

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Attorney for Plaintiffs

RECEIVED & FILED  
SUPERIOR COURT  
2015 JUN 15 PM 2:50  
CIVIL DIVISION

By: Alina Wells (029512006)  
Deputy Attorney General  
[REDACTED]

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION, SUSSEX COUNTY  
DOCKET NO.: SSX - C - 15 - 15

JOHN J. HOFFMAN, Acting Attorney  
General of the State of New Jersey, and  
STEVE C. LEE, Acting Director of the New  
Jersey Division of Consumer Affairs,

Plaintiffs,

v.

JDN AA, LLC d/b/a Audi Newton and d/b/a  
Volkswagen Newton; JANE and JOHN  
DOES 1-10, individually and as owners,  
officers, directors, shareholders, founders,  
managers, agents, servants, employees,  
representatives and/or independent  
contractors of JDN AA, LLC d/b/a Audi  
Newton and d/b/a Volkswagen Newton; and  
XYZ CORPORATIONS 1-10,

Defendants.

Civil Action

COMPLAINT

Plaintiffs John J. Hoffman, Acting Attorney General of the State of New Jersey ("Attorney General"), with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, and Steve C. Lee, Acting Director of the New Jersey Division of Consumer Affairs

("Director"), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, (collectively, "Plaintiffs"), by way of this Complaint state:

### PRELIMINARY STATEMENT

1. Consumers are particularly vulnerable to deceptive advertising and sales practices when purchasing a used motor vehicle. Most do not have independent access to information, among other things, concerning the condition and prior use of used motor vehicles offered for sale. The State of New Jersey ("State") has recognized the dangers of consumers being exploited by deceptive sales practices and has enacted a comprehensive set of statutes and regulations aimed at ensuring that consumers have access to all relevant information when purchasing a used motor vehicle.

2. At all relevant times, JDN AA, LLC d/b/a Audi Newton and d/b/a Volkswagen Newton ("JDN" or "Defendant") has been engaged in the retail sale of new and used motor vehicles to consumers in the State and elsewhere through the internet and at its dealership location. In so doing, Defendant has failed to comply with the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), the Regulations Governing Motor Vehicle Advertising Practices, N.J.A.C. 13:45A-1.1 et seq. ("Motor Vehicle Advertising Regulations"), the Used Car Lemon Law, N.J.S.A. 56:8-67 et seq. ("UCLL"), and the Used Car Lemon Law Regulations, N.J.A.C. 13:45A-26F.6(a)-(b)(1) ("UCLL Regulations") by, among other things: (a) failing to provide vehicle license plates, title and registration prior to the expiration of the temporary title and/or registration; (b) failing to make required disclosures in advertising; and (c) failing to submit the fees required by the UCLL. The Attorney General and Director submit this Complaint to halt Defendant's deceptive business practices and to prevent additional consumers from being harmed.

### PARTIES AND JURISDICTION

3. The Attorney General is charged with the responsibility of enforcing the CFA, the Motor Vehicle Advertising Regulations, the UCLL and UCLL Regulations. The Director is charged with the responsibility of administering the CFA, the Motor Vehicle Advertising Regulations, the UCLL and the UCLL Regulations on behalf of the Attorney General.

4. By this action, Plaintiffs seek injunctive and other relief for violations of the CFA, the Motor Vehicle Advertising Regulations, the UCLL and UCLL Regulations. Plaintiffs bring this action pursuant to their authority under the CFA, specifically N.J.S.A. 56:8-8, N.J.S.A. 56:8-11, N.J.S.A. 56:8-13 and N.J.S.A. 56:8-19. Venue is proper in Sussex County, pursuant to R. 4:3-2, because it is a county in which Defendant has advertised and/or conducted business and maintained a principal place of business.

5. JDN is a Domestic Limited Liability Company established in the State on January 7, 2010. At all relevant times, JDN has maintained a business address of 34 Hampton House Road, Newton, New Jersey 07083.

6. As of March 12, 2010, JDN was authorized to conduct business in the State under the alternate name of Audi Newton.

7. The registered agent in the State for JDN is JDN AA, LLC, which maintains a registered agent office address of 34 Hampton House Road, Newton, New Jersey 07083.

