

**OFFICE OF THE ATTORNEY GENERAL  
CONSUMER PROTECTION DIVISION  
AUTO ADVERTISING AND SALES PRACTICES  
ENFORCEMENT POLICIES**

**TABLE OF CONTENTS**

<b>I.</b>	<b>INTRODUCTION .....</b>	<b>1</b>
<b>II.</b>	<b>APPLICABILITY .....</b>	<b>2</b>
<b>III.</b>	<b>RESPONSIBILITY .....</b>	<b>2</b>
<b>IV.</b>	<b>FAIR BUSINESS PRACTICES ACT PROVISIONS .....</b>	<b>2</b>
A.	COMMON VIOLATIONS [O.C.G.A. § 10-1-393(A) AND (B)].....	2
B.	PENALTIES FOR VIOLATIONS [O.C.G.A. § 10-1-397].....	4
<b>V.</b>	<b>PRINCIPLES AND PRECEDENTS.....</b>	<b>4</b>
<b>VI.</b>	<b>SPECIFIC POLICIES AND EXAMPLES .....</b>	<b>8</b>
A.	CREDIT ADVERTISING PRINCIPLES AND PRECEDENTS .....	8
	<i>Truth in Lending</i> .....	8
	<i>“No Money Down” Advertising</i> .....	9
	<i>Consumer Leasing Act/Truth in Leasing</i> .....	9
	<i>“No Money Due at Lease Inception” Advertising</i> .....	10
	<i>Special Finance Rates</i> .....	10
B.	PRICE REPRESENTATIONS .....	10
	<i>Specific Credit Scores</i> .....	11
	<i>Dealer Installed Options</i> .....	11
	<i>Duration of Offers</i> .....	12
	<i>Monroney Sticker</i> .....	12
	<i>Unique/Special Sales Events</i> .....	12
	<i>Wholesale/Wholesale Prices</i> .....	13
	<i>Fleet Prices</i> .....	13
	<i>Factory Prices/Factory Authorized Sale</i> .....	13
	<i>Liquidation/Emergency Sales</i> .....	14
	<i>Going Out of Business Sales</i> .....	14
	<i>Auctions</i> .....	14
	<i>Use of the Word “Free”</i> .....	15
	<i>“Guaranteed” or “Minimum” Trade-in Offers</i> .....	15
	<i>Vouchers and Coupons</i> .....	16
	<i>Absorption of Sales Tax</i> .....	16
	<i>Credit Approval Claims</i> .....	16
	<i>Discounts on Used Cars</i> .....	16
	<i>Discounts on New Cars</i> .....	17
	<i>Rebates</i> .....	17
	<i>Special Incentive Programs</i> .....	17
	<i>Factory Invoice</i> .....	17
	<i>Dealer Cost/Dealer Invoice/Dead Cost Offers</i> .....	18
	<i>Lifetime Warranties</i> .....	18
	<i>“Money-Back” Guarantees</i> .....	18
	<i>“Number One Volume Dealer” or “Largest Dealer” Claims</i> .....	18

**OFFICE OF THE ATTORNEY GENERAL  
CONSUMER PROTECTION DIVISION  
AUTO ADVERTISING AND SALES PRACTICES  
ENFORCEMENT POLICIES**

**TABLE OF CONTENTS**

	<i>Price Matching/Price Equaling Offers</i> .....	19
	<i>“New”/“Demo” Vehicles</i> .....	19
C.	AVAILABILITY .....	19
D.	PROMOTIONS: CONTESTS, GIVEAWAYS, SWEEPSTAKES, GIFTS, AWARDS, PRIZES AND PRIZE CERTIFICATES .....	20
E.	SALES PRACTICES .....	24
	<i>Spot Delivery</i> .....	24
	<i>Emission Inspection Fees not Permitted</i> .....	25
	<i>Spanish Used Car Buyer’s Guides Required When Sales Conducted in Spanish</i> .....	25
	<i>Internet Sales Practices</i> .....	25

**OFFICE OF THE ATTORNEY GENERAL  
CONSUMER PROTECTION DIVISION  
AUTO ADVERTISING AND SALES PRACTICES  
ENFORCEMENT POLICIES**

**I. INTRODUCTION**

---

The Georgia Fair Business Practices Act of 1975 (FBPA) declares that "[u]nfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices are unlawful." The FBPA states that its purpose is to "protect consumers and legitimate business enterprises" from these practices. The FBPA then lists, by way of illustration only, examples of practices which are deemed to be unlawful. This list is not intended to be exhaustive, but only to provide further guidance as to what types of conduct constitute unfair and deceptive practices. It is in this spirit that the Consumer Protection Division of the Office of the Attorney General promulgated the *Auto Advertising and Sales Practices Enforcement Policies*.

