

***Moving the Metal: The Auto Finance Podcast — Requiem for the Rules: The Rise and Fall of the Junk Fee and CARS Rules***

**Hosts: Brooke Conkle and Chris Capurso**

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**Brooke Conkle:**

Welcome to [Moving the Metal](#), the premier legally focused podcast for the auto finance industry. I'm Brooke Conkle, a partner in Troutman Pepper Locke's Consumer Financial Services Practice Group.

**Chris Capurso:**

And I'm Chris Capurso, an associate in Troutman Pepper Locke's Consumer Financial Services Practice Group.

**Brooke Conkle:**

Today, we're talking a requiem for the rules, the rise and fall of the Junk Fee Rule and the CARS Rule. But before we jump in, let me remind you to please visit and subscribe to our blogs. We have two great ones that may be of interest to you, [TroutmanFinancialServices.com](#) and [ConsumerFinancialServicesLawMonitor.com](#). Also, we have a bevy of other podcasts that you might find interesting.

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Today, as I mentioned, we'll be discussing the aftermath of the Junk Fee Rule and the cars rule. So Chris, bring us back up to speed. What was the junk fee rule initially?

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**Chris Capurso:**

Yeah. I feel like it got kind of – I don't know, it was like the second seat to the CARS Rule. It wasn't something auto dealers and, well, maybe finance companies a little bit more cared about. But the original rule was quite broad, which was one of the problems that was highlighted later on as a teaser. But the initial rule was proposed in November 2023, and it's related to unfair deceptive fees.

As we've probably discussed here, the FTC has the single A, UDAP, as opposed to the UDAAP of the CFPB. So they police unfair deceptive practices. They propose this rule to define certain fees and certain practices around fees as unfair or deceptive. And in short, the proposed rule would have prohibited a "business" from offering, displaying, or advertising an amount a consumer may pay without "clearly and conspicuously disclosing" the "total price." And if you notice how many times I'm saying quote, a lot of defined terms, they have a lot of meat behind them, as I'll discuss.

Second, including an amount a consumer must pay in an offer display or advertisement without displaying the quote "total price" more prominently than any other information relating to an amount a consumer may pay. Third, misrepresenting the nature and purpose of any amount a consumer may pay, including the refundability of such fees and the identity of any good or service for which fees are charged. And finally, failing to disclose "clearly and conspicuously" before the consumer contends to pay the nature and purpose of any amount a consumer may pay that is excluded from the quote "total price" including the refundability of such fees and the identity of any good or service for which fees are charged.

Now, I exaggerated the quote, but we do have a couple definitions that are very important. First was the definition of total price, and that was the maximum total of all fees or charges a consumer must pay for a good or service, excluding shipping fees and charges paid to government officials. So those are potentially important things in the auto finance industry, right?

The second big definition, which is – I'm really burying the lede, this is the most important thing. The second big definition is business. And it was quite broad and included individuals and entities, but it specifically excluded motor vehicle dealers that were required to comply with the CARS Rule. So you may be saying to yourself, "Uh-oh, the CARS Rule," as Brooke will discuss later – I mean, this is called the requiem for the rules. You already know that they're probably not in the form that we're describing as the original form, but you may be saying, "Uh-oh, CARS Rule may not be around. What does this mean for us with the Junk Fees Rule?"

Well, in December, sort of under the radar, I mean, it seemed like it was one of those things where they drop it right before Christmas break, they put out the finalized rule. And the final rule still required those types of requirements, the clear and conspicuous disclosure, things like that, but it specifically limited the scope of who it applied to, and that was specifically for live event tickets or short-term lodging. The things that were actually originally noted in the rule and really covered a ton in the rulemaking as the industries that were kind of the genesis for this. Think back to the Taylor Swift debacle with the ticketing. Just any type of instance where the fees are added on later on. They discuss hotels and they discuss ticketing quite a bit in that rulemaking.

Now, the rule is limited to those industries. So we don't have to worry about this carve-out that was honestly very confusing to a lot of people where, okay, somebody who's required to comply with the CARS Rule doesn't have to comply with the Junk Fee Rule. But if the CARS Rule doesn't go into effect, what happens to the Junk Fee Rule? That entire calculus is just out the window. Now, this rule applies to live event tickets and short-term lodging.