8. Upon information and belief, John and Jane Does 1 through 10 are fictitious individuals meant to represent the owners, members, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of JDN who have been involved in the conduct that gives rise to this Complaint, but are heretofore

unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

9. Upon information and belief, XYZ Corporations 1 through 10 are fictitious corporations meant to represent any additional corporations who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

**GENERAL ALLEGATIONS COMMON TO ALL COUNTS**

**A. Defendant's Business Generally:**

10. Upon information and belief, since at least January 2010, Defendant has operated a motor vehicle dealership in the State and has engaged in the retail sale of new and used motor vehicles.

11. At all relevant times, Defendant has maintained a website at [www.newtonaudivw.com](http://www.newtonaudivw.com) ("JDN Website").

12. At all relevant times, Defendant has advertised, and otherwise offered new and used motor vehicles for sale to consumers in this State and elsewhere through various media, including, but not limited to, the JDN Website.

13. Upon information and belief, Defendant customarily accepts trade-in vehicles from consumers as part of its sales transactions.

**B. Defendant's Advertisement, Offering for Sale and Sale of Used Motor Vehicles:**

14. Defendant has advertised and/or offered for sale new and used motor vehicles through the JDN Website without including the required statement that "price(s) include(s) all costs to be paid by a consumer, except for licensing costs, registration fees and taxes."

15. Defendant has failed to remit the \$.50 administrative fee to the Division of Consumer Affairs (“Division”) for each used motor vehicle sold for the years 2011, 2012 and 2013.

16. Defendant has failed to provide consumers with title and registration to used motor vehicles prior to the expiration of a temporary title and/or registration.

17. In at least one instance, a consumer who purchased a used motor vehicle was unable to drive the vehicle after the temporary title and registration expired.

18. Defendant has sold an additional product (etching) to consumers by representing that it was mandatory, when such was not the case.

19. In at least one instance, although etching appeared to be optional on the Retail Buyers Order, JDN charged the consumer \$350 despite the consumer having declined etching.

20. Defendant has failed to pay off loans on trade-in vehicles in a timely manner.

21. In at least one instance, Defendant accepted a used motor vehicle as a trade-in, failed to pay off the loan in a timely fashion, which caused the consumer to be in default status for at least two payments due on the motor vehicle after it was traded-in.

22. Defendant has offered a used motor vehicle for sale upon which there was an existing unpaid lien.

23. In at least one instance, Defendant accepted a used motor vehicle as a trade-in, and never paid off the existing lien on the vehicle. Nevertheless, Defendant advertised the trade-in vehicle for sale on the JDN Website.

24. Defendant has failed to refund overpayment of Motor Vehicle Commission fees.

25. In at least one instance, a consumer purchasing a used motor vehicle was charged a “Registration/Title Fee (Estimated)” in excess of the true cost of obtaining registration and title.

to the vehicle from the Motor Vehicle Commission. Defendant then failed to refund the excess to the consumer for six (6) months.

26. In at least one instance, Defendant sold a used motor vehicle without possessing the title to said vehicle. (e.g. a consumer purchased a 2003 Nissan X-Terra from Defendant, but Defendant could not convey title to the motor vehicle, as it did not have title to that motor vehicle.)

27. Defendant has failed to honor the price negotiated with the consumer.

28. In at least one instance, a consumer who negotiated the purchase of a used motor vehicle to be registered in New York was charged \$12,595, but based only upon changing the place of registration to New Jersey, the consumer was charged \$12,445 for the motor vehicle, excluding state-specific taxes and registration fees.

29. Defendant has sold a used motor vehicle from a location other than its licensed location.

30. In at least one instance, a consumer who purchased a used motor vehicle from a different dealership received a Retail Buyer's Order listing Defendant as the seller of the motor vehicle.

31. Defendant has charged a 'New Car Tire Fee' to a consumer purchasing a used motor vehicle.

32. In at least one instance, a consumer was charged a "New Car Tire Fee", despite purchasing a used motor vehicle with used tires.

33. Defendant has charged a previously undisclosed 'Online Fee' to a consumer purchasing a motor vehicle.

34. In at least one instance, a consumer purchasing a used motor vehicle was charged a \$10 "Online Fee" for purchasing the motor vehicle online.

35. Defendant has failed to respond to telephone calls from consumers, from the NJ Motor Vehicle Commission, and from Volkswagen Customer Care, all seeking to resolve consumer complaints.