In the area of consumer protection, issues dealing with automobiles carry a significant amount of weight. This is due to the fact that, for many consumers, the purchase or lease of an automobile constitutes a major financial obligation second only to the purchase of a home. For that reason, this office has endeavored to draft policies that will ensure that consumers are given adequate, accurate information in advertisements prior to entering into a contract for the purchase or lease of an automobile, and that the sales tactics automobile dealers utilize are fair.

These policies are intended to further explain the application of the FBPA to relevant issues as they pertain to automobile advertising and sales. The policies detail some of the types of advertising and sales issues that we view as unfair or deceptive acts or practices, and thus violations of the FBPA.

The policies are meant to be a resource and should not be construed as the final word on advertising. Because new approaches to advertising are constantly being developed, it will be necessary for these enforcement policies to track Georgia's Fair Business Practices Act, whether or not the specific issue has been addressed in these policies. This office will continue to take action against violations of the laws we administer.

Under the Fair Business Practices Act, we are to be guided by the Federal Trade Commission's interpretations of its Act. As a result, many of these policies are based on or taken from policies promulgated by the FTC.

It is our intention to continue to work with automobile dealers and their representatives to resolve any problems, and to take administrative and/or legal action where necessary, to fairly and efficiently enforce the FBPA in order to protect the consumers and legitimate businesses of this state.

If you have any questions or suggestions regarding these policies, or want to report a problem, please feel free to contact the Office of the Attorney General, Consumer Protection Division at 40 Capitol Square SW, Atlanta, GA 30334, telephone # (404) 656-3790, fax # (404) 651-9018.

## **II. APPLICABILITY**

---

These policies apply to all forms of advertising, including, but not limited to, radio, television, print, electronic, direct mail, flyers, billboards, showroom displays and other dealership displays, and the Internet.

## **III. RESPONSIBILITY**

---

The dealership on whose behalf the advertisement is disseminated or conducted is primarily responsible under the law for the content of its advertising. Although the drafter of the advertisement is also liable, the dealership which tags the advertisement is the entity responsible for its content and is charged with the duty of reviewing and modifying, where appropriate, the advertisements generated by all sources, including national advertisements, groups advertisements, association advertisements, manufacturer advertisements and advertisements of a similar nature, to ensure compliance with the regulations of Georgia before the advertisement is disseminated.

Advertising agencies, associations or groups shall also have responsibility for advertisements created by or for them. This includes advertising prepared for the dealer by, including but not limited to, the media, advertising agents, and manufacturers.

Newspapers, periodicals, radio and television stations that disseminate advertisements for others shall have responsibility for the content of advertisements if they prepare the advertisements, have a direct financial interest in the advertised product or service, and have knowledge of the false, misleading or deceptive character of the advertisement.

It shall not be a defense in any action under this part that others were, are, or will be engaged in like practices.<sup>1</sup>

## **IV. FAIR BUSINESS PRACTICES ACT PROVISIONS**

---

### **A. Common Violations [O.C.G.A. § 10-1-393(a) and (b)].**

The first two sections of O.C.G.A. § 10-1-393 outline those acts and practices that violate the Fair Business Practices Act. Section (a) is a general statement that all unfair and deceptive acts in the conduct of trade and commerce are unlawful, while section (b) provides a list of acts and practices that would violate the Fair Business Practices Act. The following excerpts from sections (a) and (b) are not inclusive, but are provisions that are especially relevant to automobile advertising.

---

<sup>1</sup> GA. CODE ANN. § 10-1-399(f) (2007).

O.C.G.A. § 10-1-393(a): Unfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce are declared unlawful.

O.C.G.A. § 10-1-393(b): By way of illustration only and without limiting the scope of subsection (a) of this Code Section, the following practices are declared unlawful:

1. Passing off goods or services as those of another [O.C.G.A. § 10-1-393(b)(1)];
2. Causing actual confusion or actual misunderstanding as to the source, sponsorship, approval, or certification of goods or services [O.C.G.A. § 10-1-393(b)(2)];
3. Causing actual confusion or actual misunderstanding as to affiliation, connection, or association with or certification by another [O.C.G.A. § 10-1-393(b)(3)];
4. Using deceptive representations or designations of geographic origin in connection with goods or services [O.C.G.A. § 10-1-393(b)(4)];
5. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have [O.C.G.A. § 10-1-393(b)(5)];
6. Representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or secondhand [O.C.G.A. § 10-1-393(b)(6)];
7. Representing that goods or services are of a particular standard, quality, or grade or that goods are of a particular style or model, if they are of another [O.C.G.A. § 10-1-393(b)(7)];
8. Disparaging goods, services, or business of another by false or misleading representation [O.C.G.A. § 10-1-393(b)(8)];
9. Advertising goods or services with intent not to sell them as advertised [O.C.G.A. § 10-1-393(b)(9)];
10. Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity [O.C.G.A. § 10-1-393(b)(10)];
11. Making false or misleading statements concerning the reasons for, existence of, or amounts of price reductions [O.C.G.A. § 10-1-393(b)(11)];
12. Failure to comply with the federal statutes governing odometers and odometer disclosure statements [O.C.G.A. § 10-1-393(b)(15)];
13. Failure to comply with the provisions concerning promotions [O.C.G.A. § 10-1-393(b)(16)]. Promotions are covered in Section VI.(D) of the policies;

