



## WHAT'S THIS?

Auto Informer is a newsletter disseminated by the Office of Consumer Protection (OCP) and directed to automobile dealers and advertisers. This newsletter is intended to raise awareness regarding Georgia's advertising laws and regulations, particularly Georgia's Fair Business Practices Act (FBPA), a statute OCP enforces, and this agency's *Auto Advertising and Sales Practices Enforcement Policies* (AAEP). To this end, you will find discussions of common advertising issues, additional explanation of the AAEP, and information regarding services we offer.

### You're Working with Who?

#### Beware of Implying an Inaccurate or Nonexistent Endorsement or Relationship

Official looking documents may catch the eye and prompt would-be customers to open an envelope they might otherwise discard. While OCP appreciates the need to capture consumers' attention long enough to ensure they read a dealer's offer, if the mechanism for doing so is deceptive, such a practice is troublesome and may implicate the FBPA.

This office has noted recent use of direct mailers, particularly credit offers, that appear to be from a government or other official source when they are not. Advertisers should be cognizant of the general impression conveyed by an advertisement through not only the specific language used, but also the use of fonts, borders, formats and headings.

Similarly, OCP has noted numerous direct mailers advertising sales events, particularly in conjunction with efforts to obtain trade in vehicles, that appear to suggest the event is sponsored by the manufacturer when the sale is solely an endeavor on behalf of the dealership. Use caution when using such language as "in conjunction with," "in participation with," and similar phrases that suggest a sponsorship or relationship that does not exist. When such language is used in reference to the manufacturer, consumers may reasonably conclude that they should visit your dealership since the manufacturer has selected your dealership as the sole site for a special sale. If this conclusion is false, rethink your advertisement.

Again, in addition to the actual words used, be cognizant of other factors that could mislead consumers. For example, though the dealership may use the manufacturer's logos, ensure that the placement of and language surrounding these logos does not suggest the mailer is coming from the manufacturer when that is not the case.

**Clear and Conspicuous: The statement or disclosure is presented in a readily noticeable and readable manner and when on a website, newspaper and/or mailer is a minimum of 10 point font.**

### It's a Lease!

Federal law (the Consumer Leasing Act) requires that advertisers make certain disclosures when advertising the amount of payment or listing the amount of capitalized cost reduction for a lease transaction. One of these required disclosures is the fact that the transaction is a lease rather than a purchase. A statement of this fact (e.g. "lease") should be clear and conspicuous and in immediate proximity to the rest of the lease disclosures.

This office has noted that in practice, numerous advertisements appear to downplay the "lease" disclosure through tiny font or garbled radio disclosures. Failure to properly disclose the lease terms violates the FBPA. To ensure compliance, avoid advertising a payment in large font and then, in significantly smaller font, showing that the payment is for a lease. Similarly, in radio spots, the term "lease" should be spoken in the same volume and speed as the rest of the radio spot so as to avoid any confusion about the type of transaction advertised.

When advertising the amount of payment or capitalized cost reduction for a lease, be sure to disclose:

- Whether or not a security deposit is required;
  - The amount of capitalized cost reduction (amount due at signing/amount due at delivery);
  - The number and amounts of payments under the lease (e.g. the monthly payment and number of months);
  - That an extra charge may be imposed at the end of the lease term where the lessee's liability (if any) is based on the difference between the residual value of the leased property and its realized value at the end of the lease term; and
  - That the transaction is a lease.
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**Q:** My dealership really needs to move some of our used inventory and will probably need to sell some cars to an auction to make room for new vehicles. Can I advertise a “pre-auction” sale?

**A:** IT DEPENDS

As you know, any representation you make must be accurate, so if you are in fact going to send all unsold cars to an auction, a “pre-auction” sale may be a truthful statement. In the event you decide to use this type of phrase however, you must be ready to show that every unsold vehicle included in the sale was actually sent to an auction after the event’s conclusion. Consequently, OCP urges careful consideration before use of this or similar types of statements.

