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Insights

CPFB continues enforcement focus on auto finance industry with action against buy-here-pay-here dealer in late January for TILA and CFPA violations

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The Consumer Financial Protection Bureau (the "CFPB," or the "Bureau") continuing its focus on the auto finance industry, recently announced a Consent Order (available by clicking here), with a small Buy Here Pay Here ("BHPH") auto dealer called Herbies Auto Sales ("Herbies") for a series of federal lending law violations, including engaging in what they labeled as the "Deceptive" practice of concealing the true cost of financing the vehicle being purchased and failing to disclose the dealer mark up on vehicles purchased from auction when sold for more on credit than for cash. The Bureau further asserted that as a result of Herbies sales practices its' consumers were unable to determine the cost of the vehicles they were purchasing as opposed to the cost of the credit they were obtaining, resulting in an "Abusive" practice under federal law. The Consent Order calls for Herbies to pay $700,000 in restitution to harmed consumers, a civil penalty of $100,000, and to provide required disclosures beyond the scope of the requirements under existing federal law as part of an ongoing compliance program.

The CFPB asserted that Herbies violated the Truth in Lending Act ("TILA"), its accompanying Regulation Z ("Reg. Z"), and the Consumer Financial Protection Act of 2010 (the "CFPA") by:

- Failing to accurately disclose finance charges and APR for financing agreements;
- Failing to disclose the cost of a repair warranty as a finance charge;
- Failing to disclose the cost of a GPS payment reminder device as a finance charge;
- Failing to disclose the discount provided to cash customers as a finance charge;
- Advertising a false annual percentage rate; and
- Taking unreasonable advantage of consumers who were unable to protect their interests in selecting and obtaining financing for used car purchases.

Herbies sales practice included requiring all customers who financed vehicles to purchase an automobile repair policy for $1650, and a GPS payment reminder device for $100; however, the lender failed to include charges for these required purchases in the disclosed finance charges. Additionally, Herbies engaged in a practice of only negotiating vehicle prices with cash paying customers, resulting in an effective discount to those customers as compared to financing customers. The CFPB asserted that the resulting lower pricing offered to consumers in a cash transaction as opposed to a financed transaction was a "markup" that should have been disclosed as part of the finance charge under Regulation Z. The Bureau further asserted that Herbies actions of taking "unreasonable advantage of consumers' misunderstanding of the terms of the sale

and the credit offered, and their inability to protect their interests in using or selecting Herbies' auto financing as a result of their use of inaccurate credit terms," was an "Abusive" practice under the CFPA.

In addition to their order of restitution, civil penalty and a series of other compliance requirements, the Bureau also ordered Herbies to provide the following additional written disclosures to consumers prior to or simultaneously to offering a specific vehicle or in any way soliciting a commitment to purchase a specific vehicle:

- The identity of the vehicle by make, model, year, and VIN;
- The duration of the financing agreement;
- The timing, number, and dollar amount of periodic payments;
- The total number of payments that the consumer would need to make in order to acquire full ownership of the vehicle;
- The automobile purchase price if the dealer offers to finance the vehicle;
- The finance charge if the Dealer offer to finance the vehicle purchase;
- An itemization of any ancillary products to be included in the financing transaction, including warranties, payment reminder products, insurance products and any other additional products that are not optional; and
- The APR if the Dealer offers to finance the vehicle purchase.

While the imposition of these added disclosure requirements on Herbies is not legally binding on other Dealers, certainly the BHPH industry should expect the Bureau to attempt to hold them to the same standard.

While some of Herbies' practices may be beyond standard industry practices, the CFPB focus on a perceived markup of vehicle sale price for financed cars as opposed cash purchases should serve notice to all Dealers of the importance of maintaining consistent pricing regardless of the payment method. Similarly, the use of the "Abusive" standard based on confusion created by disclosure violations under Reg. Z should also remind dealers to ensure they carefully comply with the requirement to include required products in the calculation of finance charge for purposes of disclosure.

[1]In the Matter of: Y King S Corp., also doing business as Herbies Auto Sales. Administrative Proceeding File No. 2016-CFPB-0001.
http://files.consumerfinance.gov/f/201601_cfpb_consent-order_y-kings-corp-also-doing-business-as-herbies-auto-sales.pdf
[2]Herbies Auto Sales is a D/B/A for the legal entity, Y King S Corp.
[3]15 U.S.C. § 1601 et. seq.
[4]12 C.F.R. § 1026
[5]12 U.S.C. § 5531, 5536