

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney**

In the Matter of

**COWBOY AG LLC, a limited liability company,
d/b/a COWBOY TOYOTA and
COWBOY SCION.**

DECISION AND ORDER

DOCKET NO. C-4639

DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of the Respondent named in the caption. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondent a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondent with violations of the Federal Trade Commission Act (“FTC Act”); the Truth in Lending Act (“TILA”) and its implementing Regulation Z; and the Consumer Leasing Act (“CLA”) and its implementing Regulation M.

Respondent and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondent that it neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, it admits the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the FTC Act; the TILA and its implementing Regulation Z; and the CLA and its implementing Regulation M; and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. Now, in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. Respondent Cowboy AG LLC, is a Texas limited liability company, also doing business as Cowboy Toyota and Cowboy Scion, with its principal office or place of business at 9325 East R.L. Thornton Freeway, Dallas, Texas 75228.
2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondent, and the proceeding is in the public interest.

ORDER

Definitions

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

- A. "Advertisement" shall mean a commercial message in any medium that directly or indirectly, expressly or by implication, promotes a consumer transaction.
- B. "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 made visually or audibly.
 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 representation that requires the disclosure appears.
 6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices.

7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
- C. “Consumer credit” shall mean credit offered or extended to a consumer primarily for personal, family, or household purposes, as set forth in Section 226.2(a)(12) of Regulation Z, 12 C.F.R. § 226.2(a)(12), as amended.
- D. “Consumer lease” shall mean a contract in the form of a bailment or lease for the use of personal property by a natural person primarily for personal, family, or household purposes, for a period exceeding four months and for a total contractual obligation not exceeding the applicable threshold amount, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, as set forth in Section 213.2 of Regulation M, 12 C.F.R. § 213.2, as amended.
- E. “Lease inception” shall mean prior to or at consummation of the lease or by delivery, if delivery occurs after consummation.
- F. “Material” shall mean likely to affect a person’s choice of, or conduct regarding, goods or services.
- G. “Motor vehicle” shall mean:
 1. Any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;
 2. Recreational boats and marine equipment;
 3. Motorcycles;
 4. Motor homes, recreational vehicle trailers, and slide-in campers; and
 5. Other vehicles that are titled and sold through dealers.
- H. “Respondent” means Cowboy AG LLC, also doing business as Cowboy Toyota and Cowboy Scion, and its successors and assigns.

I.

IT IS ORDERED that Respondent, and Respondent’s 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 the advertising, promotion, offering for sale, or sale of motor vehicles, must not make any representation, expressly or by implication, that:

- A. Misrepresents the cost of:
 - 1. Purchasing a motor vehicle with financing, including but not limited to the amount or percentage of the down payment, the number of payments or period of repayment, the amount of any payment, and the repayment obligation over the full term of the loan, including any balloon payment; or
 - 2. Leasing a motor vehicle, including but not limited to the total amount due at lease inception, amount down, down payment, acquisition fee, capitalized cost reduction, any other amount required to be paid at lease inception, and the amounts of all monthly or other periodic payments.
- B. Misrepresents any qualification or restriction on the consumer's ability to obtain represented financing or leasing terms, including but not limited to any qualification or restriction based on a consumer's credit score or credit history.
- C. Represents any financing or leasing term, unless the representation is non-misleading, and the advertisement clearly and conspicuously discloses all qualifications or restrictions on the consumer's ability to obtain the represented financing or leasing term, including but not limited to any qualifications or restrictions that Respondent's lender, lessor, or any other entity may impose based on a consumer's credit score or credit history. *Provided, further,* that, if a majority of consumers likely will not be able to meet a stated credit score or credit history qualification or restriction, the advertisement must clearly and conspicuously disclose that fact.
- D. Misrepresents the number of vehicles, makes, or models that are available for purchase or lease.
- E. Misrepresents any other material fact about the price, sale, financing, or leasing of any motor vehicle.

II.

IT IS FURTHER ORDERED that Respondent, and Respondent's 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 in any manner:

- A. State the amount or percentage of any down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without disclosing clearly and conspicuously all of the following terms:
 - 1. The amount or percentage of the down payment;
 - 2. The terms of repayment; and

3. The annual percentage rate, using the term “annual percentage rate” or the abbreviation “APR.” If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed; or
- B. State a rate of finance charge without stating the rate as an “annual percentage rate” or the abbreviation “APR,” using that term; or
- C. Fail to comply in any respect with Regulation Z, 12 C.F.R. Part 226, as amended, and the Truth in Lending Act, as amended, 15 U.S.C. §§ 1601-1667.

III.

IT IS FURTHER ORDERED that Respondent, and Respondent’s 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 consumer lease, shall not in any manner:

- A. State the amount of any payment or that any or no initial payment is required prior to or at consummation or by delivery, if delivery occurs after consummation, without disclosing clearly and conspicuously:
 1. That the transaction advertised is a lease;
 2. The total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;
 3. The number, amounts, and timing of scheduled payments;
 4. Whether or not a security deposit is required; and
 5. That an extra charge may be imposed at the end of the lease term where the consumer’s liability (if any) is based on the difference between the residual value of the leased property and its realized value at the end of the lease term; or
- B. Fail to comply in any respect with Regulation M, 12 C.F.R. Part 213, as amended, and the Consumer Leasing Act, 15 U.S.C. §§ 1667-1667f, as amended.

IV.

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

- A. 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.

- B. For 15 years after the issuance date of this Order, Respondent must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Reports 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 Respondent delivered a copy of this Order, Respondent must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

V.

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

- A. One year after the issuance date of this Order, Respondent must submit a compliance report, sworn under penalty of perjury, in which Respondent must: (1) 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; (2) identify all of Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (3) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales; (4) describe in detail whether and how Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes Respondent made to comply with the Order; and (5) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.
- B. For 15 years after the issuance date of this Order, Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following: (1) any designated point of contact; or (2) the structure of 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.
- C. Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against 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.

- F. 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 Cowboy AG LLC, Docket No. C-4639.*

VI.

IT IS FURTHER ORDERED that Respondent must create certain records for 15 years after the issuance date of the Order, and retain each such record for 5 years. Specifically, Respondent, for any business that Respondent is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. Accounting records showing the revenues from all goods or services sold;
- 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 or records of all written consumer complaints concerning the subject matter of the Order, 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. All materials that were relied upon in disseminating the representation;
- F. All evidence in its possession or control that contradicts, qualifies, or calls into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations;
- G. For 5 years from the date received, copies of all subpoenas and other communications with law enforcement, if such communication relates to Respondent's compliance with this Order;
- H. For 5 years from the date created or received, all records, whether prepared by or on behalf of Respondent, that tend to show any lack of compliance by Respondent with this Order; and
- I. All records necessary to demonstrate full compliance with each Provision of this Order, including all submissions to the Commission.

VII.

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

- A. Within 10 days of receipt of a written request from a representative of the Commission, 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 Respondent. Respondent must permit representatives of the Commission to interview anyone affiliated with Respondent who has agreed to such an interview. The interviewee may have counsel present.
- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondent or any individual or entity affiliated with Respondent, 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.

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 January 4, 2038, 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; and
- B. 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.

Donald S. Clark
Secretary

SEAL:
ISSUED: January 4, 2018