



Consumer Protection/FTC ADVISORY ■

OCTOBER 24, 2022

FTC Settles with Auto Dealer over Claims of Deceptive and Discriminatory Sales Practices

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On October 18, 2022, the Federal Trade Commission (FTC) filed a [four-count complaint](#) and [stipulated order](#) in the U.S. District Court for the District of Maryland against multistate auto dealer Passport Automotive Group Inc., seven dealerships owned by Passport, and the president and vice president of the organization individually, alleging the defendants charged consumers unnecessary fees and discriminated against Black and Latino consumers by charging them higher financing costs and more fees than non-Latino white consumers. The complaint alleged violations of the Equal Credit Opportunity Act (ECOA) and the FTC Act. Passport agreed to pay \$3.38 million to settle the allegations and agreed to implement a fair lending program with sharp limits on interest rate markups, among other commitments. The FTC's vote to approve the settlement was 4–1, with Commissioner Noah Phillips dissenting.

The FTC's Complaint

The FTC alleged that Passport advertised “inspected, reconditioned, or certified vehicles” at certain prices, but then added on extra certification, reconditioning, or inspection fees that dealership employees told consumers they were required to pay. These add-on fees added hundreds or thousands of dollars to the cost of the vehicles and either increased the price over what was advertised or negated any discounts the consumers negotiated.

The FTC also alleged that Passport violated both the FTC Act and ECOA by discriminating against Black and Latino borrowers through the company's financing markup practices. The Passport policy was to charge all consumers a standard interest-rate markup of 200 basis points, or 2%. However, the policy permitted employees to reduce or eliminate the markup for certain discretionary reasons, such as a monthly payment constraint or if the consumer states they have a competing credit offer. According to the complaint, Black and Latino borrowers paid on average \$291 and \$235, respectively, more in interest than non-Latino white consumers, not based on the borrowers' underwriting risk or credit characteristics. The FTC alleges that Passport was notified by a finance company of a statically significant difference in markup rates charged to Black borrowers at two separate dealerships, but Passport took no action to address this markup disparity.

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Count I alleged Passport misrepresented the prices of specific vehicles in violation of the FTC Act, since the added fees increased the vehicle cost above the advertised prices. Count II alleged Passport misrepresented that fees for inspecting, reconditioning, and certifying vehicles were mandatory when, in fact, they were not, in violation of the FTC Act. Count III alleged that Passport engaged in an unfair act or practice in violation of the FTC Act by imposing higher costs on Black and Latino consumers through increased financing costs and more added fees. Count IV alleged Passport imposed higher costs on Black and Latino credit applicants than similarly situated non-Latino white applications, in violation of ECOA.

Relief

The consent order included \$3.38 million in monetary relief to refund harmed consumers. The consent order also included cease-and-desist provisions prohibiting Passport from misrepresenting costs or terms to buy, lease, or finance a car, or whether a fee or charge is optional. In addition, the order requires Passport to obtain each borrower's "express informed consent" before imposing fees.

As part of the settlement, Passport must implement a fair lending program, including designating a fair lending compliance officer and training employees on ECOA and fair lending obligations, as well as establishing written guidelines for fee assessments. The consent order also requires Passport to revise its dealer markup practices, requiring each Passport dealership to either charge no financing markup or charge the same markup rate to all consumers (up to a maximum of 100 basis points).

Commissioners' Statements

Commissioner Noah Phillips dissented from the order based on the inclusion of discrimination allegations alleged under the FTC Act. In his statement, Phillips argued that while such allegations were appropriate to allege under ECOA, the FTC exceeded its authority in bringing this claim under the FTC Act because that statute is not an antidiscrimination statute and, moreover, the conduct alleged was already covered by the parallel ECOA claim. Commissioner Christine Wilson issued a separate statement in which she joined in Phillips's dissent with regards to Count III, and also dissented from including Passport's owner and vice president in the complaint because she did not believe the FTC met the standard for imposing individual liability in this case.

Continued Focus on the Auto Space

The Passport complaint is the latest example of the FTC's focus on alleged deception and related discriminatory lending practices by auto dealerships, following the recent [Napleton Automotive Group](#) and [Bronx Honda](#) enforcement actions. The FTC's focus on auto dealerships includes a [notice of proposed rulemaking for the Motor Vehicle Dealers Trade Regulation Rule](#), issued on June 23, 2022, which addresses so called "junk fees" and "bait-and-switch advertising" in the sale of motor vehicles. The proposed rule would make it a violation of the FTC Act for a motor vehicle dealer to (1) make any misrepresentation in the purchasing, financing, or leasing of a vehicle; (2) fail to make clear and conspicuous disclosures about the offering price, optional add-on products and services, the total number of payments, and the total amount the consumer will pay; and (3) charge consumers for add-on products that provide no benefit, optional add-on products without presenting specific disclosures, or any item without obtaining a consumer's express, informed consent for the charge. The comment period on the proposed rule closed on September 12, 2022. There is no current timeline for when a final rule might be issued.

Key Takeaways

While the outcome of the FTC's rulemaking process is uncertain, with its three-commissioner Democratic majority in place, it is clear the FTC will continue to remain focused on deception and discriminatory lending practices in the automotive space. Companies that offer financing should ensure they install a fair lending program with robust oversight to ensure compliance. In addition, companies should ensure that all fees are clearly and conspicuously disclosed to the consumer, including whether or not the fee is required as a condition of purchase.

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