



## WHAT'S THIS AND WHO'S IT FROM?

The Governor's Office of Consumer Protection, which previously distributed this newsletter, became part of the Georgia Attorney General's office on July 1, 2015 and is now operating as the Georgia Department of Law – Consumer Protection Unit. Though the name may have changed, our office's purpose and function remain the same. This newsletter continues to be part of our efforts to raise awareness among auto dealers and advertisers regarding the laws we enforce, including Georgia's Fair Business Practices Act (FBPA), and this office's *Auto Advertising and Sales Practices Enforcement Policies* (AAEP). Expect to find discussions of common advertising issues, as well as additional explanation of the AAEP, and information regarding services we offer.

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## PRICING REPRESENTATIONS: DEALER FEES, OPTIONS & DISCOUNTS

By now, you should all know our policy about fees and pricing: Advertised vehicle prices must include all non-government charges that a consumer is required to pay in order to purchase a vehicle, including but not limited to, dealer fees, previously installed dealer options, and electronic titling fees. Only taxes, tag, title, and Lemon Law fees may be added to this price. This pricing requirement extends to any advertised price in any medium, but most commonly becomes an issue on your dealer website or a third party site such as Autotrader.

Additionally, advertised discounts must be accurate and non-misleading. For example, it is deceptive to advertise a specific discount and then require consumers pay a host of additional costs that effectively diminish the discount you originally offered.

Although this office's pricing policies have been in effect for decades, we still regularly identify instances of non-compliance, particularly with dealers adding required charges to advertised prices at the time of purchase. The following examples may be useful in your efforts to monitor your advertising.

### Dealer Fees:

Suppose you charge an administrative fee of \$500 and you want to list a car for \$15,000. Because your advertised price must include your dealer fee, you have effectively reduced the vehicle price to \$14,500 to accommodate the dealer fee. It is not acceptable to list a price of \$15,000 and then add the additional \$500 at the time of purchase. Similarly, you may not include a disclaimer such as "price plus tax, tag, registration, and fees," "plus government fees and a \$500 dealer fee," or any other disclosure which informs the consumer that she will be required to pay additional non-government charges upon purchase.

A word on pricing disclosures: Keep in mind that your pricing disclosures may, but are not required to, contain a statement telling customers what *is* included in your pricing (e.g. "Price includes our dealer fee"). You *should* indicate that the customer will be responsible for government fees (including applicable tax, title, tag, and Lemon Law).

### Dealer Installed Options:

Violations of this office's pricing policies can also occur with the use of dealer addendums and advertised discounts. For example, you may have a dealer policy that all new vehicles receive a paint protection package and vehicle floor mats for an additional \$1,000. Because these options have already been installed, they are non-negotiable charges to your customer. You also have a \$500 dealer fee as in the previous example. You cannot: List a "Sales Price" on your website, say for \$26,000, and then add \$1,500 to the price of the car when the consumer attempts to purchase it. Rather, the "sales

price,” “internet price” or whatever name you use to describe the amount of money you are asking for your vehicle must be listed as \$27,500.

Why? Because any dealer addendum charges must be included in the advertised vehicle price if 1) the options are already installed and/or 2) the options have not yet been installed but are a required condition of purchase.

### Discounts:

Another pricing related issue involves advertising discounts. To ensure uniformity and accuracy in advertising, all discounts for new vehicles should be taken from a vehicle’s MSRP. This prevents a dealer from artificially creating enormous discounts by adding thousands of dollars’ worth of dealer added options. For instance, a dealer may not take a vehicle with an MSRP of \$20,000, add \$10,000 worth of options to the vehicle and then advertise “\$10,000 OFF!” for a “sales price” of \$20,000. While this may be an extreme example of deceptively inflated prices, discount issues also present themselves when properly referencing MSRP. If, for example, a vehicle has an MSRP of \$30,000 and you intend to sell it for \$26,000 plus a required \$1,500 in dealer fees and dealer options, you should not advertise a \$4,000 discount. Why? Simply put, the consumer will be required to pay \$27,500 for the vehicle. The vehicle must be advertised at that price. The proper discount then, is only \$2,500, rather than \$4,000.

