

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In the Matter of

**FRANK MYERS AUTOMAXX, LLC,
a limited liability corporation.**

FILE NO. _____

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of Frank Myers AutoMaxx, LLC, a limited liability 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 Frank Myers AutoMaxx, LLC, by its duly authorized officers, and counsel for the Federal Trade Commission, that:

1. Frank Myers AutoMaxx, LLC, is a North Carolina limited liability corporation with its principal place of business at 4200 N. Patterson Ave., Winston Salem, NC, 27105.
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 a 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 thirty (30) days and information about it publicly released. The Commission thereafter

may either withdraw its acceptance of this agreement and so notify 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 This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondent, (1)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's address as stated in this agreement by any means specified in Section 4.4(a) 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 this order.
7. Proposed Respondent has read the draft complaint and 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

For the purposes of this order, the following definitions shall apply:

1. "Advertisement" shall mean a commercial message in any medium that directly or indirectly promotes a consumer transaction.
2. "Material" shall mean likely to affect a person's choice of, or conduct regarding, goods or services.
3. "Motor vehicle" shall mean
 - a. any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;

- b. recreational boats and marine equipment;
- c. motorcycles;
- d. motor homes, recreational vehicle trailers, and slide-in campers; and
- e. other vehicles that are titled and sold through dealers.

I.

IT IS HEREBY ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with any advertisement to promote, directly or indirectly, the purchase, financing, or leasing of automobiles, in or affecting commerce, shall not, in any manner, expressly or by implication

- A. Misrepresent that when a consumer trades in a used motor vehicle (“trade-in vehicle”) in order to purchase another motor vehicle (“newly purchased vehicle”), respondent will pay any remaining loan balance on the trade-in vehicle such that the consumer will have no remaining obligation for any amount of that loan; or
- B. Misrepresent any material fact regarding the cost and terms of financing or leasing any newly purchased vehicle.

II.

IT IS FURTHER ORDERED that respondent and its successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

III.

IT IS FURTHER ORDERED that respondent and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated

statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

IV.

IT IS FURTHER ORDERED that respondent and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a 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. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC, 20580. The subject line must begin: FTC v. Frank Myers AutoMaxx.

V.

IT IS FURTHER ORDERED that respondent and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of their own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports.

VI.

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;
- 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 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 of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this _____ day of _____, 2011.

FRANK MYERS AUTOMAXX, LLC

By: _____
TRACY E. MYERS
Owner and Manager

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Hendrick, Bryant, Nerhood & Otis, LLP
Attorney for respondent

ROBIN THURSTON
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APPROVED:

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