## FREQUENTLY ASKED QUESTIONS

**Q:** I recently purchased several vehicles from an auction that had been repossessed from the prior owners. Given that the vehicles have been repossessed at one time, is it acceptable to advertise that I have “repossessed” vehicles for sale?

**A:** NO

When a consumer sees the words “repossessed” they automatically assume that due to the repossession the vehicle may be sold at a lower price than usual. By the time the “repossessed” vehicle is sold and the dealer picks up the vehicle at auction however, it is unlikely that the savings are passed on to the consumer. The use of “repossessed” or similar words is inappropriate in this context and may not be used.

**Q:** We would like to offer every consumer who purchases a vehicle a free gift, like a TV or event tickets. Our advertiser just created a radio advertisement telling consumers that when they buy a vehicle, they will receive a complimentary gift. Can we run it?

**A:** NO, BUT...

It is acceptable to advertise the TV or tickets as “included with purchase,” rather than a “gift.” While it is certainly acceptable to provide consumers with an extra incentive to purchase from your dealership, if the consumer must buy one item in order to receive the “gift,” (TV or event tickets, here) and the price of that item is negotiated (such as a car), then the second item may not be designated as a gift. Similar words such as “free,” and “complimentary,” are also prohibited in this context. The ad should indicate that the second item is “included with purchase.”

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## Change in Georgia's Promotion Statute

Georgia’s FBPA has a particular section regulating promotional advertisements and events. This section lists numerous requirements regarding promotional notices and disclosures as well as requirements related to running a promotion. The promotion section was recently amended by the Georgia legislature and appears to have placed limitations on the types of prizes that may be offered during a promotion.

Previously, the statute did not place any restrictions on the use of cash prizes; however, the law has been modified in the following ways:

1. Only noncash prizes may be awarded or offered; and
2. Noncash prizes may not be redeemable for cash.

## BE AWARE OF RECENT CHANGES IN GEORGIA LAW

In determining whether this change affects you, decide if you conduct “promotions” as defined by Georgia law. The FBPA defines a “promotion” as any scheme or procedure for the promotion of consumer transactions whereby one or more prizes are distributed among persons who are required to be present at the place of business or are required to participate in a seminar, sales presentation, or any other presentation, in order to receive the prize or to determine which, if any, prize they will receive. Common examples of promotions include direct mailers instructing the consumer to come into the dealership to match a winning number with a prize board or an event where consumers visit the dealership to place their name in a drawing for a prize.

Dealers who conduct promotions should be cognizant of this amendment as it likely affects the types of prizes they have historically offered. For example, OCP has noted that promotional direct mail advertisements make frequent use of cash prizes such as \$1 coins or a large lump sum cash prize. Awarding such a prize is now prohibited by Georgia law. Likewise, keep in mind that while it may be acceptable to offer a vehicle, for instance, as a grand prize, it is not acceptable to substitute cash for that vehicle as noncash prizes cannot be redeemable for currency. Because this statute may have consequences outside of this office, when in doubt, consult with your attorney.

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### - OCP AD REVIEW -

OCP offers a courtesy review service to dealers and marketing companies. While OCP will not approve any proposed advertisements, we will identify those representations we consider problematic and make suggestions for changes.

**REVIEW TIME PERIOD:** For direct mail ads, please allow 3 full business days for a review and response. All other advertisements will be reviewed within 2 full business days (excluding weekends). Please email our primary compliance investigator, Victor Hudson, at [victor.hudson@ocp.ga.gov](mailto:victor.hudson@ocp.ga.gov) for ad review or advertising related questions.

**Suggestions/Comments:** Suggestions for this newsletter, as well as advertising questions or concerns, may be emailed to Lauren Villnow at [lauren.villnow@ocp.ga.gov](mailto:lauren.villnow@ocp.ga.gov). If you wish to unsubscribe, please send an email with “unsubscribe” in the subject line.

Copies of the Fair Business Practices Act and the *Auto Advertising and Sales Practices Enforcement Policies* can be found on our website at [www.consumer.georgia.gov](http://www.consumer.georgia.gov).