NEW YORK STATE ATTORNEY GENERAL'S

ADVERTISING GUIDELINES

FOR AUTO DEALERS

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INTRODUCTION

Except for the purchase of a home, the purchase of an automobile represents the most expensive consumer transaction most New Yorkers will undertake. In deciding upon such a purchase, New York consumers have a legal right to automobile advertising that is free from deception. This office's review of current car ads has revealed a widespread pattern of deception and the use of materially false or misleading representations by some dealers. Rather than truthfully informing consumers, all too many ads appear designed primarily to confuse and mislead them. Such unscrupulous dealer ads are costly traps for unwary car buyers and are unfair to those dealers who compete on the basis of forthright and truthful advertising.

In response to this pattern of consumer fraud, the Attorney General directed his staff to undertake a statewide review to determine the nature and extent of existing deceptive automobile advertising by dealers and to adopt Advertising Guidelines for the benefit of the public and the industry.

In the course of its work, the Attorney General's staff closely examined a substantial number of dealer ads, consulted the laws, regulations and guidelines of other states, and reviewed consumer complaints and prior enforcement actions by this office. The views of the New York State Department of Motor Vehicles and automobile dealer associations across the state were elicited and carefully considered. These associations included the Greater New York Automobile Dealers Association, the New York State Automobile Dealers Inc., the Capital

District Automobile Dealers Association, the Niagara Frontier Automobile Dealers Association, the Rochester Automobile Dealers Association and the Syracuse Automobile Dealers Association.

The Advertising Guidelines for Auto Dealers, developed by the Attorney General's office as a result of this extensive inquiry, are intended to articulate the enforcement policy of this office: to set forth, with some specificity, what practices are deemed by the Attorney General to be prohibited under New York State's laws governing false advertising and deceptive business practices, statutes which this office enforces.

Enforcement action by the Attorney General's office in the area of advertising is based primarily on three consumer protection statutes: Executive Law §63(12), General Business Law Article 22A (§350), and General Business Law §396. These statutes, however, do not specifically enumerate proscribed advertising practices; they contain general prohibitions against false, deceptive or bait and switch advertising. The guidelines are intended to clarify that certain dealer advertising practices will be considered a violation of these consumer protection laws and may lead to enforcement action.

These guidelines are intended to serve both the public and the dealers. The public from non-deceptive advertising which provides a reliable basis for comparison between competitors; dealers will be served by the fostering of a fair, competitive marketplace and by the elimination of consumer dissatisfaction due to misleading and deceptive advertising.

SECTION I. STATEMENT OF PRINCIPLES

All automobile advertising by dealers, whether printed or broadcast, should be in plain language, clear and conspicuous and non-deceptive. Deception may result from direct statements in the advertisement or from reasonable inferences that may be drawn from an ad, or from disclaimers that contradict, confuse, unreasonably limit or materially modify a principal message of the advertisement. Deception may also result from the failure to clearly and conspicuously disclose any material facts, including limitations, disclaimers, qualifications, conditions, exclusions or restrictions.

Any advertisement for new or used automobiles -- including passenger cars, utility vehicles, and light trucks -- for sale or lease by dealers in New York State must comply with New York General Business Law §350 and §350-a, which define and prohibit "false advertising."

SECTION II. DEFINITIONS

For purposes of these guidelines, the term "dealer" includes all those in the business of selling or leasing automobiles who hold themselves out as dealers or have sold, leased or negotiated or brokered the sale or lease of more than five automobiles in the preceding twelve months, including, but not limited to, banks, retail auto auctioneers, leasing companies, and auto brokers, but excluding state or local governmental entities.

The terms "clear and conspicuous" or "clearly and conspicuously" mean that the statement, representation or term is so presented as to be

readily apparent and understood by the person to whom it is being addressed. Factors to be considered for this purpose include, but are not limited to, size, color contrast, length and crawl time.

SECTION III. DECEPTIVE ADVERTISING PRACTICES

The following are advertising practices which the Attorney General considers to be deceptive:

A. GENERAL ADVERTISING PRACTICES

1. Footnotes and Asterisks

Use of one or more footnotes or asterisks which, alone or in combination, contradict, confuse, materially modify or unreasonably limit a principal message of the ad.

2. Print Size

Use of any print in type size so small as to be not easily readable. For the purposes of these guidelines, any type size 10-point type or larger in print advertising is deemed easily readable.

3. Color Contrasts

Use of color contrasts which render the text difficult to read. For example, grey print on a grey background without sufficient contrast to make it easily readable would violate this section.

