

OCCC CASE NO. L25-001

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| IN THE MATTER OF: MASTER FILE NO.: 2000066583 BUCKSAPP CORP. 201 CRANDON BLVD., 540 KEY BISCAWAYNE, FLORIDA 33149 | § § § § § § § | BEFORE THE OFFICE OF CONSUMER CREDIT COMMISSIONER STATE OF TEXAS |
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ORDER DISAPPROVING PLAIN LANGUAGE CONTRACT SUBMISSION

The Office of Consumer Credit Commissioner (“OCCC”) issues this Order Disapproving Plain Language Contract Submission against BucksApp Corp. (“BucksApp”).¹

Statement of Facts and Law

Chapter 341 of the Texas Finance Code requires loan contracts entered under Chapter 342 of the Texas Finance Code to be written in plain language designed to be easily understood by the average consumer.² A creditor must use either a model contract adopted by rule of the Finance Commission of Texas or a contract that the creditor has submitted to the OCCC for plain language review.³ If the Consumer Credit Commissioner (“Commissioner”) determines that a contract does not comply with Chapter 341 or its implementing rules, then the Commissioner shall issue an order disapproving the contract.⁴ Under Chapter 341’s implementing rules, a contract must be consistent with federal and state law.⁵

In June 2020, BucksApp submitted a loan contract titled Consumer Credit Agreement and Disclosure Statement to the OCCC for plain language review. The contract reflects that the form number for the loan contract is Form Number 2. The

¹ Tex. Fin. Code §§ 14.208, 341.502.
² Tex. Fin. Code § 341.502(a).
³ Tex. Fin. Code § 341.502(b)-(c).
⁴ Tex. Fin. Code § 341.502(c).
⁵ 7 Tex. Admin. Code § 90.104(a)(3).

submission form reflects that the loan contract is intended to be used under Chapter 342, Subchapter E of the Texas Finance Code.

For the reasons discussed below, the loan contract submitted by BucksApp is inconsistent with federal and state law and is not written in plain language to be understood by the average consumer and therefore does not comply with Texas Finance Code Chapter 341 and its implementing rules.

A. Truth in Lending Disclosures

The federal Truth in Lending Act applies to creditors that extend consumer credit that is payable in more than four installments or for which a finance charge is required.⁶ Under the Truth in Lending Act and its implementing rule, Regulation Z, a creditor must disclose required information about a consumer credit transaction, including the amount financed, finance charge, annual percentage rate, and total of payments, using those terms.⁷ Finance charge and annual percentage rate disclosures must be more conspicuous than any other disclosure.⁸

In the loan contract submitted by BucksApp, the disclosures for finance charge and annual percentage rate are not more conspicuous disclosures than other disclosures, as required by the Truth in Lending Act and Regulation Z.

Because BucksApp's loan contract does not include the more conspicuous disclosures for finance charge and annual percentage required by the Truth in Lending Act and Regulation Z, the loan contract is not consistent with federal law. Therefore, the loan contract does not comply with Chapter 341's implementing rule that requires a contract to be consistent with federal law.⁹

B. Failure to Specify Finance Charge Earnings Method

Chapter 342 of the Texas Finance Code describes different methods of applying the interest rate to the outstanding balance. These methods are also called "earnings methods." The scheduled installment earnings method is a method to compute an interest charge by applying a daily rate to the unpaid balance of the principal amount as if each payment will be made on its scheduled installment date.¹⁰ The

⁶ Truth in Lending Act, 15 U.S.C. § 1602(g).

⁷ Truth in Lending Act, 15 U.S.C. § 1632; Regulation Z, 12 C.F.R. § 1026.18(b)-(h).

⁸ Truth in Lending Act, 15 U.S.C. § 1632; Regulation Z, 12 C.F.R. § 1026.17(a)(2).

⁹ 7 Tex. Admin. Code § 90.104(a)(3).

