

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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| In The Matter of |) | |
| |) | |
| VOLKSWAGEN OF AMERICA, INC., |) | FILE NO. 972 3141 |
| a corporation. |) | |
| |) | AGREEMENT CONTAINING |
| |) | CONSENT ORDER |

The Federal Trade Commission ("Commission") has conducted an investigation of certain acts and practices of Volkswagen of America, Inc., a corporation ("proposed respondent"). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Volkswagen of America, Inc., by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent Volkswagen of America, Inc. is a New Jersey corporation with its principal office or place of business at 3800 Hamlin Road, Auburn Hills, Michigan 48326.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondent waives:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of sixty (60) days and information about it publicly

released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent by any means specified in Section 4.4 of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the draft complaint and consent order. It understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

1. "Clearly and conspicuously" as used herein shall mean: 1) video or written disclosures must be made in a manner that is readable and understandable to a reasonable consumer and 2) audio or oral disclosures must be made in a manner that is audible and understandable to a reasonable consumer.

2. "Total amount due at lease signing or delivery" as used herein shall mean the total amount of any initial payments required to be paid by the lessee on or before consummation of the lease or delivery of the vehicle, whichever is later. The total amount due at lease signing or delivery may 1) exclude third-party fees, such as taxes, licenses, and registration fees, and disclose that fact or 2) provide a total that includes third-party fees based on a particular state or locality as long as that fact and the fact that fees may vary by state or locality are disclosed.

3. Unless otherwise specified, "respondent" as used herein shall mean Volkswagen of America, Inc., its successors and assigns, and its officers, agents, representatives, and employees.

4. "Commerce" as used herein shall mean as defined in Section 4 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to aid, promote, or assist, directly or indirectly, any consumer lease in or affecting commerce, as "advertisement" and "consumer lease" are defined in Section 213.2 of revised Regulation M, 61 Fed. Reg. 52,246, 52,258 (Oct. 7, 1996) and 62 Fed. Reg. 15,364 (April 1, 1997) (to be codified at 12 C.F.R. § 213.2) ("revised Regulation M"), as amended, shall not, in any manner, expressly or by implication:

A. Misrepresent the total amount due at lease signing or delivery, the amount down, and/or the downpayment, capitalized cost reduction, or other amount that reduces the capitalized cost of the vehicle (or that no such amount is required).

B. Make any reference to any charge that is part of the total amount due at lease signing or delivery or that no such charge is required, not including a statement of the periodic payment, more prominently than the disclosure of the total amount due at lease signing or delivery.

C. State the amount of any payment or that any or no initial payment is required at lease signing or delivery unless all of the following items are disclosed clearly and conspicuously, as applicable:

1. that the transaction advertised is a lease;

2. the total amount due at lease signing or delivery;
3. whether or not a security deposit is required;
4. the number, amount, and timing of scheduled payments; and
5. that an extra charge may be imposed at the end of the lease term in 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 vehicle.

II.

IT IS FURTHER ORDERED that an advertisement that complies with subparagraph I.C. shall be deemed to satisfy the requirements of Section 184(a) of the Consumer Leasing Act, 15 U.S.C. § 1667c(a), as amended by Title II, Section 2605 of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Pub. L. No. 104-208, 110 Stat. 3009, 3009-473 (Sept. 30, 1996) ("revised CLA"), as amended, and Section 213.7(d)(2) of revised Regulation M, 61 Fed. Reg. at 52,261 and 62 Fed. Reg. at 15,368 (to be codified at 12 C.F.R. § 213.7(d)(2)), as amended.

III.

IT IS FURTHER ORDERED that if the revised CLA, as amended, or revised Regulation M, as amended, are amended in the future to alter definition 2 of this order ("total amount due at lease signing or delivery") or to require or permit advertising disclosures that are different from those set forth in subparagraphs I.B. or I.C. of this order, then the change or changes shall be incorporated in subparagraph I.B., subparagraph I.C., and/or definition 2 for the purpose of complying with subparagraphs I.B. and I.C. only, as appropriate; provided however, that all other requirements of this order, including definition 1 ("clearly and conspicuously"), will survive any such revisions.

IV.