4. Photos and Illustrations

Use of inaccurate photographs or illustrations when describing specific automobiles. For example, depicting a fully-loaded car when the advertisement actually refers to a minimally-equipped automobile in the text would violate this section.

5. Abbreviations

Use of any unexplained abbreviation or jargon which is confusing, misleading or not readily understood by the general public. For example, use of "C.R." without further explanation for "Capitalized Cost Reduction" (a mandatory and usually substantial initial payment in a lease transaction), would violate this section.

B. PRICE ADVERTISING

1. Advertised Selling Price

a) Use of any price figure in an advertisement, unless such figure represents the actual purchase price of the advertised automobile, exclusive of registration and title fees and taxes.

b) Failure to include a statement, adjacent to the price, that the price includes everything except registration and title fees and taxes.

c) Failure to include a statement, where an advertised automobile is not in stock, that the automobile is not in stock.

d) Failure to include a statement indicating the number of vehicles in stock at the advertised selling price, if the number is not likely to meet reasonably anticipated demand.

e) Failure to disclose the major options affecting the value of the car that are included in the advertised price. For example, air-conditioning, power windows, cruise control and AM/FM stereo.

2. Selling Above Advertised Price

Selling an automobile for more than the advertised price, if such price has not been communicated to the purchaser, unless the ad specifically conditions the obtaining of the automobile at the advertised

price upon the presentation or mention of the ad.

3. "Low Prices"

Use of the term "low prices", or similar words, unless the prices offered are lower than those usually offered by the dealer or other dealers in the same business area.

4. "Lowest Prices", "Guaranteed Lowest Prices"

Use of the terms "lowest prices", "guaranteed lowest prices", "prices lower than anyone else" or similar terms, unless the dealer has systematically monitored and continues to monitor competitive prices in the trade area and can substantiate such claim.

5. Price Matching

Use of the terms "meet your best offer" or "we won't be undersold", or similar terms which suggest that a dealer will beat or match a competitor's price, unless (a) the dealer clearly and conspicuously discloses its price matching policy and any limitations and (b) such policy does not require the presentation of any evidence which places an unreasonable burden on the consumer. For example, a dealer's policy which requires a signed sales order from another dealer would violate this section.

6. Disclosure of Basis for Price Comparison

a) Use of any advertising which compares the dealer's selling price with a higher price, unless the basis for the higher price comparison is disclosed. For example, "Save $1000" or "25% off" would violate this section.

b) Use of any advertising which compares the dealer's current selling

price with a "list price", or other similar term, unless such list price is the manufacturer's suggested retail price ("MSRP"), is identified as such and the MSRP figure is included in the ad. (The MSRP figure is as stated on the Monroney sticker where such a sticker is required.) For example, "$1000 Off List Price" would violate this section.

7. "Sales"

Use of the words "sale", "discount", "savings", "price cut", "bargain", "reduced", "clearance", "tent sale", and other similar terms, which state or imply a saving from a former price, if the price currently offered is not substantially less that the former actual, bona fide price at which the dealer has sold or offered for sale the same or similar automobiles in the recent regular course of business for a reasonable period of time.

8. "Liquidation Sale"

Use of the terms "Liquidation Sale", "Public Notice", "Public Sale" or similar terms used to connote or imply a court-ordered or other forced liquidation of assets, unless such is the case.

9. "Dealer Cost"

Use of terms which compare the price of an automobile to the dealer's purported cost (such as "inventory price", "factory invoice", "wholesale", "dealer's cost", or similar terms) unless such term represents the dealer's ultimate total vehicle cost. Such ultimate total vehicle cost must reflect all holdbacks, incentives, rebates, allowances, promotional fees, or any other consideration that has been or will be paid or credited by the manufacturer to the dealer for the purchase of the automobile.

10. Rebates

Use of any cash rebate offer, unless the rebate is provided through a manufacturer's rebate program; and, if the dealer offers a rebate through a manufacturer's rebate program, failure to include a statement, if such is the case, disclosing the amount or the percentage of the rebate that the dealer is paying and that such participation may increase the price of the car accordingly.

11. Duration of Sale

Failure to disclose the duration of a time-limited offer, including manufacturer's rebate, sale or special promotion.

12. Trade-Ins

a) Use of any advertising offering a specific trade-in allowance (i.e. "push it, pull it, tow it. $2000 minimum trade-in") if (i) the price of the automobile offered for sale is increased because of the amount of the allowance; or (ii) the offer fails to disclose that it is conditioned upon the purchase of additional options or services, if such is the case. For example, "Extended service contract must be purchased" would be acceptable.

b) Use of any advertising offering a range of prices, for trade-ins (for example, "up to $500" or "as much as $500"), unless the advertisement discloses the criteria which the dealer will use to determine the amount to be paid for a particular trade-in, such as age, condition or mileage.

