

## Deceptive Advertising: FTC Proposed Settlement Requires Spanish-language TILA Disclosures in Spanish-language Advertising

January 29, 2018 | Nora Udell

Cowboy AG, LLC, a Texas buy-here-pay-here dealer doing business as Cowboy Toyota and Cowboy Scion ("Cowboy"), has agreed to settle Federal Trade Commission ("FTC") charges that it used deceptive advertisements in a regional Spanish-language newspaper. The FTC published a description of the proposed settlement agreement in the Federal Register for public comment on December 8, 2017. The FTC will decide whether to accept the proposed agreement or take other action against Cowboy after it reviews the comments. The comment period closed on January 2, 2018.

The FTC alleged that Cowboy violated Section 5(a) of the Federal Trade Commission Act when it engaged in Spanish-language advertising that misrepresented material terms of the sales and leases it was prepared to offer. The FTC also alleged that Cowboy failed to disclose information required under the advertising rules in the Truth in Lending Act ("TILA") and Consumer Leasing Act ("CLA") and failed to disclose other information clearly and conspicuously, as that term is used by TILA and the CLA.

### *Section 5(a) of the FTC Act Issues*

The FTC alleged that Cowboy's Spanish-language advertisements prominently displayed material sale and lease terms that were not available to customers and that were contradicted by information contained in fine-print English-language disclosures elsewhere in the advertisements. The FTC alleged that the prominently displayed Spanish-language portion of the advertisements conveyed the following information:

- No-downpayment finance options were available to both credit sale and lease customers;
- The low-monthly payments featured in the advertisement were available to both credit sale and lease customers;
- The interest rates, monthly payments, and other terms featured in the advertisements were available to customers with bad credit; and
- The 2016 model year Toyotas featured in the advertisements were available to credit sale customers.

The English-language fine-print portion of the advertisements disclosed that:

- Cowboy required the customer to make a downpayment to qualify for sale financing;
- The low monthly payment options featured in the advertisement were available only to customers who wanted to lease a vehicle;
- Not all of the credit terms featured in the advertisements were available to customers with bad credit; and
- The 2016 model year Toyotas were not available when the advertisements were published in 2017.

### *TILA AND CLA Issues*

The FTC alleged that the advertisements contained certain "trigger terms" under TILA and the CLA but failed to disclose other required information. In some cases, the advertisements contained the required information, but did not disclose it clearly and conspicuously. According to the FTC, placing the required information in fine-print, in much smaller type, at the bottom of the advertisement does not meet the "clear and conspicuous" standard under the advertising rules in TILA or the CLA.

### *The Proposed Settlement Agreement & Foreign Language Disclosures*

Cowboy has agreed to provide accurate information in its advertisements and to comply with TILA and the CLA. Cowboy has also agreed to file compliance reports with the FTC, maintain compliance records for 20 years and file certain reports with the FTC, including notices about changes to its corporate structure that might affect its compliance obligations. The Order sunsets after 20 years.

Cowboy has agreed that when it is required to make any information "clear and conspicuous" under TILA and the CLA, it will ensure that the information is difficult to miss (i.e., easily noticeable) and that it is easily understandable by ordinary consumers, including that its disclosures "must appear in each language in which the representation that requires the disclosure appears." That means that Cowboy will have to provide Spanish-language disclosures in its Spanish-language advertisements.

This foreign language requirement is more aggressive than the standard approach to "clear and conspicuous" in credit sale and lease advertising under TILA and CLA. Although the FTC has consistently included this foreign language requirement in the definition of "clear and conspicuous" in Section 5(a) FTC Act settlements before, this proposed settlement represents an expansion of the foreign language requirement into a settlement that includes TILA and CLA claims. Moreover, it appears that the FTC has announced this broadened "clear and conspicuous" standard through this proposed settlement, instead of through the proper course of notice and comment rulemaking. As the FTC does not have rulemaking authority under TILA (rather that authority rests with the Consumer Financial Protection Bureau), the FTC appears to be doing by enforcement what it cannot do by rulemaking.

The proposed settlement may just be against one Texas dealer, but it could create a potentially wide-ranging TILA/CLA reinterpretation of the "clear and conspicuous" standard in advertising. If you advertise credit terms in a language other than English, the Cowboy settlement reflects the FTC's apparent position that it may be unlawful to provide related information, required by TILA, in English.

You can read more about the proposed settlement agreement [here](#).

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