

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In The Matter of

MARTIN ADVERTISING, INC., a corporation.

DOCKET NO.

COMPLAINT

The Federal Trade Commission, having reason to believe that Martin Advertising, Inc., a corporation ("respondent" or "Martin"), has violated the provisions of the Federal Trade Commission Act, 15 U.S.C. §§ 45-58, as amended, the Consumer Leasing Act, 15 U.S.C. §§ 1667-1667e, as amended, and its implementing Regulation M, 12 C.F.R. § 213, as amended, and the Truth in Lending Act, 15 U.S.C. §§ 1601-1667, as amended, and its implementing Regulation Z, 12 C.F.R. § 226, as amended, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Martin Advertising, Inc. is a Delaware corporation with its principal office or place of business at 2801 University Boulevard, Suite 200, Birmingham, Alabama 35233.
2. Respondent, at all times relevant to this complaint, has provided advertising services to automobile dealers and dealer marketing groups, including but not limited to dealer marketing groups that promote General Motors Corporation ("GM") vehicles. Respondent has disseminated advertisements to the public that promote consumer leases, as the terms "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 C.F.R. § 213.2, as amended.
3. Respondent has disseminated advertisements to the public that promote credit sales and other extensions of closed-end credit in consumer credit transactions, as the terms "advertisement," "credit sale," and "consumer credit" are defined in Section 226.2 of Regulation Z, 12 C.F.R. § 226.2, as amended.
4. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

FEDERAL TRADE COMMISSION ACT VIOLATIONS

LEASE ADVERTISING

2. ,hhTT2 1 T562 -2.125s

to save on every new car in stock at Capital Motor Company. Everything must go - nothing will be held back. Plus, Capital guarantees to have the best price on any new car or they'll pay you \$1,000 cash. Don't let time run out - take advantage of huge year-end savings during the 96 Hour Capital Countdown - only at Capital Motor Company - home of the \$1,000 price guarantee. See our ad in Saturday's Tallahassee Democrat for details." (Martin Exhibit A).

B. [Audio:] "Choose the way you want to save this holiday season at Mid South Nissan. See Mid South Nissan before the New Year and drive a loaded '97 Nissan pickup for only 99 dollars a month with zero down payment! You get air, stereo cassette, alloy wheels, chrome package, sliding rear window and more. Drive it for 99 dollars a month with zero down! Or buy the same loaded '97 Nissan pickup for only 10-8-88. That's a total savings of over 4500 dollars. Plus when you buy, Mid South Nissan writes you a check for 1000 dollars. One thousand dollars holiday cash to use any way you choose. A fun new '97 pickup, thousands in savings, plus a thousand bucks. Choose the way you want to save this holiday at Mid South Nissan. Drive a new '97 Nissan pickup for 99 dollars a month with zero down. Or buy it for just 10-8-88 and get 1000 dollars holiday cash. Hurry to Mid South Nissan, 966 South Gloster, Tupelo."

[The following disclosure is rapidly stated at the end of the advertisement, over background sound: "Sale prices plus tax, tag, and fees. 24 month lease with approved credit. Acquisition fee, security deposit and first month's payment at inception. See dealer for details."] (Martin Exhibit B).

C. [Audio:] "Premier Pontiac Nissan's Final Four Year-end clearance! You'll score big on every car in stock, get financing as low as 3.9%, and no payments up to 6 months... Plus, drive away in a '97 Nissan pick-up for just \$99 a month or Altima for just 1-29 a month."

[Video:] "FINANCING AS LOW AS 3.9%*

NO PAYMENT UP TO 6 MONTHS

97 VTP NISSAN PICK-UP

\$99 A MONTH**

97 NISSAN ALTIMA

\$129 A MONTH***"

[The advertisement contains the following disclosure at the bottom of the screen in light-colored fine print superimposed on moving background:

**You must take retail delivery from dealer stock by 1/2/97.

Dealer financial participation may affect consumer cost. Length of finance contract is limited. See dealer for details.

*36-month NMAC lease. Stock #8501; MSRP \$13,868. Sale price \$11,525. Residual \$9,085.12. 36 payments of \$99.43 with \$1675 cash or trade plus tax, title, tag and security deposit. See dealer for details.

****36-month NMAC lease. Stock #8328; MSRP \$20,597. Sale price \$18,095. Residual \$13,799.99. 36 payments of \$129.15 with \$1,999 cash or trade plus tax, title, tag and security deposit. See dealer for details."] (Martin Exhibit C).**

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

COUNT II: Misrepresentation of Inception Fees

10. In lease advertisements, including but not necessarily limited to Martin Exhibits B and D, respondent has represented, expressly or by implication, that the amount stated as "down" or "cash or trade down" in respondent's lease advertisements is the total amount consumers must pay at lease inception to lease the advertised vehicles.