IT IS FURTHER ORDERED that respondent Volkswagen of America, Inc., and its successors and assigns, shall, for five (5) years after the date of service of this order, maintain and upon request make available to the Commission for inspection and copying all records that will demonstrate compliance with the requirements of this order.

V.

IT IS FURTHER ORDERED that respondent Volkswagen of America, Inc., and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, managers, employees, agents, and representatives having responsibilities with respect to the subject matter of this order and to all advertising agencies; and shall secure from each such person or entity a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel or entities within thirty (30) days after the date of service of this order, and to such future personnel or entities within thirty (30) days after the person or entity assumes such position or responsibilities.

VI.

IT IS FURTHER ORDERED that respondent Volkswagen of America, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not necessarily limited to dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VII.

IT IS FURTHER ORDERED that respondent Volkswagen of America, Inc., and its successors and assigns, shall within one hundred and twenty (120) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

VIII.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a

complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

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 Part 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 deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this _____ day of _____, 1997.

FEDERAL TRADE COMMISSION

VOLKSWAGEN OF AMERICA, INC.

ROLANDO BERRELEZ

By: _____
DEBRA L. KINGSBURY
Counsel
Volkswagen of America, Inc.

SALLY FORMAN PITOFISKY
Counsel for the Federal Trade
Commission

APPROVED:

DAVID MEDINE
Associate Director
Division of Credit Practices

JOAN Z. BERNSTEIN
Director
Bureau of Consumer Protection

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In The Matter of)
)
VOLKSWAGEN OF AMERICA, INC.,) DOCKET NO.
a corporation.)
)
)

COMPLAINT

The Federal Trade Commission, having reason to believe that Volkswagen of America, Inc., a corporation ("respondent" or "Volkswagen"), has violated the provisions of the Federal Trade Commission Act, 15 U.S.C. §§ 45-58, as amended, and 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 it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Volkswagen of America, Inc. is a New Jersey corporation with its principal office or place of business at 3800 Hamlin Road, Auburn Hills, Michigan 48326. Respondent offers Volkswagen and Audi vehicles for sale or lease to consumers.
2. 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. 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.
4. Respondent has disseminated or has caused to be disseminated consumer lease advertisements ("lease advertisements") for Volkswagen and Audi vehicles, including but not necessarily limited to the attached Volkswagen Exhibits A - D. Volkswagen Exhibits A - D are television lease advertisements (attached in video and storyboard format). The advertisements contain the following statements:
 - A. [Video:] "Golf K2 Limited Edition
\$215 a month 48 month lease"

[The advertisement contains the following lease disclosure in black fine print superimposed on a white background and accompanied by background sound:

"\$214.83 first month's payment, \$300 down payment, \$225.00 refundable security deposit and \$450 acquisition fee due at lease inception. Monthly payments total \$10,311.84. . . . Requires dealer discount of \$650 which could affect final negotiated transaction. Price includes all costs to be paid by a consumer except for other options, dealer charges, licensing costs, registration fees and taxes. Lessee responsible for insurance. At lease end, lessee responsible for \$0.10/mile over 48,000, for damage and excessive wear. Purchase option at lease end for \$7,504.80. Dealers set actual prices. . . ."

The fine print is displayed on one screen of 12 lines, appearing for approximately 4 seconds.](Volkswagen Exhibit A).

B. [Video:]

"219* a month
The Jetta GL Lease"

[The advertisement contains the following lease disclosure in black fine print superimposed on a white background and accompanied by background sound:

"\$218.81 first month's payment, \$300 down payment, \$225.00 refundable security deposit and \$450 acquisition fee due at lease inception. Monthly payments total \$10,502.88. . . . 48-month closed-end lease offered to qualified customers by VW Credit, Inc. through participating dealers. . . . Requires dealer discount of \$750 which could affect final negotiated transaction. Price includes all costs to be paid by a consumer except for other options, dealer charges, licensing costs, registration fees and taxes. Lessee responsible for insurance. At lease end, lessee responsible for \$0.10/mile over 48,000 miles, for damage and excessive wear. Purchase option at lease end for \$8,371.65. Dealers set actual prices. © 1997 Volkswagen.

See dealer for details

The fine print is displayed on one screen of 12 lines, appearing for approximately 4 seconds.](Volkswagen Exhibit B).

