



STATE ATTORNEY GENERALS PURSUING DECEPTIVE ADVERTISING

By Robert C. Byerts

Recent press releases from State Attorney Generals' Offices in the Northeast, South, Northwest, and Atlantic seaboard states, to name just a few, highlight that State Attorney Generals are after auto dealers engaging in deceptive advertising. The alleged violations concern advertising, according to at least one dealer, that has been used for the past fifteen years. Target ads "falsely" promise rebates, incentives, free gifts, financing for anyone, and "asterisk" pricing. Many times the advertising copy is produced by promotional companies and direct mail advertisers, not by the dealers themselves. The pitch is usually "these always generate tons of traffic" or "we just used this one with a dealer in the South and pulled in monster numbers." Unfortunately, some of the people pulled in by the deceptive ad complain to law enforcement and regulatory authorities. While the direct mailer writes the ad, the dealer is always held responsible.

More enforcement efforts are expected. How do your advertising practices measure up? All advertising must contain truthful statements. The statements must not only be true but also cannot be misleading. Most deception involves written or oral misrepresentations, or omissions of material information. To be deceptive the representation, omission or practice must be likely to mislead reasonable consumers under the circumstances. The test is whether the consumer's interpretation or reaction is reasonable. A dealer cannot be charged with liability with respect to every conceivable misconception, however outlandish, to which his representations might be subject among the foolish or feeble-minded. However, when a dealer's representation conveys more than one meaning to reasonable consumers, one of which is false, the dealer is liable for the misleading interpretation.

Some phrases and claims simply invite action by regulators. When considering your next ad campaign, beware of: (1) "Liquidation sale!" claims (unless you are actually going out of business); (2) "we will pay off your trade in no matter what you owe" claims, particularly when coupled with a "zero down" promise, because there are always exceptions; (3) "free" "gift" "without charge" "bonus" and similar claims, as these are a favorite target of the Federal Trade Commission and AGs; (4) "this offer is not available to the general public" claims, because the offer is; and (5) "everything must go, regardless of price/profit/loss" because you always make a profit or you wouldn't be in business. Along the same lines, do not use "asterisk pricing" to represent the price of vehicles. "Asterisk pricing" means advertising

of a prominently displayed, artificially lowered price, where the material terms and conditions which must be met to receive the advertised price are listed in small print separate from the displayed price and include a cash or trade reduction.

Dealers need to be upfront and honest in their advertisements. Dealers should carefully select the companies they hire to promote their business. Both dealers and their ad firms can be liable for violation of state laws if the vehicle promotions fail to include legally required disclosures or include deceptive and misleading material. In an election year where Attorney Generals tout consumer protection agendas, car dealers are prime targets for public attack. To manage the risk of more Attorney General activity, make sure your ads are reviewed by an experienced dealer advocate before the direct mailer or newspaper copy becomes final. Don't learn from a bad experience.

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