



AUTO INFORMER

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Issue 09

WHAT'S THIS?

Auto Informer is a quarterly newsletter disseminated by the Office of Consumer Protection (OCP) and directed to automobile dealers and advertisers. This newsletter is intended to aid in raising awareness regarding Georgia's advertising laws and regulations, particularly Georgia's Fair Business Practices Act (FBPA), which is explained more below, 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.

THIS QUARTER'S COMMON VIOLATION: **Promotional Mailers**

OCP has seen a marked increase in the use of direct mailers in recent months. While we appreciate that such advertisements touting "huge sales" and vehicle giveaways may generate increased visits to the dealership, we are concerned about the growing use of advertisements that are often problematic. There are three elements of these mailers that are of particular concern.

PROMOTIONS: First, these direct mailers often advertise promotions, the most common of which are "scratch & win" mailers offering prizes such as golden coins, vehicles, and cash. The FBPA contains specific provisions governing the use of promotional advertisements. Direct mailers, which often contain promotions, must comply with these requirements (many of which are summarized in the AAEP!). Please ensure that you closely read these requirements prior to dissemination of any promotional mailer.

UNIQUE SALES EVENTS: Additionally, these mailers often advertise special sales events. The AAEP contains specific provisions governing the use of these "unique sales events," that is, advertising practices that suggest the dealership is conducting business in a manner that differs from the way that cars are usually sold or leased. If an advertisement falsely suggests to consumers that they will receive discounts or deals that they would not ordinarily receive, the advertisement violates the FBPA.

Be cognizant of the specific phrases used within the advertisement as well as the general impression that the mailer conveys. Using such phrases as "lowest prices of the year," "historic event," "once in a lifetime opportunity," "only at this dealership," "corporate ordered disposal," and similar terms may attract consumers, but such terms must be used accurately. For instance, the phrase "corporate ordered" suggests that the manufacturer has created and mandated a specific sale. If the dealer is trying to move inventory during a sale and the manufacturer is not participating in any way other than providing vehicles per the franchise agreement, this representation may be deceptive. Similarly, representing that a sale is "historic" is problematic when the dealership regularly conducts sales events. The AAEP discusses the use of numerous other phrases, such as "repossessed" and "seized" that should be avoided unless used as directed within this agency's guidelines.

DISSEMINATION: Finally, it has recently come to our attention that some dealerships order one printing of direct mailers yet disseminate them at two or three different times. Multiple "drops" of the same mailer, with the same advertised vehicles, discounts and offers in each drop are problematic as the advertised vehicles may sell, but since the printing has already occurred, there is no opportunity to update the mailer.

FEES

BE AWARE OF HOW (AND WHAT) YOU CHARGE YOUR CUSTOMERS

If you are advertising, selling or leasing vehicles in Georgia, you should be aware of this agency's long standing requirement that all non-government fees be included in the advertised price. While there is no requirement that dealerships charge "doc," dealer, administrative, transportation, prep or any other fee, should you choose to collect such a charge, that fee must be advertised correctly. For example, if a vehicle is offered at \$15,000 and the dealership fee is \$500, then the vehicle must be advertised at \$15,500. It is not acceptable to indicate the price and then include a disclosure "plus fees." Dealership websites are of particular concern since we have frequently noted blanket disclaimers regarding the exclusion of non-government fees.

On the other hand, it is permissible to exclude those fees collected on behalf of the government (tax, tag, title and Lemon Law). Two issues we have noticed regarding government fees relate to title and Lemon Law charges. For "title" fees, ensure you are only charging the requisite title fee and not any amount in excess of the amount prescribed by law. Any administrative costs associated with the title application must be charged elsewhere and not denoted as part of the "title" fee.

Additionally, make certain the Lemon Law fee is only charged for the sale or lease of new vehicles. Collecting a Lemon Law fee for the sale of a used vehicle suggests to the consumer that the Georgia Lemon Law applies to their purchase and offers them protection against the purchase of a "lemon" when the law is inapplicable to such vehicles. The use of pre-printed forms can prove problematic if they automatically provide for the collection of Lemon Law fees and are used for pre-owned vehicles. We are actively pursuing dealerships that fail to advertise fees correctly and encourage you to review, in particular, your internet advertisements and buyer's order forms.

LEMON LAWS NEWS

As you may be aware, the Georgia Lemon Law provides four requirements with which dealers must comply. One of these requirements deals with consumers who bring you their new vehicle for repairs.



WORK ORDERS AND COMPUTER READINGS

Each time you return a consumer's new motor vehicle after diagnosing or repairing an issue, you must provide the consumer with a fully itemized and legible work order. The work order should include the following information:

- A general description of the problem reported by the consumer.
- The date and odometer reading when the vehicle was submitted for repair.
- An itemization of all work performed on the vehicle, including, but not limited to, parts and labor.
- A description of any diagnosis of the problem and the results of any diagnostic test, inspection or test-drive.
- The date and odometer reading when the vehicle was made available to the consumer.

You must provide a work order to the consumer even if no work is performed. Additionally, you must provide a copy of a

report or computer reading regarding the inspection, diagnosis, or test drive of a consumer's new motor vehicle, if requested by the consumer. When consumers apply for the state's Lemon Law arbitration program they may have to contact you for copies of work orders and computer readings. Most dealers provide these documents to the consumers within a reasonable time period of the request and we greatly appreciate that. As always, if you have questions, please do not hesitate to contact this office.