So, as far as the FTC is concerned, the Junk Fee Rule for auto-finance companies is null, it's a non-factor. And, notably, because I always found this interesting, our now current chair of the FTC, Andrew Ferguson, released a dissenting statement on this rule. Not about the scope of it. In fact, he said his dissent should not be seen as just against the rule in general. And he specifically noted that, essentially, he liked where it had gone with the scope because he thought the original scope was way too broad, being economy-wide. But the dissent was specifically that he thought the Biden administration's time was over and that they shouldn't be dropping new rules one month before they're out of office. He said they should specifically be concerned with the law enforcement aspect of the FTC and not rulemaking. So that was his only qualm. He said it wasn't even an indicator of whether they should enforce it or not.

Again, this doesn't really matter to auto finance companies now because there's no applicability for them. But this is still something to keep in mind because we're starting to see states kind of take up this mantle and got to look into having their own junk fee rules that may not be so limited. As far as the FTC goes, it's dead for auto finance. No worries. But as far as the states go, time will tell whether some of these states start proposing. I mean, some states have already proposed junk fee legislation, but will more do it? Will the laws that are up be passed? These are all questions for the future.

### **Brooke Conkle:**

Chris, I think my basic takeaway from sort of the kind of reversal on the Junk Fee Rule, the Lina Khan FTC willing to take on the big guys, going after all of these different massive corporations for antitrust issues. One conglomerate she is not willing to take on, the Swifties. If anybody can take down the Lina Khan FTC, apparently it is the Swifties. She did not want to mess with them.

Chris, the other rule that we're going to lament here is the CARS Rule. And unless you're new here, you have heard us talk about the CARS Rule. We've spent a considerable amount of time looking at this proposed regulation, which frankly could have really, really changed how auto dealers do business.

So where are we? Well, we started with the car's rule that really was kind of targeted to four specific buckets of regulations. One, a prohibition on specific kinds of misrepresentations. Two, a series of disclosure requirements specifically related to the offering price of a vehicle. And I'll use Chris's quotes here. We're putting that offering price in quotation marks. That is a specific defined term that had very serious implications for advertising. Third, a prohibition on valueless add-ons. How are we defining valueless? Don't ask the FTC. And then finally, a requirement to obtain express informed consent from consumers before charging for any item.

And the CARS Rule was hotly debated as soon as the FTC issued and noticed the proposed rulemaking. The agency's stance really had been, "Guys, this should not be controversial. This should not be kind of a shock to anyone in the industry because our position is this is already

the law. This is the law. It has been the law for years. These are bedrock UDAP principles that we're just kind of collecting into a single rule." From the other side, folks were saying, "This is not quite the regulatory regime that all of us have been operating on. There's a lot of ambiguity going on here. So let's try to parcel this out and figure out where we go."

So as soon as the rule was published really, it immediately faced challenges. And specifically, there was a challenge in the Fifth Circuit that challenged both sort of procedurally the way that the rule came about and then also substantively the requirements and the prohibitions in the rule. So early in 2025, the decision came out from the Fifth Circuit that it frankly took a track that we didn't necessarily expect. We anticipated that the procedural challenge to the rule would have, frankly, a more difficult path through the Fifth Circuit. But that substantively, there could be some weaknesses within the rule that the Court of Appeals would really latch onto.

And actually, it was the other way around, where the court found that the FTC violated its own regulations by failing to issue an advanced notice of proposed rulemaking required for all rulemakings under section 18 (a)(1)(B) of the FTC Act. And one of sort of the quotes that was kind of circulated around industry insiders, "It is a given of administrative law that agencies must follow their own regulations." That's got to be tough if you're with the FTC. And really, the FTC's argument really was that this was kind of a harmless error. Advanced notice of proposed rulemaking, notice of proposed rulemaking. From their perspective, the industry was still going to have its say about what they thought was problematic within the rule. And the Fifth Circuit explained, "No, it's far from clear that the failure to issue an advanced notice of proposed rulemaking had no bearing on the procedure used or the substance of the decision that was reached." It was not harmless error according to the Fifth Circuit.