C. OTHER ADVERTISING PRACTICES

1. Dealer Size

Use of statements as to dealer size, dealer inventory, or sales

volume to represent or imply that the dealer can and does sell automobiles at a lower price, as a result of such size, inventory or volume, than do other dealers, unless such is the fact.

2. "Factory Outlet"

Use of the terms "Factory Outlet", "Authorized Distribution Center", "Factory Authorized Sale" or similar terms to imply that the dealer has a special affiliation, connection or relationship with the manufacturer that is greater or more direct that of any other dealer, when in fact no such special affiliation, connection or relationship exists.

3. "No Money Down"

Use of the phrase "No Money Down" where a dealer fails to disclose that any charges, such as taxes or registration and title fees, must be paid by the consumer to the dealer at the time the contract is signed.

4. Gifts and "Free" Merchandise

(a) Use of the term "free" in advertising, unless the advertiser shall comply with the Federal Trade Commission's Guide Concerning Use of the Word "Free" and Similar Representations, 16 CFR 251, and any amendments thereto. For example:

i) Use of the term "free" or words which convey a similar meaning, including but not limited to "without charge", "giveaway", "gift", "bonus", "complimentary", or "on us", when conditioned upon a purchase or lease, (a) if the price for the product or service to be purchased or leased, or any material factor of the product or service such as quantity, quality or size, is arrived at through bargaining with the purchaser or lessee; or (b) if the

price of the item to be purchased or leased is increased over its regular price; or (c) if the item to be purchased or leased can be purchased or leased for a lesser price without the "free" item; or (d) if the quantity or quality of the item to be purchased or leased is reduced when sold with the "free" item.

ii) Use of any advertising (not prohibited by paragraph (i) above) which promises "free" equipment, accessories or other merchandise or service or offers a gift or other incentive, unless all terms and conditions for receiving such "free" items, gifts or incentives are fully disclosed in the advertisement.

(b) Failure of the dealer to provide the gift or incentive under the terms and conditions disclosed, even if the gift or incentive is to be provided by a third party.

5. Advertising of Repurchased Vehicles

A. Use of any term to describe vehicles that were repurchased by a manufacturer or dealer under a repurchase program for vehicles previously used as rentals, which fails to clearly and conspicuously disclose such prior use. For example, the terms "Program Cars" or "Almost New Cars", when used to describe repurchased rentals, without further disclosure, would violate this section.

B. Use of the term “Certified” in connection with the sale or lease of used cars, unless the manufacturer has an established inspection program for pre-owned vehicles backed by the manufacturer’s warranty and the vehicle to which such term is applied has passed such an inspection according to the manufacturer’s standard.

D. WARRANTY ADVERTISING FOR USED CARS

Use of any claims stating or implying that a used car warranty offers coverage beyond that by the New York Used Car Lemon Law, unless a summary of the essential terms and conditions of the additional protection is provided. For example, "100% warranty" would violate this section.

E. ADVERTISING RELATED TO SPECIFIC USED, EXECUTIVE OR DEMONSTRATOR AUTOMOBILES

Failure to disclose the following in any advertising relating to a specific used, executive or demonstrator cars:

1. The year, make, and model.
2. The actual odometer reading as of the date of placing the advertisement, unless the dealer knows or has reason to know that the odometer reading is inaccurate.
3. The prior use of the automobile, if such automobile was previously used as a police, fire, taxi, driver education, or rental automobile when such prior use is known or should have been know to the dealer.
4. The fact that the automobile was repurchased under the new or used car lemon law, if such is the case, where such repurchase is known or should have been known to the dealer.
5. All major options affecting the value of the car that are in the advertised price. For example, air-conditioning, power windows, cruise control and AM/FM stereo.

SECTION IV. BAIT AND SWITCH ADVERTISING

Bait & switch advertising is unlawful (General Business Law §396). Bait and switch advertising offers deals which are alluring but insincere. The dealer does not intend to sell at the price or under the conditions advertised. Instead, the purpose is to switch consumers from buying the advertised vehicle to buying one at a higher price or on a basis more advantageous to the dealer. The following practices will be considered in determining whether the advertising is a "bait" ad:

1. Refusal to show, display, offer for sale, or sell the automobile advertised in accordance with the terms of the advertisement.