WE WANT TO BUY BACK YOUR VEHICLE

AND WILL PAY X FOR IT!

Representations, such as the one above, can be problematic for several reasons. As we have generally seen such advertisements presented, the consumer receives a direct mailer representing that if the consumer still has a specific make and model, the dealership will purchase the vehicle at an estimated price based on a vehicle value book (e.g. Kelley Blue Book or Black Book). This agency is concerned that due to numerous variables these types of "buy back" offers may not accurately reflect the amount of money most consumers may actually receive for their vehicle and consequently, the ad may be misleading and/or deceptive.

One issue is the use of the vehicle's mileage in the valuation which often utilizes yearly mileage estimates that are not reflective of consumers' actual driving distances, particularly within the Atlanta area. This agency has also seen advertisements quoting estimated purchase prices based on high trim levels and options when the consumer receiving the letter does not have a vehicle matching the car on which the price is based. Also troubling is the use of vehicle conditions such as "good" or "clean," that many consumers may not have and that the dealer retains complete discretion in determining.

It should also be noted that "buy back" offers should only be termed as such if the dealership making the offer is the original dealer that sold the vehicle to the consumer. Otherwise, use of the term is inaccurate. Additionally, because guaranteed trade-in values are prohibited (advertisements for trade-in vehicles that offer certain minimum purchase amounts), an offer to purchase may not be contingent on the consumer trading in their current vehicle and purchasing another. Because of these potential issues, OCP is concerned about the use of these types of offers and urges caution in the use of any advertisement offering to purchase a consumer's vehicle.

BUT THE CONSUMER NEVER SAW THE ADVERTISED PRICE!

If a dealership is offering a vehicle at a specific price, then that vehicle must be sold at or below the advertised price even if the purchaser never saw or mentioned the advertisement.

The only exception to this requirement occurs if the advertisement clearly and conspicuously requires that the ad be presented to the dealer in order to receive the price. In such an instance, the dealer must give the advertised price to those consumers who present the ad (or a coupon in the advertisement). Consumers who request the vehicle without following the instructions in the advertisement do not have to be given the advertised price.

SAY WHAT YOU MEAN & MEAN WHAT YOU SAY

All representations within an advertisement must be accurate on the day of printing or publication. If advertising specific vehicles, ensure that you have both the quantity and type of vehicle listed and that it is available for sale per the advertisement. Failure to do so is a violation of the FBPA.

FREQUENTLY ASKED QUESTIONS



Q: Are dealers required to give the yellow Lemon Law Statement of Consumer Rights to purchasers who will register the vehicle in another state?

A: YES

You are required to provide this statement to every consumer who purchases or leases a new motor vehicle from your Georgia dealerships, even if the consumer will register the vehicle in another state.

Q: I recently saw an advertisement offering cars at “factory direct pricing.” Is that allowed in Georgia?

A: NO

Because phrases like “factory direct pricing,” “factory showroom,” and similar terms falsely imply that the dealer owns or operates a factory, these words are prohibited. Likewise, language such as “factory authorized” should not be used unless the dealer can demonstrate a unique authorization from the factory to the dealer over and above the usual franchisee relationship. Simply receiving an additional or special allocation of vehicles, in and of itself, does not qualify as a “factory authorized sale” and may not be advertised as such.

Q: My dealership website has a pop-up coupon that appears when consumers visit the site. We ask that consumers give us the coupon when they arrive at the dealership. Is that acceptable?

A: NO

The AAEP prohibits any language requiring the consumer to present the dealer with a coupon or voucher at any time prior to negotiating the vehicle price. Consumers believe that the value of the coupon will be deducted from their lowest negotiated price, which may not occur if the coupon is presented upon arrival at the dealership or any other time before negotiations.

Also, be aware that coupons should include all relevant limitations or restrictions. We also frequently notice the use of “select” with such coupons. Keep in mind that the AAEP only permits use of this term when accompanied by a list of all vehicles included or excluded from the offer.

WHAT DOES OCP DO?

OCP enforces the FBPA which prohibits unfair and deceptive acts and practices within the context of consumer transactions. OCP's mission is to protect consumers and businesses from unlawful, deceptive and unfair practices in the marketplace by enforcing the laws we administer and through education.

In carrying out our mission, we are guided by the following core values:

Integrity. Individuals making ethical choices which earn and maintain the public trust.

Public Service. Passion for what we do; Compassion for those we serve.

Fairness. Uncompromising commitment to the even-handed and uniform administration of justice.

Excellence. Continually challenging ourselves to maximize our effectiveness and impact.

- OCP AD REVIEW - CHANGES YOU SHOULD BE AWARE OF

As many of you know, 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 limited suggestions for changes.

REVIEW TIME PERIOD:

Due to the increasing volume of proposed ads, OCP is extending the review time period for certain types of advertisements. For direct mail ads, please allow 3 full business days for a review and response. Other, general advertisements, will be reviewed within 2 full business days (excluding weekends).

PERSONNEL CHANGES:

We have a new Compliance Investigator!

Victor Hudson now works as our primary compliance investigator and all advertisements and any advertising related questions should be submitted directly to him at victor.hudson@ocp.ga.gov.

Lauren Villnow now acts as a staff attorney and works closely with Victor in monitoring advertising issues. Suggestions for this newsletter, as well as advertising questions or concerns, may be emailed directly to Lauren at lauren.villnow@ocp.ga.gov.

Unsubscribe:

To unsubscribe from this newsletter, please send an email to Lauren 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