

**Consumer Protection for Auto Dealers:
*Most of it is Common Sense***

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Good morning. I'm delighted to be here today to speak to the NIADA membership. I had the privilege of participating in a NIADA conference two years ago and it's good to be back.

Auto dealers are important to the FTC because they (you) are important to consumers. An auto purchase is the second biggest financial transaction for many consumers, behind purchasing a home. Having access to a motor vehicle is essential to many consumers' daily lives. And because of the substantial expense involved, most consumers seek to lease or finance the purchase of their cars. For many decades, the FTC has been committed to protecting consumers in connection with these important transactions.

NIADA plays a key role in educating its members about regulatory and enforcement developments affecting the auto industry. NIADA's code of ethics includes many of the same principles addressed in the FTC's business guidance and enforcement actions. And NIADA's Used Car Industry Report provides useful information for anyone who wants to track developments in this industry. The FTC sees NIADA as a true partner in getting the message out about good business practices in this area.

One example of this partnership harkens back to the late 1990s, when we revised and distributed – with NIADA's help – our industry publication explaining dealers'

responsibilities for complying with the Used Car Rule. I hope that the FTC can continue to work closely with NIADA and its members in the coming years.

My aim today is to provide you with a brief overview of the FTC's consumer protection work involving auto dealers. I'll first address the FTC's legal authority in this space and then move to our recent enforcement activities involving dealers. Then I'll briefly touch on the resources we provide to assist with compliance, since that's such a big part of what NIADA does. Finally, I'll leave time for questions.

I. The FTC's Jurisdiction and Authority

Many of you are familiar with the FTC, but let me do a quick FTC 101 for those that aren't.

The FTC accomplishes its mission to protect consumers in a number of ways, including by enforcing various consumer protection laws; holding workshops and issuing reports on issues of concern; providing guidance to businesses and consumers; encouraging self-regulation by industry; and working with partners at other federal and state agencies (particularly the CFPB and the states) to collaborate on enforcement and promote consistent messages. We have broad jurisdiction covering most non-bank entities. In the auto area, this means we have authority over dealers, finance companies, ad agencies, and marketers, among others.

We are first and foremost a law enforcement agency, and the FTC enforces various laws applicable to auto dealers. One of our chief enforcement goals is to level the playing field so bad actors are held responsible and the good guys can emerge as the winners of consumers' trust. Our bread and butter authority is Section 5 of the FTC Act,

which prohibits unfair and deceptive trade practices in or affecting commerce. The FTC Act is flexible by design, and we've used our authority to challenge a wide range of practices related to financial products and services, consumer privacy and data security, and many other consumer protection areas.

We also enforce various sector-specific laws applicable to the auto industry, including the Truth in Lending Act (TILA), Consumer Leasing Act (CLA), Equal Credit Opportunity Act (ECOA), Fair Debt Collection Practices Act (FDCPA), Fair Credit Reporting Act (FCRA), and Gramm-Leach-Bliley Act (GLBA). And as you well know, we enforce the Used Car Rule, which requires the familiar windshield stickers that give consumers critical information about warranties and other important terms of sale.

Finally, the Dodd-Frank Act, enacted in 2010, made the FTC the primary federal enforcement agency for many auto dealers. Under Dodd-Frank, the FTC has exclusive jurisdiction over dealers that routinely assign financing to third parties. We have concurrent jurisdiction with the CFPB over other dealers, such as "buy here, pay here" dealers, or dealers providing in-housing financing or no financing. Notably, Dodd Frank gave us rulemaking authority to address unfair or deceptive practices related to the sale, financing, or leasing of automobiles. To date, we have not exercised this authority.

That sounds like a lot of laws and regulations. And I'll admit, you're an industry that seems to be stuck with us. But while these laws and rules contain various context-specific requirements, they share some basic and common-sense bottom lines: Tell the truth. Keep the promises and deals you've made with your customers. Give them the key information they need to make purchasing, borrowing, leasing, and other important

decisions. And deal with them fairly as individuals and as customers, including in how you handle their sensitive personal information.

