

Client Alert

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The FTC Sues and Settles with Virtual RTO Giant Progressive for \$175 MM: A Discussion of the Takeaways for Leasing, RTO and Virtual Finance Companies

Introduction

This week the Federal Trade Commission (FTC) reached a \$175 million settlement with Progressive Leasing (Progressive)—one of the largest rent-to-own companies in the United States—relating to Progressive’s rental-purchase transaction practices. As is typical, the FTC simultaneously filed a Complaint and Stipulated Order for Permanent Injunction and Monetary Judgment on the same day confirming the \$175 million settlement.

This article summarizes the FTC’s enforcement action against Progressive and provides takeaways for consumer leasing and finance companies who offer their products and services through associated retailers, whether online or through retailer point-of-transaction systems.

FTC v. Progressive

Progressive, a subsidiary of Aaron’s, Inc., is the country’s largest virtual rent-to-own company, offering its services through large big-box retailers. Progressive’s rental-purchase transactions allow consumers to lease an item over time with the option to purchase the property early, return the property at any time, or pay all potential rent payments, resulting in ownership more than a year later. RTO programs, such as Progressive’s, are popular among consumers who do not have access to traditional forms of credit, such as credit cards or traditional retail installment credit products.

In its Complaint, the FTC alleged that Progressive’s leasing and marketing practices were deceptive, including by representing the transaction costs to be much lower than the true costs. Among numerous charges, the FTC complained that:

- Progressive deceptively advertised the lease-ownership cost to be the “same as cash” price if paid in 90 days, when in truth there were additional fees required.
- Progressive’s lease application depicted the cash price of the leased item, but in order to know the full lease details, the consumer was required to separately click a hyperlink to see the full cost of the lease services.
- Associated retailers improperly marketed the RTO program as a “no interest” program if paid in full within 12 months.

Progressive apparently received over 15,000 consumer complaints relating to its improper practices but according to the FTC, continued to employ the same practices in an effort to deceive consumers.

The Stipulated Order provides a general road map of the key issues of concern to the FTC. Those include:

- A disclosure is clear and conspicuous if it is easily noticeable, difficult to miss and easily understood by an ordinary consumer;
- A consumer must give affirmative and unambiguous consent to be charged; and
- Consumer lessors are responsible for monitoring and ensuring their retail partners are not engaging in any activity that violates compliance with applicable consumer laws.

FTC Commissioner Christine S. Wilson filed a Concurring Statement addressing the Stipulated Order stating the “order remedies [] deception by requiring Progressive to disclose the material terms of [its] plan, including total costs, before the consumer provides payment information and agrees to the plan.” Further, the Order requires Progressive to “[v]et and monitor the acts and practices of any business, entity, or other organization that offers” Progressive’s leasing program.

Notably, the matter revealed disagreement among FTC commissioners as it was approved by a close 3-2 vote and Commissioner Rebecca Kelly Slaughter issued a Dissenting Statement. Commissioner Slaughter, along with Commissioner Rohit Chopra, opined that the \$175 million settlement was inadequate.

What Should Companies Take Away from the Settlement?

In light of the settlement and Stipulated Order, leasing and finance companies should revisit their current compliance measures and make appropriate adjustments to contract terms and disclosures, application screen flows, product and service scripting, and marketing and associate training. Specifically, companies should consider the following:

1. Confirm pricing disclosures clearly and conspicuously explain the cost of the transaction without the use of hidden hyperlinks, including in the consumer-facing application;
2. Seek to ensure that store associates fully and properly identify and explain the transaction costs and perform periodic audits where necessary;
3. Consider including express consumer consent for all cost disclosures in a transaction;
4. Include rules in transaction application flow to seek to ensure all disclosures and contract terms are reviewed by the consumer and avoid e-signature processes that jump to lease execution;
5. Consider establishing a task force to actively monitor retail and merchant partner activities;
6. Consistently train, re-train and audit retailers where necessary;
7. Review all scripting to eradicate any potential confusing or misleading statements;
8. Consistently review complaints to identify retailers for lack of compliance with applicable law, governing documents and training materials;
9. Audit marketing materials to seek to ensure such materials are free of confusing or misleading representations; and
10. Seek to ensure that marketing materials are only used as approved by the company.

The consumer finance litigation and regulatory attorneys at Hunton Andrews Kurth LLP recommend that companies consider taking the above actions to seek to ensure that compliance practices are updated to account for the Progressive/FTC settlement.

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