With that, where does that leave us with the CARS Rule? Are we dead in the water or are we going to face a new rule that is much, much narrowed, much like the Junk Fee Rule? Do we have states popping up to come kind of fill this void left by the Fifth Circuit? Chris, what do you think?

**Chris Capurso:**

Yea. I don't know. As everybody is saying right now for every kind of regulatory compliance issue, it's really hard to tell. And I mean, the thing that I keep latching onto is that Chair Ferguson, in concurring and dissenting statements on auto actions in the last year, hasn't really gone against some of the ideas of the CARS Rule that have shown up in those actions, as we've described several times.

Whenever we talk about an FTC action, Brooke will say, "It's shades of the CARS Rule," or, "This is our greatest hits. We're going to hit the CARS Rule tidbits." And there are certain other things he rails against in his concurring or dissenting statements, but not the idea of valueless add-ons, not the idea of consent to certain add-on costs or disclosures around those add-ons. Those are things that he hasn't specifically highlighted.

You could take that omission to say, "Oh, he's totally onboard with it. Maybe he just hasn't had the time to think about it because he was railing against other things." But it goes to the typical lawyer answer. It depends. But, I mean, I feel like, politically, the odds of that rule continuing forward in its exact state where the FTC is going to be like, "Well, let's just do a notice of

proposed rulemaking in the exact way that we're supposed to under our regulations," that seems far-fetched.

**Brooke Conkle:**

I agree wholeheartedly. I think the idea that the new sort of Trump version of the FTC is going to come in and just kind of dust off the CARS Rule and give it the old college try one more time. I think that's probably highly unlikely, we'll say. But the flip side of that coin is, without activity at the federal level, there's going to be activity at the state level. And frankly, we're seeing that happen right now. As of February 21st, California has issued their own Combating Auto Retail Scams Act. It potentially is just kind of a cut-and-paste version of the FTC's CARS Rule.

The one kind of change that frankly really popped out to me was the record-keeping requirements, which were kind of tucked into the back of the CARS Rule, which required two years of record keeping requirements under the federal version of the CARS rule. The California version however, seven years. Seven years of record keeping requirements. And those requirements include the same communications that made a lot of the requirements in the CARS Rule so onerous. Anytime a salesperson talks to a consumer about a vehicle and discloses the offering price, those are encompassed in the record-keeping requirements. That's a lot. And I understand we're all kind of looking at this from an electronic perspective. It still is a pretty onerous requirement to keep all of that stuff.

**Chris Capurso:**

Yeah, and I don't think there's as much hope out there that they're going to somehow fail to follow the legislative process and then get it overturned. I'd be remiss before I finish. The entire time Brooke was discussing kind of the self-own that the FTC had by not following their own rules. All I could think of being a Simpson's nerd like I am is there is an episode where Lisa enters a beauty pageant and she gets disqualified, because on the application, in the area that said, do not write below this line, Homer wrote okay. And that's all I can think of the entire time is you have your procedures in place, strict directions on what to follow, you then do it, that's how it gets overturned. It's brutal, as Brooke said, if you're the FTC.

**Brooke Conkle:**

It's tough. Yeah.

**Chris Capurso:**

Yeah. Yeah, it's tough.

**Brooke Conkle:**

It's a tough day. We've all had those days. It's tough.

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**Chris Capurso:**

Well, with that, that'll wrap it up for today's podcast. Thank you to our audience for tuning in. Don't forget to check out our blogs where you can subscribe to the entire blog or just the specific content you find most helpful. That's the [ConsumerFinancialServicesLawMonitor.com](https://www.ConsumerFinancialServicesLawMonitor.com) and the [TroutmanFinancialServices.com](https://www.TroutmanFinancialServices.com) blogs. And while you're at it, why don't you head on over to [troutman.com](https://www.troutman.com) and sign up for our Consumer Financial Services mailing list so that you can stay abreast of current issues with our insightful alerts and advisories and receive invitations to our industry insider webinars. And of course, please mark your calendars for this podcast, *Moving the Metal*, which we will be releasing every two weeks in 2025. That will be generally on the second and fourth Tuesdays in each month. And as always, if you have any questions or if we can help in any way, please reach out. Until next time.

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