The key principal in pricing, whether focusing on additional fees or discounts, is to ensure that your customer is not quoted one price over the telephone, by email or through some other medium only to come to the store and be surprised with a host of additional required fees and charges. As always, we encourage you to check your advertisements and properly train your staff to ensure complete understanding in this area. This office regularly conducts undercover shops to ascertain advertising compliance. If we find your dealership is violating our requirements in this area, we will take appropriate action.

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## BAIT & SWITCH

It is a specific violation of the FBPA (O.C.G.A. § 10-1-393(b)(9)), to advertise a vehicle that is unavailable and/or which the dealer has no intention of selling. While the classic illustration of “bait & switch” involves advertising a vehicle that will not or cannot be sold and then pushing the customer to a higher priced car, this issue presents itself in numerous variations.

Consider, for instance, a dealer who sells a vehicle but fails to remove the corresponding vehicle advertisement from the dealership website. Problems arise if a consumer then comes to the dealership after seeing the inaccurate advertisement. This issue is only compounded if the consumer first contacts the dealership to ask about the car before traveling to the dealership and the dealer misrepresents its availability. Statements like the vehicle is “out on a test drive” or others which suggest the car is still available for sale when it is not are highly troublesome, particularly when a consumer then travels to a dealership to view the vehicle only to be told the car “just sold.” Dealers can avoid these issues by ensuring that their staff members check the status of vehicles when asked so that accurate information is provided to

customers. Dealers should also carefully monitor advertisements to ensure they are updated in a timely manner. While we understand that advertisements are not updated the instant a vehicle is sold, failure to manage and remove dated advertisements can result in significant misrepresentations to consumers and possible FBPA violations.

Failing to sell an “ad car” could also give rise to bait & switch concerns when a particular vehicle is repeatedly advertised over an extended period of time yet never sold. If customers respond to an advertisement seeking the “ad car” and the dealer redirects them to another vehicle in an effort to keep the car and continue advertising it, the dealer may have violated the FBPA. **Fair warning:** If we see that a dealer is repeatedly advertising the same vehicle at an especially attractive price, we may decide to conduct an undercover visit to ensure that it is still available and is actually being offered to consumers who express an interest in it.

## DIRECT MAILERS

Direct mailers are advertisements addressed to specific consumers which are generally mailed to their homes. Examples of these types of advertisements include “scratch & win,” pre-approval, and special sales events advertisements. Obviously, we understand your need to bring consumers into your stores. Be wary, however, of enticing buyers with offers that are potential violations of the FBPA. Here are a few of the most common examples:

### **1. Scratch & Win:**

- “Scratch & Win” advertisements typically ask consumers to scratch off a series of circles or shapes containing pictures and/or icons. If the consumer uncovers a matching series of pictures, the consumer has won a prize. The consumer must then go to the dealership in order to claim the prize, which is generally determined by comparing the consumer’s mailer with “winning numbers” at the dealership. Violations of the FBPA can arise when the shapes that are “scratched” reveal pictures of prizes which the consumer has not actually won. For instance, new vehicles are a common “grand prize” in these types of mailers for only one mailer recipient. It is problematic if every mailer recipient scratches off a picture of a car next to language telling him or her that they have won a prize. Clearly, many consumers reasonably could believe that they have won the “grand prize” car, when only one consumer has actually done so.
- Generally, these types of mailers will also qualify as promotions under GA law. In a promotion, you may only offer noncash prizes. Cash prizes, such as “grand prize” cash giveaways, are prohibited.
  - Are you conducting a promotion? Promotions, as defined by the FBPA, generally involve a sales scheme which requires consumers to come into the dealership in order to determine what prize the consumer is receiving. The definition also includes other events, though these are not as common within the auto industry. If conducting a promotion please refer to the *AAEP* and O.C.G.A. § 10-1-392(a)(27), O.C.G.A. § 10-1-393(b)(16) and related provisions for information about the specific way in which these events must be advertised and conducted.