C. [Video:] "The Audi A6 quattro
Lease for \$429 mo."

[The advertisement contains the following lease disclosure in white fine print superimposed on a varied-color background and in black print superimposed on a white background and accompanied by background sound:

39 mo. closed-end lease offered to qualified customers by VW Credit, Inc. through participating dealers through 3/31/97. \$1,999 down pmt., \$429 1st month's pmt.,

\$450 ref. sec. dep. and \$450 acq. fee due at lease inception. Price includes all costs to be paid by a consumer, except licensing, registration, taxes, dlr. prep., and other options. Lessee responsible for insurance. Mo. pmts. total \$16,731. At lease end, lessee responsible for \$0.15 mile over 32,500 for damage & excess wear & for a \$250 disposal fee. Option to purchase at lease end for \$20,583 in example shown.

The fine print is displayed on three screens, each screen contains 4 lines, and the three screens appear together for approximately 7 seconds.] (Volkswagen Exhibit C).

- D. [Video:] "The Audi A6.
Only Quattro. Only from Audi.
Lease for \$439 mo./\$1,999 down"

[The advertisement contains the following lease disclosure in white fine print superimposed on a varied-color background or gray background and accompanied by background sound:

"39 mo. closed-end lease offered to qualified customers by VW Credit, Inc. through participating dealers through 01/02/97. \$1,999 down pmt., \$439 1st month's pmt., \$450 ref. sec. dep. and \$450 acq. fee due at lease inception. Price includes all costs to be paid by a consumer, except for licensing, registration, taxes, dlr. prep., and other options. Lessee responsible for insurance. Mo. pmts. total \$17,121. At lease end, lessee responsible for \$0.15 mile over 32,500 for damage & excess wear & for a \$250 disposal fee. Option to purchase at lease end for \$21,666 in example shown.

The fine print is displayed on three screens, each screen contains 4-5 lines, and the three screens appear together for approximately 7 seconds.] (Volkswagen Exhibit D).

Federal Trade Commission Act Violations
COUNT I: Misrepresentation in Lease Advertising

5. In lease advertisements, including but not necessarily limited to Exhibit 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 limited to the monthly payment amount and the amount stated as "down."

6. In truth or in fact, consumers cannot lease the advertised vehicles at the terms prominently stated in the advertisements, including but not limited to the monthly payment amount and the amount stated as "down." Consumers must also pay additional fees beyond the prominently stated terms, such as the first month's payment, a security deposit, and an acquisition fee, at lease inception. Therefore, respondent's representation as alleged in Paragraph 5 was, and is, false or misleading.

7. 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: Failure to Disclose Adequately in Lease Advertising

8. In its lease advertisements, including but not necessarily limited to 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. These advertisements do not adequately disclose additional terms pertaining to the lease offer, such as the total amount of any payments due at lease inception. The existence of these additional terms would be material to consumers in deciding whether to lease a Volkswagen or Audi vehicle. The failure to disclose adequately these additional terms, in light of the representation made, was, and is, a deceptive practice.

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 III: Consumer Leasing Act and Regulation M Violations

10. Respondent's lease advertisements, including but not necessarily limited to Volkswagen Exhibits A - D, state a monthly payment amount but fail to disclose clearly and conspicuously certain additional terms required by the Consumer Leasing Act and

Regulation M, including one or more of the following terms: that the transaction advertised is a lease; the total amount of any payments due at lease inception; whether or not a security deposit is required; and the number, amount, and timing of scheduled payments.

11. The lease disclosures in respondent's television lease advertisements, including but not necessarily limited to Volkswagen Exhibits A - D, are not clear and conspicuous because they appear on the screen in very small type, for a very short duration, and/or accompanied by background sounds and images.

12. Respondent's practices violate Section 184 of the Consumer Leasing Act, 15 U.S.C. § 1667c, as amended, Section 213.5(c) of Regulation M, 12 C.F.R. § 213.5(c), and Section 213.7(d) of revised Regulation M, 61 Fed. Reg. 52,246, 52,261 (October 7, 1996) and 62 Fed. Reg. 15,364, 15,368 (April 1, 1997)(to be codified at 12 C.F.R. § 213.7(d)), as amended.

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

By the Commission.

Donald S. Clark
Secretary

SEAL:

[Exhibits A-D (text versions) attached to paper copies of complaint, but not available in electronic form.]