11. In truth and in fact, the amount stated as "down" or "cash or trade down" in respondent's lease advertisements is not the total amount consumers must pay at lease inception to lease the advertised vehicles. Consumers must also pay additional fees beyond the amount stated as "down" or "cash or trade down," such as the first month's payment, security deposit, and acquisition fee at lease inception. Therefore, respondent's representation as alleged in Paragraph 10 was, and is, false or misleading.

12. Respondent knew or should have known that the representation set forth in Paragraph 10 was, and is, false and misleading.

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

COUNT III: Failure to Disclose Adequately that Transaction Advertised is a Lease

14. In lease advertisements, including but not necessarily limited to Exhibits A through C, respondent has represented, expressly or by implication, that consumers can purchase the advertised vehicles for the monthly payment amounts prominently stated in the advertisements. These advertisements doJ T* [(C,)8(advertised)-15(vehicles)-35(for)-21(tJ in4f(vehicle

15. The existence of th(li55(additional information)-28(would be)-56(material)-35(to)-34(consumers)-35(Paragraph 14 was, and is, deceptive.

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

COUNT IV: Failure to Disclose Adequately Inception Fees

18. In its lease advertisements, including but not limited to Martin Exhibits A - D, respondent has represented, expressly or by implication, that consumers can lease the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount and/or amount stated as "down." These lease advertisements doJ T* [(C,)8(advertised)-15(vehicles)-3additional terms pertaining to the lea

charges: a-1ef security deposit, first month's payment, and/or acadisition fee.

19. These additional terms would be material to consumers in deciding whether to visit a dealership named in respondent's advertisement and/or whether to lease an automobile from the dealership. The failure to disclose adequately these additional terms, in light of the representation made, was, and is, a deceptive practice.

20. Respondent knew or should have known that the failure to disclose adequately material terms as set forth in Paragraph 18 was, and is, deceptive.

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

COUNT V: Consumer Leasing Act and Regulation M Violations

22. Respondent's lease advertisements, including but not necessarily limited to Martin Exhibits A through D, state a monthly payment amount, the number of required payments, and/or an amount "down." Respondent's advertisements omit or fail to clearly

Federal Trade Commission Act Violations

COUNT VI: Misrepresentation in Credit Advertising

25. In credit advertisements, including but not necessarily limited to Martin Exhibit E, respondent has represented, expressly or by implication, that consumers can buy the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount.

26. In truth and in fact, consumers cannot buy the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount. Consumers are also responsible for a final balloon payment of several thousand dollars to purchase the advertised vehicles. Therefore, respondent's representation as alleged in Paragraph 25 was, and is, false or misleading.

27. Respondent knew or should have known that the representation set forth in Paragraph 25 was, and is, false and misleading.

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

COUNT VII: Failure to Disclose Adequately in Credit Advertising

29. In credit advertisements, including but not necessarily limited to Martin Exhibit E, respondent has represented, expressly or by implication, that consumers can buy the advertised vehicles at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount and/or number of required monthly payments. These advertisements do not adequately disclose additional terms pertaining to the credit offer, including but not necessarily limited to a final balloon payment of several thousand dollars, the amount of the downpayment, and the annual percentage rate. The existence of these additional terms would be material to consumers in deciding whether to buy the advertised vehicle. The failure to disclose adequately these additional terms, in light of the representation made, was, and is, a deceptive practice.

30. Respondent knew or should have known that the failure to disclose adequately material terms as set forth in Paragraph 29 was, and is, deceptive.

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

Truth in Lending Act and Regulation Z Violations

COUNT VIII: Failure to State Rate of Finance Charge as Annual Percentage Rate

32. In credit advertisements, including but not necessarily limited to Martin Exhibits A and C, respondent has stated a rate of finance charge without stating that rate as an "annual percentage rate," using that term or the abbreviation "APR."

33. Respondent's aforesaid practice constitutes a violation of Section 144 and 107 of the TILA, 15 U.S.C. §§ 1664 and 1606, respectively, and Sections 226.24(b) and 226.22 of

Regulation Z, 12 C.F.R. §§ 226.24(b) and 226.22, respectively.

COUNT IX: Failure to Disclose Required Information

Clearly and Conspicuously

34. In credit advertisements, including but not necessarily limited to Martin Exhibit E, respondent has stated a rate of finance charge, monthly payment amount, and/or an amount "down" as terms for financing the purchase of the advertised vehicles.

35. These credit advertisements have omitted or failed to disclose clearly and conspicuously all of the terms required by Regulation Z, as follows: the amount or percentage of the downpayment, the terms of repayment, and the annual percentage rate, using that term or the abbreviation "APR."

36. Respondent's aforesaid practice violates Section 144 of the Truth in Lending Act, 15 U.S.C. § 1664, as amended, and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c), as amended.

THEREFORE, the Federal Trade Commission this day of , , has issued this complaint against respondent.

By the Commission.