



AUTO INFORMER

March 7, 2012

Issue 10

WHAT'S THIS?

Auto Informer is a quarterly newsletter disseminated by the Governor's 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), 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

Incorrectly Charging and Collecting Government Fees: Consumers pay tax, tag, title and Lemon Law fees (for new vehicles), when purchasing or leasing vehicles. OCP has recently encountered a few misrepresentations regarding the payment of these government fees.

Tax: This winter, OCP noted several dealers who advertised they would pay a consumer's sales tax. GA law makes it a misdemeanor for any retailer to represent or otherwise advertise that it will absorb any part of the sales tax. Making such a representation also violates the FBPA and the AAEP.

Tag & Title: Ensure that only those fees collected on behalf of the government are designated as "tag and title fees." For instance, administrative expenses that the dealership incurs in processing paperwork for tag and title may not be designated as a "government fee" or included in charges for tag and title because the government is not requiring the dealership to assess such a charge. Designating these types of additional charges as "government fees" is deceptive and misleading because consumers reasonably assume that if a fee is collected on behalf of the government it is a required and therefore, non-negotiable fee, when this may not be the case.

Lemon Law: The Georgia Lemon Law currently requires dealers to collect \$3 for the sale and lease of all **new** vehicles. OCP has seen numerous dealers charging all consumers, whether purchasing a new or used vehicle, the Lemon Law fee. When consumers read their contracts and see they have paid a Lemon Law fee, they may reasonably assume they will be covered under the Lemon Law when they are not. OCP urges particular caution when using a pre-printed form that automatically provides for the collection of a Lemon Law fee. Dealer's additional responsibilities related to the Lemon Law are discussed in more depth below.

SHOW ME THE CARFAX!

Does your dealership use Carfax, AutoCheck or similar reports? While use of these reports is intended to promote transparency and can provide consumers with valuable information, OCP urges caution when using reports that do not reflect damage, accidents, incidents, etc. that the dealer knows to exist.

For example, suppose you know that a vehicle was in a car accident 3 weeks ago and that the Carfax has not yet been updated with this information. Suppose a consumer then asks whether the vehicle has ever been in an accident. If you simply respond by handing the consumer the Carfax report, knowing that the accident is not reflected in the Carfax, you may have violated the FBPA by your use of the report without additional information.

FREQUENTLY ASKED QUESTIONS

Q: I'm selling a used car to a consumer living in one of the 13 counties requiring emissions certificates. I had an emissions test done on the car and it now has a valid emissions certificate. Is it ok to charge the consumer for the emissions test?

A: NO

As you know, if selling a used vehicle to a consumer residing in one of 13 Georgia counties, the vehicle must be sold with a valid emissions certificate. While dealers may routinely have emissions tests done on vehicles, it is not permissible to directly pass that expense to the consumer. The AAEP specifically prohibits charging consumers for the emissions test.

Q: All my new cars have dealer addendums that provide additional services and products that raise the overall purchase price of the car. I would like to advertise discounts off this increased price. Is that allowed?

A: NO

OCP requires that all discounts off of new cars be calculated from the MSRP. So, if you have a vehicle with a MSRP of \$25,000 and a dealer addendum that adds \$2,000, it is deceptive to calculate the discount off of \$27,000. Inflating the price and then calculating a discount off the new increased price suggests to consumers they are receiving a more significant discount than they may actually be receiving.

Additionally, remember that if your dealership uses a dealer addendum, the sticker or supplement must make the reason for the additional charges clear, i.e. that the dealer, rather than the manufacturer, is charging extra for certain services and/or products. To that end, ensure that you clearly indicate something like "Additional Dealer Profit" and avoid terms such as "ADP" which does not communicate to consumers the reasons for the additional charges.

Q: Our dealership really needs used cars and we want to encourage customers to trade in their vehicles. Can we say "we'll pay off your trade no matter what you owe?"

A: NO

While this phrase is certainly an arresting one, this statement implies to consumers that they can bring in their trade and they will not be responsible for the pay off, regardless of the amount of negative equity. If a consumer will be required to refinance any negative equity in his or her next car loan, the above statement is misleading and prohibited.

REMEMBER: THE AAEP IS NOT A COMPLETE GUIDE TO AUTO ADVERTISING IN GEORGIA. BECAUSE NEW IDEAS AND CONCEPTS ARE CONSTANTLY BEING DEVELOPED, THE AUTO POLICIES MAY NOT SPECIFICALLY ADDRESS EVERY POSSIBLE ADVERTISING CONCEPT. WANT TO KNOW IF AN IDEA IS COMPLIANT? ASK US!

SPOT DELIVERY & YO-YO SALES

The practice of negotiating sales contracts and then sending consumers home with vehicles while the dealer tries to retain the right to rescind the contract can be a problematic practice. While spot delivery appears to be a widespread practice throughout our state, OCP has serious concerns about those dealerships that abuse the use of these “conditional” sales.

OCP continues to receive complaints from consumers who understood they were “approved” and drove away in a vehicle only to be later contacted, sometimes weeks or months later, and told to bring back the vehicle because financing had not been secured. Consumers indicate that they have been placed in a state of “limbo” where they are unable to register the vehicle or even make loan payments while the selling dealer seeks financing.