II. Recent FTC activities

With that background in mind, I'd like to talk about some of the FTC's recent activities related to auto dealers. The advertising, sale, and financing of motor vehicles has been a long-time area of focus for the FTC, and you may have noticed a fair amount of activity related to dealers in recent years. This area continues to be an FTC priority – again because having a car, and being able to afford a car, is so important to consumers so that they can get to work, to school, and to the doctor, and pick up their kids.

I'm going to talk this morning about three particular areas of concern in your industry – auto advertising, auto lending and loan servicing, and protecting the privacy, security, and accuracy of sensitive data that dealers routinely collect from customers.

Auto Advertising

As you may recall, following passage of Dodd Frank, the FTC undertook a comprehensive effort to gather information on consumer protection issues that may arise in the sale, financing, or leasing of motor vehicles. We held a series of roundtables – in Detroit, San Antonio, and Washington DC – in order to hear directly from stakeholders on a range of issues, including dealer advertising, leasing, fair lending, credit approval, payment and locator devices, consumer privacy, and concerns impacting military consumers. We also sought written comment from interested parties – and received 100 comments. Several areas of concern emerged, including product add-ons, yo-yo financing, payment packing, credit insurance, and dealer markups.

One of the primary concerns raised at the roundtables was deceptive advertising by dealers. We heard that loud and clear, and we also see it every day in the papers, online, on the radio, and on TV. So over the past three years, the FTC has brought a number of cases against dealerships for statements in ads that simply weren't true or were designed to lure consumers into dealerships using bait-and-switch tactics.

For instance, in 2012, we settled charges against five dealerships that allegedly offered deceptive "pay off your trade" promotions on their websites and on sites such as YouTube. Our cases alleged that the dealers claimed that they would pay off the consumer's trade, no matter what consumers owed. In fact, the dealers rolled the negative equity into a new loan, or in one case, made the consumer pay out of pocket. The orders in these cases prohibit the dealers from making misrepresentations about paying consumers' loan balances or about the costs and terms of financing or leasing a vehicle.

In case you want to look at these cases on our website, they relate to Billion Auto in South Dakota, Frank Myers AutoMaxx in North Carolina, two Hyundai dealers in Connecticut, and Ramey Motors in West Virginia.

The following year, we settled complaints against two dealerships – Timonium Chrysler in Maryland, and Ganley Ford in Cleveland – for allegedly making deceptive statements regarding pricing, discounts and rebates. In one case, the dealer's ads touted specific Internet prices and dealer discounts but failed to disclose that the discounts required consumers to qualify for rebates that generally were not available to them. For

example, consumers had to be a member of the military or a recent college graduate, or had to have a bank account at a particular bank.

In the other case, the dealership advertised discounts on vehicles but failed to disclose that the discounts generally only applied to the more expensive models of the vehicles. The settlements prohibit the dealers from advertising discounts or prices unless the ads clearly disclose any qualifications or restrictions.

And earlier this year, we announced what may be our biggest auto initiative to date – “Operation Steer Clear” – a nationwide law enforcement sweep against ten dealers, focusing on deceptive ads for the sale, financing, and leasing of their cars. We alleged that the dealers used a variety of deceptive and misleading claims in their print, Internet, and video ads, both in Spanish and English, to get consumers into their showrooms.

Some of these dealers ran ads that trumpeted a low purchase price, but hid a significant down payment – often \$5,000 – or other up-front fees in the fine print.

Others ran ads with deceptive promises that you could finance a vehicle with low monthly payments, but buried a critical detail – that these “low payments” were teaser rates that would last for just a few months of the financing period. In fact, the monthly payment amount would rise significantly afterward – to over \$500 in one example.

Ads for another dealer promised low monthly payments, but hid in fine print that a balloon payment of more than \$10,000 would be due at the end of the financing term.