### **2. Pre-Approval:**

- Some mailers offer consumers pre-qualified loan offers based on a prior evaluation of the consumer’s credit worthiness. It is deceptive to tell these consumers they have qualified for a range of potential loan amounts, such as “up to \$35, 000,” because consumers believe they will likely qualify for the largest advertised amount. It is acceptable, however, to list a minimum amount for which all mailer recipients have actually been qualified.

### **3. Special Sales Events:**

- These types of mailers generally include any type of advertisement that tells customers the dealership is offering deals, discounts, financing, etc. that are usually not available except during a special event or are limited to select customers. Telling consumers to come into your dealership within the next 24 hours to receive a special deal is problematic, for example, if after 24 hours that deal will still be available. Similarly, advertising that a sales opportunity will be made available only to mailer recipients (e.g. “Come into the store for this exclusive offer”) is deceptive if consumers other than those receiving the mailer are also given the advertised offers.

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## **THINGS YOU CAN’T SAY:** *“We’ll pay off your trade no matter what you owe!”*

Why not? Because consumers, particularly those who are upside down in their car payments, will hear this and think the dealer will be paying off their car’s loan. In reality, the consumer is still responsible for the negative equity in their trade in vehicle and this statement suggests otherwise.

## VEHICLE HISTORY REPORTS AND UNDISCLOSED DAMAGE

If your dealership offers consumers Carfax reports or other documents containing vehicle history, keep in mind these reports can lag or not include all relevant history at any given time. Dealers who use these reports can find themselves in potential violation of the FBPA, particularly if they know the report is inaccurate. Consider the following scenario and example responses:

### Scenario:

**A consumer comes into your dealership, looks at a particular car, and asks if the vehicle has ever been in any car accidents. You hand the consumer a copy of the Carfax and say something like, “Check the Carfax,” or “The Carfax doesn’t show any accidents.” You do not offer any other information.**

### These Responses are Deceptive If:

1. Example # 1
  - You know your salesman backed the car into a pole last week causing considerable damage to the bumper. You had the bumper replaced and instead of telling the consumer about this when asked, you hand him a copy of the Carfax which has no accidents reported. This response is deceptive because you know that the vehicle has been in an accident even though it was not reported to Carfax and thus will never show up in that report. Having answered the consumer’s question only by referring to the report, you have essentially said there was no accident when that is clearly untrue.
2. Example # 2
  - You know that you purchased this car three weeks ago at auction where it was announced with frame/unibody damage. You do not know how the vehicle was damaged. You also know that the Carfax does not have any accidents reported and does not reflect the auction announcement. As with the previous example, you cannot simply hand the consumer a copy of a vehicle history report which suggests the car has not been damaged.
3. Example # 3
  - You know that when you accepted this vehicle on trade last month, the owner told you she wrecked the car a few weeks earlier, but elected to pay for the damage out of pocket instead of report it to her insurance company. You know the Carfax shows a car accident reported three years ago but clearly does not show the second accident that occurred just a month or two ago. Given this knowledge, you cannot simply hand the consumer the report and allow him to believe the vehicle has only been involved in one accident when you know that it was involved in two.

These are of course, only three examples of the possible deceptive misuse of vehicle history reports that may violate the FBPA. To avoid violations, ensure that you and your staff are knowledgeable about your vehicles and do not use these reports as a shield to avoid commenting on known vehicle history.

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### AD REVIEW

This office offers a complimentary review service to help advertisers and dealers identify those areas that might violate the FBPA or related rules or laws. **We cannot approve any advertisements.** For direct mail ads, please allow 3 full business days (excluding weekends) for a review and response. Other general advertisements will be reviewed within 2 full business days. Email our advertising compliance investigator, Victor Hudson, at [vhudson@law.ga.gov](mailto:vhudson@law.ga.gov) for advertising review. You may also contact Lauren Villnow, the assistant attorney general who assists in monitoring auto related issues, at [lvillnow@law.ga.gov](mailto:lvillnow@law.ga.gov). **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).**