¹⁰ Tex. Fin. Code § 342.002(a).

true daily earnings method is a method to compute interest by applying a daily rate to the unpaid balance of the principal amount, by multiplying the daily rate by the number of days the principal balance is outstanding.¹¹ For irregular transactions, the Texas Finance Code allows a lender to use any method or formula to provide for an interest rate that does not exceed the amount that would produce the same effective return as allowed if the loan were payable in equal successive monthly installments beginning one month from the date of the contract.¹²

The loan contract submitted by BucksApp contains a provision titled “Promise to Pay and Payment Terms.” The first sentence of this provision states: “You Promise to pay us a principal amount of \$____. Interest will be charged on the amount owed at the rate of ____% per year until paid.”

The plain language contract submitted by BucksApp does not specify an earnings method (i.e., how the interest rate will be applied to the outstanding balance). The provision does not provide for a method or formula for how the interest is calculated beyond a percentage per year. In addition, the phrase “amount owed” is ambiguous, because it is unclear whether this refers to the outstanding balance or the original principal balance.

Because the loan contract fails to specify an earnings method, the loan contract is ambiguous. The loan contract is not written in plain language such that it can be easily understood by the average consumer. The loan contract therefore violates Chapter 341 of the Finance Code and its implementing rules.

C. Ambiguous Late Charge Provision

Additional interest on a loan for default may not exceed five cents for each \$1 of a scheduled installment.¹³ Additional interest for default may not be collected more than once on the same installment.¹⁴

In the loan contract submitted by BucksApp, there is a section titled “Late Charge” in which the contract states, “We may charge a late charge of \$5 or \$2.50 if a payment is not received within 14 days after it is due. We may charge an extra late charge of \$5 or \$2.50 if payment is not received within 21 days after it is due. We

¹¹ Tex. Fin. Code § 342.002(b)

¹² Tex. Fin. Code § 342.001(2), 342.201(c).

¹³ Tex. Fin. Code § 342.203(d).

¹⁴ Tex. Fin. Code § 342.203(e).

may charge an extra late charge of \$10 or \$5 if payment is not received within 28 days after it is due. We may charge an extra late charge of \$2.50 for each 7-day period such payments remain late after 28 days of non-payment.”

The late charge provision in the loan contract is ambiguous. Under the loan contract, the first and second late charges could be either \$5 or \$2.50, and the third late charge could be either \$10 or \$5. A consumer would not be able to determine the specific amount of a late charge from these provisions.

Further, the loan contract misleadingly suggests that the lender may impose default charges exceeding the maximum allowed under Chapter 342. If a consumer fails to pay a scheduled installment beyond 28 days under the contract, the consumer is then charged \$2.50 for each 7-day period the consumer remains delinquent. There is no limit to the default charge in the contract, suggesting that the lender could charge more than the maximum of 5% of the scheduled installment.

Because the late charge provision in the loan contract is ambiguous, it is not written in plain language such that it can be easily understood by the average consumer. In addition, because this provision misleadingly suggests that the lender may impose default charges in excess of the statutory maximum, it is not consistent with Texas law. Therefore, the loan contract does not comply with Chapter 341’s requirement that it be written in plain language, or Chapter 341’s implementing rule that requires a contract to be consistent with Texas law.¹⁵

D. Ambiguous Origination Fee Provision

A loan contract entered under Chapter 342, Subchapter E of the Texas Finance Code may provide for an administrative fee.¹⁶ Currently, the maximum administrative fee is \$125.¹⁷

The loan contract has a section titled “Fees” in which there is a provision for a non-refundable origination fee. The provision states that the amount of the fee is included in the “App Account.” The amount of the fee is not included in the contract.

¹⁵ 7 Tex. Admin. Code § 90.104(a)(3).

¹⁶ Tex. Fin. Code § 342.201(f).

¹⁷ 7 Tex. Admin. Code § 83.503.

Because the amount of the fee is not included in the contract, the loan contract is ambiguous. Based on the text of the loan contract, a consumer could not reasonably determine the amount of the fee, and could not determine whether the fee complies with Chapter 342 of the Texas Finance Code and its implementing rules.

Because the loan contract is ambiguous, it is not written in plain language such that it can be easily understood by the average consumer. Therefore, the loan contract does not comply with Chapter 341's requirement that it be written in plain language.