We allege that ads for yet another group made deceptive lease claims of “\$0 down.” But contrary to that claim, there were fees, down payments, and taxes – in one instance totaling almost \$5,000 – buried in the fine print.

Finally, we alleged that one dealer went so far as to use a deceptive sweepstakes promotion to lure people into its showrooms. The company mailed promotional fliers with headlines that the reader would win a substantial prize if a scratch-off matched the winning prize number. Of the 30,000 fliers they mailed out, all but three had scratch-off numbers matching the numbers for prizes valued at \$1,000; \$5,000; or \$25,000. But when people went to the dealership to claim their prize, they learned that they hadn't won anything. In fact, not a single consumer won any of the listed prizes.

All of these ads were attempts to get people in the door with misleading promises about the price of the deal. And we allege that all of these ads violated federal law.

The orders in these cases bar the dealerships from misrepresenting the cost of leasing or purchasing a vehicle with financing – or any other material fact about the price, sale, financing, or leasing of a vehicle – in any of their ads. In the case involving the deceptive sweepstakes, the order also prohibits misrepresenting material terms of any prize, sweepstakes, or other incentive.

We'd like to be able to declare victory over deceptive auto ads but alas, we continue to see them, and continue to have serious concerns about them. Expect more enforcement in the coming months in this important area. And please note that, to the extent you advertise your cars through apps or mobile websites, all of the same consumer protection rules apply.

Auto Lending and Servicing

Another recent focus for the FTC is auto lending and servicing. Our activity in this area doesn't directly involve dealers – so you may be thinking, “pew, that's not us”

– but it involves companies that you may deal with so I want to address the FTC’s concerns in this area. You may also be happy to see we’re not just picking on dealers!

This past May, we entered into a settlement with a national subprime auto lender – Consumer Portfolio Services (CPS) – alleging a bevy of law violations related to its lending, servicing, and collection of many thousands of consumer loans. As part of the settlement, CPS agreed to pay more than \$5.5 million in consumer refunds and civil penalties. Our charges in the case illustrate many of the things auto lenders and services should *not do* – so while our press release isn’t War and Peace, it’s a must-read for member of the auto industry. Among the FTC’s many allegations are that the company:

- Misrepresented the fees that consumers owed in collection calls and monthly statements
- Improperly assessed and collected fees, sometimes by making unauthorized debits from consumers’ accounts
- Unilaterally modified contracts by, for example, increasing principal balances
- Failed to disclose the financial effects of loan extensions
- Misrepresented that consumers must use particular payment methods requiring service fees
- Misrepresented that the company audited and verified consumer account balances
- Improperly disclosed the existence of debts to third parties and sometimes harassed those third parties
- Called consumers at work when not permitted or inconvenient, and often disguised who it was by deceptively manipulating Caller ID
- Falsely threatened car repossession, and

- Failed to investigate consumer disputes about the accuracy of information submitted to credit bureaus, thus potentially damaging consumers' credit histories.

The order requires the company to stop these practices going forward. And the company also agreed to refund or adjust 128,000 consumers' accounts for more than \$3.5 million for its deceptive practices, and to pay another \$2 million in civil penalties to settle charges that the company violated the FDCPA and the FCRA. These were serious violations and there are serious consequences.

Data Privacy, Security, and Accuracy

The third concern I want to highlight relates to the privacy, security, and accuracy of the sensitive personal information dealers routinely collect from its customers. As you may know, protecting consumers' personal information is a top priority at the FTC, and several laws that the Commission enforces in this area – the FTC Act, GLBA, and the FCRA – apply to auto dealers.

Many of our concerns in this area are pretty basic. When dealers collect sensitive data, they need to protect it so it doesn't fall into the hands of identify thieves or other wrongdoers. Our recent case against Georgia-based Franklin's Budget Car Sales illustrates this basic point. We alleged that the company's poor security procedures allowed peer-to-peer (P2P) software to be installed on its systems. As a result, the sensitive personal information of 95,000 Franklin customers was uploaded to the P2P network – a network specifically designed to allow sharing and access to data – and exposed to anyone using the P2P network. The data that was compromised included names, addresses, Social Security Numbers, dates of birth, and driver's license numbers.