If your dealership engages in spot delivery, be aware that financing arrangements implicate federal law, as well as the FBPA, and that OCP is carefully reviewing consumer complaints. While we are concerned with numerous aspects of this practice, the following are a few specific issues of which you should be aware:

- **Retention of the consumer’s trade-in vehicle.** If a consumer is not approved per the terms of the retail installment contract, the dealer must retain the title to the trade-in vehicle and return the vehicle to the consumer if the transaction is not consummated.
- **Verbal representations.** Regardless of the language used in a bailment agreement, ensure that you do not make any oral representations that are untrue or inaccurately describe the nature of a spot delivery transaction. For instance, it is confusing and misleading to congratulate a consumer on his new purchase if financing has not been approved and there is a chance the consumer may need to return the vehicle because of this contingency.
- **Return of the consumer’s down payment.** If the requisite financing cannot be secured and the consumer elects not to enter into another sales agreement, the dealer must immediately return the consumer’s down payment.

OCP is particularly concerned about those spot delivery transactions where the consumer drives the vehicle long enough for the dealer to retain the down payment under the terms of the bailment agreement.

- **Retention of the credit application.** Federal law requires dealers to keep a copy of the consumer’s credit application for a period of 25 months.

REMEMBER: GEORGIA LAW REQUIRES THAT VEHICLES PURCHASED FROM A DEALER BE REGISTERED WITHIN 30 DAYS. THOUGH GEORGIA DOES PROVIDE FOR A ONE TIME EXTENSION BY THE COUNTY AGENT, REMEMBER THAT IF THE VEHICLE ISN’T PROPERLY REGISTERED, YOUR CUSTOMER CANNOT LEGALLY OPERATE THE VEHICLE.

CONSUMER COMPLAINTS & MEDIATION

OCP has a mediation department that acts as a mediator between businesses and consumers in the hopes of reaching a mutually agreeable solution.

Although our mediation department handles a variety of complaints, we often learn of consumer’s concerns about their vehicles. One common complaint involves consumers who purchase used vehicles that have not passed an emissions inspection prior to the sale. As you are aware, if you sell a vehicle that is at least three years old and no older than 24 years old with a GVWR of 8500 lbs. or less to a consumer residing in one of the 13 covered counties, the vehicle must

have a valid emissions certificate. The 13 covered counties are Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding and Rockdale. See O.C.G.A. § 12-9-54 and DNR Rules 391-3-20-.02 and .03.

The FBPA also prohibits representing that goods have uses or benefits that they do not have. Your sale of a vehicle without a valid emissions certificate to a consumer residing in a covered county is a violation of the FBPA. If the vehicle does not have a valid emissions certificate, the consumer cannot register and lawfully operate the vehicle.

If we receive a complaint from a consumer in this position, OCP will either request that you pay for the vehicle inspection, as well as the associated costs for the vehicle to pass the inspection, or that you rescind the sale or lease transaction. Keep in mind that OCP is not limited to mediating a complaint; we may elect to take more formal action if necessary. OCP may assess fees and penalties in any resulting investigation.

DEALER INSTALLED OPTIONS

Does your dealership routinely install options such as rustproofing, etching or undercoating? Remember that, as discussed above, the price you advertise for the car must include all fees and charges other than tax, tag, title and Lemon Law (for the sale and lease of new vehicles only). This means that if your dealership places options or accessories on a vehicle on a regular basis or requires consumers to purchase these add-ons, the additional charges for these items must be included in the advertised price.

Additionally, keep in mind the following:

- If the consumer has the option of electing not to purchase the options or accessories, it is

deceptive to place the charges for these items in such a way that consumers will understand the charges to be standard, pre-printed and non-negotiable.

- If a consumer asks what you paid for the option or accessory, any representation you make regarding your cost must be accurate.
- If a consumer pays for an add-on, they have a legitimate expectation that the service or product they paid for will be adequately performed or provided. Your failure to do so may be a violation of the FBPA.

LEMON LAWS NEWS

As you may be aware, the Georgia Lemon Law contains four major requirements with which new motor vehicle dealers must comply. In previous newsletters, we have discussed work orders, reacquired vehicle disclosure notices and Lemon Law Rights Statements. Collection and submission of the Lemon Law fee is the final major statutory requirement. As a new motor vehicle dealer, you must:

- Collect \$3 on each new motor vehicle sold or leased regardless of the consumer's state of residence. **Do not collect the fee on vehicles not covered by the law, including used vehicles or trucks that have a GVWR in excess of 12,000 pounds.**
- Submit the Georgia Lemon Law Submission Form on January 20th, April 20th, July 20th, and October 20th for the previous quarter's new motor vehicle sales to the Office of Planning and Budget. Indicate the number of qualifying transactions and the total amount due on the fee submission form.
- Send \$2 from each transaction with the fee submission form.



- Submit the fee submission form without payment if you didn't sell any new vehicles during the previous quarter.

WHAT CAN WE DO FOR YOU?

AD REVIEW:

OCP offers a complimentary review service to help advertisers and dealers identify those areas that might violate the FBPA, the AAEP or related rules or laws. We cannot approve any advertisements. 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 (excluding weekends) for a review and response. Other general advertisements will be reviewed within 2 full business days.

WHO TO CONTACT:

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

Lauren Villnow is a staff attorney and works closely with Victor in monitoring auto-related issues. Suggestions for this newsletter, as well as auto related 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.

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.

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.