2. The disparagement of the advertised automobile, its service record, reliability, warranty, credit terms, delivery terms, options, availability of service, repairs or parts, or of any other material fact regarding the advertised automobile. "Disparagement", however, shall not include providing accurate factual information with respect to differences between the advertised automobile and other automobiles, in response to a consumer's questions.

3. The refusal to take orders for an advertised automobile at the advertised selling price (unless a specific advertised automobile was previously sold pursuant to the ad) or the taking of orders for the advertised automobile at a price greater than the advertised selling price.

4. The failure to promptly submit orders received from consumers to the supplier for the advertised automobile.

5. The advertising of any automobile which is known to have an undisclosed defect or condition that substantially impairs the value of the

automobile to a consumer.

6. Accepting a deposit for an advertised automobile, and, thereafter, selling the customer a substitute higher--priced automobile, except if the customer has been given the choice to purchase the higher-priced automobile or the advertised automobile and has acknowledged such choice in writing and consented in writing to purchase the higher priced automobile.

7. The failure to make delivery of the advertised automobile at the advertised price within the promised delivery period, unless such failure is caused by reasons beyond the control of the dealer.

8. Taking action which is designed to or has the effect of preventing or discouraging salespersons from selling the advertised price. For example, the payment of a bonus or other financial incentive to the salesperson for the sale of autos other than the advertised auto at the advertised price.

9. Advertising an automobile which the dealer has no reasonable basis for believing he can obtain from the supplier or other source at the advertised price.

10. Failure to disclose the limited number of automobiles available where that number likely will not meet reasonably anticipated demand.

SECTION V. CREDIT SALES ADVERTISING

In credit sales advertising, the Attorney General considers the following practices to be deceptive:

1. The failure to provide the disclosures required by the Truth-In-

Lending Act, 15 USC §1601 et seq., and Regulation Z. That regulation requires that if the advertisement contains any of the following "triggering" terms:

(a) The amount or percentage of any down payment (such as "5% down" or "$100 down");

(b) The number of payments or period of repayment (such as "36 monthly payments");

(c) The amount of any payment (such as "$100 monthly");

(d) The amount of any finance charge;

then the following terms must also be set forth:

(i.) The amount or percentage of any down payment;

(ii.) The terms of repayment;

(iii.) The annual percentage rate, or A.P.R. (and if the A.P.R. may be increased after the contract is signed, that fact must also be disclosed).

2. Advertising credit terms which are not actually available.

3. Using terms such as "everybody financed," "no credit rejected", "we finance everyone", or "bad credit, no problem" or words which imply that credit is available to all applicants, unless a summary of the essential terms and conditions for such financing is disclosed.

4. The restriction of a rate or price to a "qualified buyer" or "qualified lessee", or similar words, unless such qualifications are conspicuously disclosed.

5. Advertising a finance rate (A.P.R.) without disclosing, if such is the fact, that such rate is limited to certain models; that the price may

be increased by a dealer's contribution to lower the rate; that to take advantage of such reduced rate, a customer must purchase additional options or services; or that taking advantage of the rate will increase the final price of the vehicle or options or services purchased; or that the offer expires after a limited time period; or another condition, qualification or limitation which materially affects the availability of such rate.

6. The use or statement of an installation payment on any basis other than a monthly basis.

7. The use of terms such as "no money down" or "low monthly payments" or similar terms when the credit terms are conditioned on an undisclosed trade-in allowance or higher A.P.R.

SECTION VI. LEASE ADVERTISING

The rules described in Sections III, IV and V apply equally to lease advertising. In addition, in lease advertising, the Attorney General considers the following practices to be deceptive:

1. The failure to comply with the applicable provisions of the Truth-In-Lending Act, 15 U.S.C. §1601 et seq., the Truth-In-Leasing Act, 15 U.S.C. §1667 et seq., and Regulations Z and M (12 CFR §213 et seq.), as amended, to the extent that each applies to lease advertising.

For example, an advertisement for a leased vehicle that states “$0 Down payment” must disclose with equal prominence all amounts

due at the inception of the lease. Such disclosure may read, for example, “$1,500 (security deposit plus first month’s payment) plus taxes, title and registration fees, due at lease signing.”

2. The representation that the advertised offer is extended to business and professional use only, unless such is the case.

3. The failure to state the rate of any excess mileage charge and the mileage above which that charge must be paid.

4. The failure to disclose to any lessee its responsibility for maintenance and repair.

5. The misrepresentation of the lessee's liability in the event of early termination of the lease. For example, misstating the penalty for early termination.

6. The use or statement of any lease payment on any basis other than a monthly basis.

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