TAB

Combination Box
74937
PULL TAB TO ACTIVATE

IF YOUR Combination Box... MATCHES THE OFFICIAL WINNING CODE AND ONE OF THE CODES ABOVE, CALL OR LOG ON AND SCHEDULE YOUR APPOINTMENT AT THIS TENT EVENT IN MADISON TO FIND OUT WHAT PRIZE YOU HAVE WON! PLEASE REDEEM DURING EVENT HOURS. NO PURCHASE NECESSARY. ANY TAMPERING WITH NUMBERS WILL MAKE THIS DOCUMENT NULL AND VOID.

DIGITAL COMBINATION BOX IS ONLY GOOD FOR A LIMITED TIME ONCE ACTIVATED

ALL OTHER CODES - SORRY, YOU ARE NOT A WINNER.

- 1.) <FIRSTNAME>, YOUR COMBINATIONS ABOVE MUST MATCH TO WIN!
- 2.) **CALL 888-488-8843 NOW!**
OR LOG ON TO MyPrizeStatus.com
- 3.) YOUR PIN IS: <CONFCODE>
- 4.) BRING THIS INVITATION TO THE TENT EVENT IN MADISON TO CLAIM YOUR PRIZE

MAY 28TH THRU JUNE 3RD ONLY!

<FIRSTNAME> <LASTNAME> <ZIP> <ZIP> <WINNING NUMBER> <PRIZEBOARD NUMBER>

5483 W. Watson Ave. #1204
Tampa, FL 33604

Opinion of the Commission

IMMEDIATE VEHICLE DISCOUNT DISPATCH PROGRAM

LIMIT TWO (2) VEHICLES PER HOUSEHOLD - WHILE SUPPLIES LAST!

**CONGRATULATIONS TO JAKEB MCGINNIS,
THE LATEST GRAND PRIZE WINNER!**

**IF YOUR NUMBERS MATCH, YOU ARE GUARANTEED
AT LEAST ONE (1) OF THESE CERTIFIED PRIZES:**

1.
**\$15,000
INSTANT CASH**

2.
**\$2,500
INSTANT CASH**

3.
**\$800
AMAZON GIFT CARD**

4.
**ALL-NEW WIRELESS EARPODS
PRO W/CHARGING CASE**

5.
**\$250
WALMART GIFT CARD**

PAYMENTS FOR JUST

\$0 DOWN \$151/MO.⁽¹⁾

TO DRIVE AWAY IN THIS NISSAN SENTRA RIGHT NOW!

ON SALE!

MORE PAYMENTS FOR ONLY

\$0 DOWN \$187/MO.⁽²⁾

GOING ON NOW, TO TAKE HOME THIS KIA SOUL!

ON SALE!

EXCLUSIVE SAVINGS!

\$0 DOWN \$190/MO.⁽³⁾

TO BRING HOME THIS NISSAN VERSA AT THIS EVENT!

ON SALE!

EXCLUSIVE TENT EVENT HEADQUARTERS IN MADISON, AL

8760 MADISON BLVD. • MADISON, AL 35758

**EVENT HOURS: MONDAY-SATURDAY: 9AM-8PM
SUNDAY: CLOSED TO RESTOCK**

MANDATORY QUALIFICATIONS TO USE AUTOMOTIVE RELIEF VOUCHER BELOW:

(1) MUST BE PERMANENT U.S. RESIDENT; (2) MUST HAVE VALID DRIVER'S LICENSE; (3) ANNUAL INCOME CANNOT EXCEED \$91,300.00.

VALID ONLY AT: MADISON TENT EVENT
8760 MADISON BLVD. • MADISON, AL 35758

ISSUED TO: _____ NAME: _____

(PLEASE FILL IN COMPLETELY) ADDRESS: _____

CITY, ST, ZIP: _____

UP TO THE AMOUNT OF: THREE THOUSAND ONE HUNDRED SEVEN AND 92/100^{THS}

VOID where prohibited; certificate has no cash value, non-negotiable certificate. This is not a check. Only valid if presented upon registration. Account good toward select new vehicles. Cannot be used in conjunction with any other offers. Expires June 6th, 2020.

UP TO THE AMOUNT OF

\$3,107.92

AUTHORIZED SIGNATURE

- VOID IF DUPLICATED + NOT A CHECK -

SPECIALIZED FINANCING OPPORTUNITIES ALSO AVAILABLE:

0% APR

INSTANTLY!⁽⁴⁾

**NO PAYMENTS
UP TO 6 MONTHS**

FOR A LIMITED TIME ONLY!⁽⁵⁾

**15% OVER
KBB VALUE FOR ALL
TRADE-INS!⁽⁶⁾**

(1) \$0 down, plus tax, title and license/\$151 per month example: 2016 Nissan Sentra sdn40Y242302 sale price \$19,995 72 months at 2.9% APR with approved credit. (2) \$0 down, plus tax, title and license/\$187 per month example: 2018 Kia Soul sdn40Y2594191 sale price \$11,995 72 months at 2.9% APR with approved credit. (3) \$0 down, plus tax, title and license/\$190 per month example: 2018 Nissan Versa sdn40Y24244 sale price \$12,495 72 months at 2.9% APR with approved credit. (4) No payments for up to 6 months subject to lender's approval with approved credit. Interest accrues from date of purchase. (5) 0% APR available on select new Nissan models for up to 60 months financing thru Nissan with approved credit-subject to lender's approval. (6) Must be presented upon registration. Valid on select pre-owned vehicles model year 2014 or newer and priced \$15,000 or higher. Cannot combine any offers. *If the winning number on your invitation matches the prize posted at the dealership, you have won one (1) of the following prizes: #1 \$15,000 Instant Cash; #2 \$2,500 Instant Cash; #3 \$2,500 Amazon Gift Card; #4 \$800 Amazon Gift Card; #5 \$250 Walmart Gift Card; #6 \$250 Walmart Gift Card; #7 \$250 Walmart Gift Card; #8 \$250 Walmart Gift Card; #9 \$250 Walmart Gift Card; #10 \$250 Walmart Gift Card. All prizes are the responsibility of the prize sponsor. Contest begins May 26th, 2020 and ends June 6th, 2020. No purchase necessary. Prizes do not increase chance of winning. Contest open to legal U.S. residents age 18 or older with a valid driver's license who received an original mail piece via U.S. mail. Excludes Florida residents. Participants agree to all contest rules. See dealer for complete contest rules. Dealership employees and associates, mail house, associated processors or agencies, and their family members and members of same household are ineligible. Addressee must return original mail piece in person by close of business June 6th, 2020. Any unclaimed prizes will not be awarded. All photos are for illustration purposes only. Vehicles are subject to prior sale. Void where prohibited by law. All offers end June 6th, 2020.

Batteries are included in attached Combination Box™ device and must be disposed of properly per state regulations.

Final Order

FINAL ORDER

The Commission has heard this matter upon the Motion for Summary Decision filed by Complaint Counsel, and upon the briefs and responses filed in support thereof and in opposition thereto. For the reasons stated in the accompanying Opinion of the Commission, the Commission has determined to grant Complaint Counsel's Motion for Summary Decision. Accordingly,

IT IS ORDERED that the following Order to cease and desist be, and it hereby is, entered:

ORDER**DEFINITIONS**

For purposes of this Order, the following definitions apply:

- A. "Clearly and conspicuously" means that a required disclosure is difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure ("triggering representation") is made through only one means.
 2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
 3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
 4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
 5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the triggering representation appears.

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6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
 7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
 8. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.
- B. “Close proximity” means that the disclosure is very near the triggering representation. For example, a disclosure made through a hyperlink, pop-up, interstitial, or other similar technique is not in close proximity to the triggering representation.
- C. “Respondents” means the Corporate Respondent and the Individual Respondent, individually, collectively, or in any combination.
1. “Corporate Respondent” means Traffic Jam Events, LLC, a limited liability company, and its successors and assigns.
 2. “Individual Respondent” means David J. Jeansonne II.

Provisions**I.**

IT IS ORDERED that Respondents, whether acting directly or through an intermediary, must not participate in any business which involves, in whole or in part, advertising, marketing, promoting, distributing, offering for sale or lease, or selling or leasing motor vehicles.

II.

IT IS FURTHER ORDERED that Respondents, and Respondents’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with advertising, marketing, promoting, or offering for sale or lease, or selling or leasing, must not misrepresent, or assist others in misrepresenting, expressly or by implication, any material fact, including the following:

- A. Financial assistance or relief from the government;
- B. Any prize, sweepstakes, lottery, or giveaway;

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- C. Any affiliation, association with, endorsement, sponsorship, or approval by the government; and
- D. The nature, value, or amount of any incentive and all material restrictions, limitations, or conditions applicable to the purchase, receipt, or use of any product or service.

III.

IT IS FURTHER ORDERED that Respondents, and Respondents' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with any advertisement for any extension of consumer credit, shall not:

- A. State, expressly or by implication:
 - 1. 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:
 - a. The amount or percentage of the down payment;
 - b. The terms of repayment; and
 - c. The annual percentage rate, using the term "annual percentage rate" or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed; or
 - 2. A rate of finance charge without stating the rate as an "annual percentage rate" or the abbreviation "APR," using that term; or
- B. Fail to comply 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, a copy of which is attached (TILA).