36. Defendant has misrepresented the mechanical condition of a used motor vehicle.

37. In at least one instance, a consumer who purchased a used motor vehicle which Defendant represented as being "in good shape" suffered the failure of a strut while driving the motor vehicle from the dealership to her home.

### COUNT I

#### **VIOLATION OF THE CFA BY DEFENDANT (UNCONSCIONABLE COMMERCIAL PRACTICES)**

38. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 37 above as if more fully set forth herein.

39. The CFA, N.J.S.A. 56:8-2 prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing[] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise . . .

40. Since at least 2010, JDN, through its owners, members, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors, has entered into or has attempted to enter into various retail transactions with consumers in this State and elsewhere for the sale of new and used motor vehicles.

41. In so doing, JDN, through its owners, members, officers, director, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors, has engaged in the use of unconscionable commercial practices or misrepresentations.

42. Defendant's conduct in violation of the CFA includes, but is not limited to, the following unconscionable commercial practices:

- a. Failing to provide vehicle license plates, title and registration prior to the expiration of the temporary title and/or registration;
- b. Failing to pay off loans on trade-in vehicles in a timely manner;
- c. Offering a used motor vehicle for sale upon which there was an existing lien;
- d. Failing to refund overpayment of Motor Vehicle Commission fees;
- e. Failing to honor the price negotiated with the consumer;
- f. Offering for sale a used motor vehicle from a location other than the licensed location;
- g. Charging a 'New Car Tire Fee' to a consumer purchasing a used motor vehicle; and
- h. Charging a previously undisclosed 'Online Fee' to a consumer purchasing a motor vehicle.

43. Each unconscionable commercial practice by Defendant constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

44. Defendant's conduct in violation of the CFA includes, but is not limited to, the following misrepresentations:

- a. Selling an additional product (etching) to consumers by representing that it was mandatory, when such was not the case;
- b. Offering for sale a used motor vehicle by representing that it possesses title to the vehicle, when such was not the case.

45. Each misrepresentation by Defendant constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

**COUNT II**

**VIOLATION OF THE MOTOR VEHICLE  
ADVERTISING REGULATIONS BY DEFENDANT  
(FAILURE TO MAKE REQUIRED DISCLOSURES)**

46. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 45 above as if more fully set forth at length herein.

47. The Motor Vehicle Advertising Regulations, address, among other things, general advertising practices concerning motor vehicles offered for sale in the State.

48. The Motor Vehicle Advertising Regulations provide that an advertisement offering for sale a used motor vehicle include the following:

2. A statement that ‘price(s) include(s) all costs to be paid by a consumer, except for licensing costs, registration fees, and taxes’. If this statement appears as a footnote, it must be set forth in at least 10 point type. For purposes of this subsection , ‘all costs to be paid by a consumer’ means manufacturer-installed options, freight, transportation, shipping, dealer preparation, and any other costs to be borne by a consumer except licensing costs, registration fees, and taxes;

[N.J.A.C. 13:45A-26A.5(a)(2).]

49. Defendant’s conduct in violation of the Motor Vehicle Advertising Regulations includes, but is not limited to, the following:

- a. In their advertisements for used motor vehicles on the JDN Website, failing to disclose the required statement that “price(s) include(s) all costs to be paid by the consumer, except for licensing costs, registration fees, and taxes.”

50. Defendant's conduct constitutes multiple violations of the Motor Vehicle Advertising Regulations, N.J.A.C. 13:45A-26A.5(a)(2), each of which constitutes a per se violation of the CFA, N.J.S.A. 56:8-2.

**COUNT III**

**VIOLATION OF THE UCLL AND UCLL  
REGULATIONS BY DEFENDANT  
(FAILURE TO FILE DOCUMENTATION AND REMIT  
ADMINISTRATIVE FEES)**

51. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 50 above as if more fully set forth at length herein.

52. The UCLL Regulations, N.J.A.C. 13:45A-26F.2, defines "dealer" as "any person or business which sells, offers for sale, a used motor vehicle after selling or offering for sale three or more used motor vehicles in the previous 12-month period."

53. The UCLL provides the Director with the authority to establish certain fees to apply to the administration and enforcement of the UCLL. Specifically, N.J.S.A. 56:8-80 provides:

The director may establish an administrative fee, to be paid by the consumer, in order to implement the provisions of this act, which fee shall be fixed at a level not to exceed the cost for the administration and enforcement of this act.