Authority

If the Commissioner determines that a plain language contract does not comply with Section 341.502 of the Texas Finance Code or its implementing rules, then the Commissioner shall issue an order disapproving the contract.¹⁸ If the Commissioner issues an order disapproving a contract, a person may not use the contract after the order takes effect.¹⁹

The Commissioner has determined that the loan contract submitted by BucksApp (Form Number 2) does not comply with Section 341.502 of the Texas Finance Code and its implementing rules. For this reason, the Commissioner issues this Order.

Order

IT IS ORDERED that:

1. The loan contract submitted by BucksApp Corp., Form Number 2, is DISAPPROVED.
2. BucksApp must cease and desist using the loan contract with Form Number 2.
3. **No later than 30 days after the date of this Order**, BucksApp must provide the OCCC with a written statement acknowledging that BucksApp has ceased and desisted using the version of Form Number 2 that was

¹⁸ Tex. Fin. Code § 341.502(c).

¹⁹ Tex. Fin. Code § 341.502(d).

submitted to the OCCC. BucksApp must send the written statement by email to Audrey Spalding at audrey.spalding@occc.texas.gov.

Violation of Order

If you violate this Order, the OCCC may impose an administrative penalty of up to \$1,000 for each day.²⁰

Right to Request Hearing

You have the right to request a hearing regarding this Order.²¹ To request a hearing, you must send a written hearing request to the OCCC no later than 30 days after the date of this Order.²² You must send your request to Audrey Spalding, Assistant General Counsel, by mail to 2601 N. Lamar Blvd., Austin, TX 78705, or by email to audrey.spalding@occc.texas.gov.

If you request a hearing, a hearing will be set and conducted in accordance with Chapter 2001 of the Texas Government Code.²³ If you fail to request a hearing by this deadline, the Order will be considered final and enforceable.²⁴

All communications with the OCCC concerning this matter must be through Audrey Spalding, Assistant General Counsel, who may be contacted by mail at 2601 N. Lamar Blvd., Austin, TX 78705, by telephone at 512-936-7659, or by email to audrey.spalding@occc.texas.gov.

Signed this 27th day of January, 2025.

/s/ Leslie Pettijohn
Leslie L. Pettijohn
Consumer Credit Commissioner
State of Texas

²⁰ Tex. Fin. Code § 14.208(c).

²¹ Tex. Fin. Code § 14.208(b).

²² Tex. Fin. Code § 14.208(b).

²³ Tex. Fin. Code § 14.208(b).

²⁴ Tex. Fin. Code § 14.208(c).

CERTIFICATE OF SERVICE

I certify that on January 27, 2025, a true and correct copy of this Order Disapproving Plain Language Contract Submission has been sent to BucksApp Corp. by the following:

BucksApp Corp.
Attn: Regis Sebastian, Compliance Officer
201 Crandon Blvd., 540
Key Biscayne, FL 33149
sebastian@bucksapp.co

- email
- eFileTexas.gov electronic service
- regular mail
- certified mail, return receipt requested
#9214 8901 9403 8300 0098 0448 31

BucksApp Corp.
Attn: Lorena Grundy, Plain Language Contact Person
General Borgono 1034, Apt. 202
Miraflores 15074, Lima, Peru
lorena@bucksapp.co

- email
- eFileTexas.gov electronic service
- regular mail
- certified mail, return receipt requested

BucksApp Corp.
Attn: Compliance Officer
2222 Ponce de Leon Blvd.
Office 06-119
Miami, FL 33134

- email
- eFileTexas.gov electronic service
- regular mail
- certified mail, return receipt requested
#9214 8901 9403 8300 0098 0448 48

BucksApp Corp.
Attn: Business Filings Incorporated,
Registered Agent
701 Brazos St., Suite 720
Austin, TX 78701
agent@bizfilings.com

- email
- eFileTexas.gov electronic service
- regular mail
- certified mail, return receipt requested
#9214 8901 9403 8300 0098 0448 55

/s/Audrey Spalding
Audrey Spalding
Assistant General Counsel
Office of Consumer Credit Commissioner
State Bar No. 24111055
2601 North Lamar Blvd.
Austin, Texas 78705
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audrey.spalding@occc.texas.gov