We alleged that these practices violated the GLB Safeguards Rule as well as the FTC Act. Franklin also allegedly failed to provide annual privacy notices and provide a mechanism by which consumers could opt out of information sharing with third parties, in violation of the GLB Privacy Rule.

Other privacy concerns are more complicated and relate to the rapid technological changes we are seeing across the marketplace. Today, data is collected from consumers wherever they go, often invisibly and without their knowledge or consent. As they browse online. As they communicate with friends on their mobile device. As they browse in stores, do their daily workout, and even walk down the street. And companies develop, or purchase from data brokers, detailed profiles of consumers that maybe used to determine whether to provide consumers with credit or other offers.

In the auto industry in particular, tracking devices may be used to monitor the location of rented and leased cars. And Smart Cars, as wonderful as they are, take all of this tracking and personalization to a new level. Some of this may not involve your own particular company now, but it's coming.

There's so much to discuss here and these are issues we are actively addressing right now in our privacy program. But suffice to say, many of the same basic principles that apply to your brick-and-mortar dealership apply to online data collection and Smart Cars too. Tell the truth. Keep your promises. Give consumers key information and choices about what you are doing with their data. Provide security protections for sensitive consumer data, and don't collect or store more data than you need. And just use common sense in order to deal with your customers fairly.

For more information about how these issues are being addressed in your industry, we have some resources I can point you to. Last month, for example, we filed a comment on the National Highway Traffic Safety Administration's rulemaking related to vehicle-to-vehicle (V2V) communications. Our comment discussed the privacy and security issues raised by this technology and commended NHTSA for its efforts to address these issues in its rulemaking.

We will also shortly be issuing a report on the FTC's recent workshop on the Internet of Things. One of the main topics discussed at the workshop was how to address the privacy and security concerns raised by Connected Cars. This issue may be of greatest relevance to auto manufacturers. However, you're the guys dealing with consumers every day, so you may want to be in position to respond to consumers' questions and concerns about these practices. I'll also note that the manufacturers themselves are developing standards for addressing these issues, so I encourage you to keep an eye out for announcements in this area.

III. Compliance

Finally, while we're on the topic of available resources, I want to highlight the educational materials that we regularly make available to aid businesses with compliance and help consumers protect themselves from harmful practices. Business guidance and consumer education are a core part of our mission. For example, we have materials for business about how to ensure your ads are truthful and not misleading, how to make effective disclosures in digital advertising, and how to advertise consumer leases. I urge you to visit our Business Center site at www.business.ftc.gov to access these materials.

We also provide information to educate consumers, such as guides to assist them with buying cars, spotting deceptive claims in auto ads, and avoiding loan modification scams. You can access these publications at www.consumer.ftc.gov.

IV. Conclusion

In closing, I want to emphasize that while I recognize that there are many federal laws that apply to your industry, most of what is required is common sense and consistent with your business goals. Be honest. Be fair. Treat your customers like you want them back. And as I said earlier, our enforcement work in this area levels the playing field for the good guys, so we view the FTC's goals as very much in line with NIADA's.

I want to mention one final item before I take your questions: I know you are going to ask about the Used Car Rule, so let me quickly address what I can without revealing non-public information. As you know, we have underway an ongoing rule review of the Guide, which hadn't been updated since 1995, and some of the issues we've been examining have proved to be controversial and complicated – particularly the issue of whether and how to provide customers with vehicle history information. This is an incredibly important issue for consumers, who don't want to unknowingly purchase a car that was damaged and rehabbed. We will very soon be announcing our next steps in this area – stay tuned.

Thanks again for having me. I'm happy to answer questions.