

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill
 Maureen K. Ohlhausen

In the Matter of

**BILLION AUTO, INC.,
a corporation.**

DOCKET NO. C-4356

COMPLAINT

The Federal Trade Commission, having reason to believe that Billion Auto, Inc., a corporation (“Respondent”), has violated provisions of the Federal Trade Commission Act (“FTC Act”), the Truth in Lending Act (“TILA”), and the Consumer Leasing Act (“CLA”), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a South Dakota corporation with its principal office or place of business at 3401 West 41st Street, Sioux Falls, SD, 57106. Respondent offers automobiles for sale and lease.
2. The acts or practices of Respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
3. Since at least May 2011, Respondent has disseminated or has caused to be disseminated advertisements promoting the purchase, financing, and leasing of its automobiles.
4. Respondent’s advertisements include, but are not necessarily limited to, an advertisement on its website www.billionpayoff.com, a copy of which is attached as Exhibit A (DVD containing 7/6/11 capture of www.billionpayoff.com). This advertisement includes the following statements and depictions:
 - a. **“We will pay off your trade NO MATTER how much you owe!”**

- b. “Credit upside down? Need a new car? Go to Billionpayoff.com. We want to pay off your car.” The advertisement depicts a car driving, inverts the video to depict the car upside down, and then depicts the car right-side up again.
5. Respondent also has disseminated or has caused to be disseminated advertisements promoting credit sales and other extensions of closed-end credit in consumer credit transactions, as the terms “advertisement,” “closed-end credit,” “credit sale,” and “consumer credit” are defined in Section 226.2 of Regulation Z, 12 C.F.R. § 226.2, as amended, on one of its websites, a copy of which is attached as Exhibit B (copy of 7/6/11 capture of <http://www.billionauto.com>). This advertisement includes the following statements:
- a. “New Buicks starting at \$249 Mo.”
 - b. “0% 72 Mo. Toyota Certified”
 - c. “Toyota 2.9% Financing”
 - d. “2.9% Financing GMC”

No additional information regarding the cost or terms of financing a vehicle appears on this website.

6. Respondent also has disseminated or has caused to be disseminated advertisements promoting 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, copies of which are attached as Exhibits C and D (online newspaper advertisements). Respondent’s advertisements promoting consumer leases contain the following statement:

\$199 ^{lease}
/mo.

The term “lease” appears in fine print. No additional information regarding the cost or terms of leasing a vehicle appears in these advertisements.

VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Misrepresentation of Financing Terms

7. Through the means described in Paragraph 4, Respondent has represented expressly or by implication that, when a consumer trades in a used vehicle in order to purchase another vehicle, Respondent will pay off the balance of the loan on the trade-in vehicle such that the consumer will have no remaining obligation for any amount of that loan.

8. In truth and in fact, in many instances, when a consumer trades in a used vehicle with a loan balance that exceeds the vehicle's value (*i.e.* the trade-in has negative equity) in order to purchase another vehicle, Respondent will not pay off the balance of the loan on the trade-in vehicle such that the consumer will have no remaining obligation for any amount of that loan. Instead, Respondent includes the amount of the negative equity in the loan for the newly purchased vehicle.
9. Therefore, the representation set forth in Paragraph 7 of this Complaint was, and is, false or misleading in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE TRUTH IN LENDING ACT AND REGULATION Z

10. Under Section 144 of the TILA and Section 226.24(d) of Regulation Z, advertisements promoting closed-end credit in consumer credit transactions are required to make certain disclosures if they state any of several terms, such as the monthly payment ("TILA triggering terms"). In addition, the rate of the finance charge must be stated as an "annual percentage rate" using that term or the abbreviation "APR." 15 U.S.C. § 1664; 12 C.F.R. § 226.24(c).
11. Respondent's advertisements promoting closed-end credit, including but not necessarily limited to those described in Paragraph 5, are subject to the requirements of the TILA and Regulation Z.

Failure to Disclose or Disclose Clearly and Conspicuously Required Credit Information

12. Respondent's advertisements promoting closed-end credit, including but not necessarily limited to those described in Paragraph 5, have included TILA triggering terms, but have failed to disclose or disclose clearly and conspicuously, additional terms required by the TILA and Regulation Z, including one or more of the following:
 - a. The amount or percentage of the downpayment.
 - b. The terms of repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment.
 - c. The "annual percentage rate," using that term, and, if the rate may be increased after consummation, that fact.
13. Therefore, the practices set forth in Paragraph 12 of this Complaint have violated Section 144 of the TILA, 15 U.S.C. § 1664, and Section 226.24(d) of Regulation Z, 12 C.F.R. § 226.24(d), as amended.

Failure to State Rate of Finance Charge as Annual Percentage Rate

14. Respondent's advertisements promoting closed-end credit, including but not necessarily limited to those described in Paragraph 5, have stated a rate of finance charge without stating that rate as an "annual percentage rate" using that term or the abbreviation "APR."
15. Therefore, the practices set forth in Paragraph 14 of this Complaint have violated Section 144 of the TILA, 15 U.S.C. § 1664, and Section 226.24(c) of Regulation Z, 12 C.F.R. § 226.24(c).

VIOLATION OF THE CONSUMER LEASING ACT AND REGULATION M

16. Under Section 184 of the CLA and Section 213.7 of Regulation M, advertisements promoting consumer leases are required to make certain disclosures if they state any of several terms, such as the amount of any payment ("CLA triggering terms"). 15 U.S.C. § 1667c, 12 C.F.R. § 213.7.
17. Respondent's advertisements promoting consumer leases, including but not necessarily limited to those described in Paragraph 6, are subject to the requirements of the CLA and Regulation M.

Failure to Disclose or Disclose Clearly and Conspicuously Required Lease Information

18. Respondent's advertisements promoting consumer leases, including but not necessarily limited to those described in Paragraph 6, have included CLA triggering terms, but have failed to disclose or disclose clearly and conspicuously additional terms required by the CLA and Regulation M, including one or more of the following:
 - a. That the transaction advertised is a lease.
 - b. The total amount of any initial payments required on or before consummation of the lease or delivery of the property, whichever is later.
 - c. Whether or not a security deposit is required.
 - d. The number, amount, and timing of scheduled payments.
 - e. With respect to a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the property, that an extra charge may be imposed at the end of the lease term.
19. Therefore, the practices set forth in Paragraph 18 of this Complaint have violated Section 184 of the CLA, 15 U.S.C. § 1667c, and Section 213.7 of Regulation M, 12 C.F.R. § 213.7.

20. The acts and practices of Respondent as alleged in this complaint constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the FTC Act, violations of the Truth in Lending Act and Regulation Z, and violations of the Consumer Leasing Act and Regulation M.

THEREFORE, the Federal Trade Commission, this first day of May, 2012, has issued this complaint against Respondent.

By the Commission, Commissioner Ohlhausen not participating.

Donald S. Clark
Secretary

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