54. The UCLL Regulations, N.J.A.C. 13:45A-26F.6(a)-(b)(1), established the "Fifty Cent Rule" on February 1, 1999. Specifically, N.J.A.C. 13:45A-26F.6(a)-(b)(1) provides:

- (a) At the time of sale a dealer shall collect an administrative fee of \$0.50 from each consumer who purchases a used motor vehicle in the State of New Jersey.
- (b) By the 15<sup>th</sup> of every January, a dealer shall mail to the Used Car Lemon Law Unit, the following:
  - 1. A check or money order made payable to the "New Jersey Division of Consumer Affairs," in an amount equal to the total sum

of administrative fees collected during the preceding calendar year....

55. The UCLL Regulations, N.J.A.C. 13:45A-26F.6(b)(2), further establish certain reporting requirements for used motor vehicle dealerships. Specifically, N.J.A.C. 13:45A-26F.6(b)(2) provides:

- (b) By the 15<sup>th</sup> of every January, a dealer shall mail to the Used Car Lemon Unit, the following:
  - 2. A completed "Certification of Administrative Fees" form ... indicating the number of used cars sold each month by the dealer during the preceding calendar year.

56. From at least 2010 to the present, JDN has functioned as a "dealer" within the meaning of the UCLL and UCLL Regulations.

57. Each used motor vehicle that Defendant sold to a consumer was subject to the UCLL and, as such, obligated Defendant to collect and remit administrative fees.

58. Between 2011 and 2013, Defendant failed to remit the UCLL fees as required by N.J.A.C. 13:45A-26F.6(b)1.

59. Between 2011 and 2013, Defendant failed to submit the documentation required by N.J.A.C. 13:45A-26F.6(b)2 to the Division's UCLL Unit.

60. Each failure by Defendant to timely remit the administrative fees and/or documentation concerning the used motor vehicles Defendant sold constitutes a separate violation of the UCLL, N.J.S.A. 56:8-80, and the UCLL Regulations, N.J.A.C. 13:45A-26F.6.

#### COUNT IV

#### **VIOLATION OF THE UCLL BY DEFENDANT (MISREPRESENTATION OF MECHANICAL CONDITON OF A MOTOR VEHICLE)**

61. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 60 above as if more fully set forth at length herein.

62. N.J.S.A. 56:8-68 provides in relevant part:

It shall be an unlawful practice for a dealer:

(a) To misrepresent the mechanical condition of a used motor vehicle;

[N.J.S.A. 56:8-68(a).]

63. Defendant violated the UCLL by misrepresenting the mechanical condition of a used motor vehicle prior to sale.

64. Each instance of Defendant misrepresenting the mechanical condition of a used motor vehicle constitutes a separate violation of the UCLL, N.J.S.A. 56:8-69.

#### **PRAYER FOR RELIEF**

WHEREFORE, based upon the foregoing allegations, the Plaintiffs respectfully request that the Court enter judgment against Defendant:

- (a) Finding that the acts and omissions of Defendant constitute multiple instances of unlawful practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., the Motor Vehicle Advertising Regulations, N.J.A.C. 13:45A-26A.1 et seq., the UCLL, N.J.S.A. 56:8-67 et seq., and the UCLL Regulations, N.J.A.C. 13:45A-26F.6.;
- (b) Permanently enjoining Defendant and its owners, members, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, independent contractors, corporations, subsidiaries, affiliates, successors, assigns and all other persons or entities directly under its control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., the Motor Vehicle Advertising Regulations, N.J.A.C. 13:45A-26A.1 et seq., the UCLL, N.J.S.A. 56:8-67 et seq., and the UCLL Regulations, N.J.A.C. 13:45A-26F.6., including, but not limited to, the acts and practices alleged in this Complaint;
- (c) Directing the Defendant to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any practice alleged herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;

- (d) Assessing the maximum statutory civil penalties against Defendant for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (e) Assessing investigative costs and fees, including attorneys' fees, against Defendant for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- (f) Granting such other relief as the interests of justice may require.

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: Alina Wells  
Alina Wells  
Deputy Attorney General

Dated: June 11, 2015  
Newark, New Jersey