IV. Acknowledgments of the Order

IT IS FURTHER ORDERED that Respondents obtain acknowledgments of receipt of this Order:

- A. Each Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

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- B. Each Individual Respondent for any business that such Respondent, individually or collectively with any other Respondents, is the majority owner or controls directly or indirectly, and each Corporate Respondent, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for conduct related to the subject matter of the Order and all agents and representatives who participate in conduct related to the subject matter of the Order; (3) all customers of Corporate Respondent; and (4) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Report and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which a Respondent delivered a copy of this Order, that Respondent must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

V. Compliance Reports and Notices

IT IS FURTHER ORDERED that Respondents make timely submissions to the Commission:

- A. One year after the issuance date of this Order, each Respondent must submit a compliance report, sworn under penalty of perjury, in which:
 - 1. Each Respondent must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Respondent; (b) identify all of that Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other Respondent (which Individual Respondent must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how that Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes the Respondent made to comply with the Order; and (e) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.
 - 2. Additionally, Individual Respondent must: (a) identify all his telephone numbers and all his physical, postal, email and Internet addresses, including all residences; (b) identify all his business activities, including any business for which such Respondent performs services whether as an employee or otherwise and any entity in which such Respondent has any ownership interest; and (c) describe in detail such Respondent's involvement in each

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such business activity, including title, role, responsibilities, participation, authority, control, and any ownership.

- B. Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
1. Respondent must submit notice of any change in: (a) any designated point of contact; or (b) the structure of Corporate Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
 2. Additionally, Individual Respondent must submit notice of any change in: (a) name, including alias or fictitious name, or residence address; or (b) title or role in any business activity, including (i) any business for which such Respondent performs services whether as an employee or otherwise and (ii) any entity in which such Respondent has any ownership interest and over which Respondents have direct or indirect control. For each such business activity, also identify its name, physical address, and any Internet address.
- C. Each Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Respondent within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____ and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the 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: *In re Traffic Jam Events, LLC*, FTC File No. X200041.

VI. Recordkeeping

IT IS FURTHER ORDERED that Respondents must create certain records for 20 years after the issuance date of the Order, and retain each such record for 5 years. Specifically, Corporate Respondent and Individual Respondent for any business that such Respondent, individually or

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collectively with any other Respondents, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. accounting records showing the revenues from all products or services sold, the costs incurred in generating those revenues, and resulting net profit or loss;
- B. personnel records showing, for each person providing services in relation to any aspect of the Order, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. copies of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. a copy of each unique advertisement or other marketing material making a representation subject to this Order;
- E. for 5 years from the date received, copies of all subpoenas and other communications with law enforcement, if such communication relate to Respondents' compliance with this Order;
- F. for 5 years from the date created or received, all records, whether prepared by or on behalf of Respondents, that demonstrate non-compliance OR tend to show any lack of compliance by Respondents with this Order; and
- G. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

VII. Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Respondents' compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, each Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.
- B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with each Respondent. Respondents must permit representatives of the Commission to interview anyone affiliated with any Respondent who has agreed to such an interview. The interviewee may have counsel present.

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- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondents or any individual or entity affiliated with Respondents, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

VIII. Order Effective Dates

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate on October 25, 2041, or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Provision in this Order that terminates in less than 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 Provision.

Provided, further, that if such complaint is dismissed or a federal court rules that the 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 Provision 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.

Complaint

IN THE MATTER OF

BROADCOM, INCORPORATEDCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT

Docket No. C-4750; File No. 181 0205
Complaint, June 29, 2021 – Decision, November 4, 2021

This consent order addresses Broadcom, Inc.’s violation of the FTC Act through anticompetitive practices. The complaint alleges that Broadcom, Inc. engaged in anticompetitive and exclusionary acts to enhance or maintain its monopoly power and unreasonably restrain trade in relevant markets. Under the order the Respondent is prohibited from entering into certain types of exclusivity or loyalty agreements with its customers for the supply of semiconductor components and retaliating against customers for working with Broadcom competitors.

Participants

For the *Commission*: Kathleen Clair, Joseph Baker, Michael Turner, Melissa Westman-Cherry, Patricia Jerjian, Stephanie Funk, Philip Kehl, and J. Wells Harrell.

For the *Respondent*: Daniel Wall and Josh Holian [*Latham & Watkins*]; Stephen Weissman [*Gibson Dunn*]; and Maureen Ohlhausen [*Baker Botts*].

COMPLAINT

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, the Federal Trade Commission (“Commission”), having reason to believe that Broadcom Inc. (“Broadcom”), a corporation, hereinafter sometimes referred to as “Respondent,” has violated the provisions of Section 5 of the Federal Trade Commission Act, 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 in that respect as follows:

I. NATURE OF THE CASE

1. Respondent Broadcom possesses monopoly power in markets for the sale of several semiconductor components (chips) used in connection with the delivery of subscription video and broadband internet service (as hereinafter defined, the “Monopolized Products”). The Monopolized Products are incorporated by Broadcom’s customers into video set-top boxes and broadband internet access devices.

2. Broadcom also is a supplier in markets for the sale of other semiconductor components related to the Monopolized Products (as hereinafter defined, the “Related Products”). The Related Products are also incorporated by Broadcom’s customers into video set-top boxes and broadband internet access devices.