14. Failure to comply with the FBPA provisions concerning representations in connection with a vacation, holiday, or items using similar terms [O.C.G.A. § 10-1-393(b)(22)];
15. Failure to comply with the FBPA provisions concerning statements made in writing or by telephone that a person has won or will receive a prize or thing of value [O.C.G.A. § 10-1-393(b)(23)];
16. Conducting a going-out-of-business sale for more than ninety days, or continuing to do business after the ninety-day time limit contrary to any representations made concerning the going-out-of-business sale [O.C.G.A. § 10-1-393(b)(24)]; and
17. Mailing any notice, notification, or similar statement to any consumer regarding winning or receiving any prize in a promotion, and the envelope or other enclosure fails to conspicuously identify on its face that the contents of the envelope or other enclosure is a commercial solicitation and, if there is an element of chance in winning a prize, the odds of winning as “odds” [O.C.G.A. § 10-1-393(b)(27)].

## **B. Penalties for Violations [O.C.G.A. § 10-1-397]**

A violation of the FBPA can potentially subject the violator to an administrative cease and desist order, an administrative civil penalty order of up to \$2,000 per violation, a court ordered civil penalty of up to \$5,000 per violation, or other sanctions.

It is important to note that bulk solicitation mailings may constitute either single or multiple violations of the Fair Business Practices Act.<sup>2</sup> The fact that a dealership mails thousands, as opposed to one or two single advertisements should not serve to diminish the seriousness of each individual violation.

## **V. PRINCIPLES AND PRECEDENTS**

---

All advertisements should be in plain language, truthful and accurate, and free of express or implied claims that misrepresent or are otherwise deceptive.

Representations made in an advertisement are evaluated based on their capacity/tendency to deceive and/or the likelihood of deception. Statements susceptible to both a misleading and a truthful interpretation shall be construed to be deceptive.<sup>3</sup> The FBPA is violated if the first contact with a consumer is secured by deception, even though the true facts are made known to the buyer before he enters into the contract of purchase or lease.<sup>4</sup> It is important to note that an advertisement may be considered to contain deceptive representations even if no complaints are received from

---

<sup>2</sup> See, e.g., *United States v. Reader's Digest Ass'n, Inc.*, 662 F.2d 955, 966 (3d Cir. 1981), *United States v. Golden Fifty Pharmaceutical Co., Inc.*, 421 F. Supp. 1199, 1207 ([N.D.Ill. 1976](#)), *United States v. Wilson Chem. Co.*, 1962 U.S. Dist. LEXIS 5522 (D. Pa. 1962).

<sup>3</sup> See, e.g., *National Comm'n on Egg Nutrition v. F.T.C.*, 570 F.2d 157, 161 (1976).

<sup>4</sup> *Carter Products, Inc. v. F.T.C.*, 186 F.2d 821, 824 (7th Cir. 1951). See also, 15 U.S.C.S. § 45 (2006).

consumers. Since statements and representations in advertisements are evaluated based on their tendency to deceive, no actual harm to consumers need occur for there to be a violation.<sup>5</sup>

Deception may arise from any of the following: direct statements; failure to clearly and conspicuously disclose material facts, limitations, disclaimers, qualifiers, conditions or exclusions; or reasonable inferences or overall impressions that may be drawn from the advertisement. An advertisement may be deceptively framed or constructed, or its net impression may have a capacity to deceive, even though its words and sentences may be literally and technically true or factually accurate.

### **Examples**

A statement such as “we’ll pay off your trade no matter what you owe” is deceptive, because it implies that consumers will not bear any cost for the balances due on their trade-ins, when such is not the case.

A statement such as “All credit applications accepted” may be considered deceptive, because, although literally true, it implies that acceptance is the same as approval.

“Buy a Wheeler, get a Wheeler free” when the “free” Wheeler is a bicycle, not a second car.

A representation that vehicles are being offered for a specific amount below the MSRP should be stated so that the most prominent text or statement is the final sales price.

MSRP: \$20,000.00

Discount: \$5,000.00

**Sale Price: \$15,000.00**

### **Disclosure/Disclaimer Placement**

If an advertisement makes express or implied representations that have the capacity, tendency or effect of misleading consumers without certain qualifying information, the failure to disclose the information is a violation of the Fair Business Practices Act. Any necessary qualifying information must be clearly and conspicuously disclosed. The term “clear and conspicuous” means that the statement or representation is presented in a reasonably understandable form. A disclosure is clear and conspicuous, and therefore is effectively communicated, when it is displayed in a manner that is readily noticeable, readable and/or audible (depending on the medium), and understandable to the audience to whom it is disseminated.<sup>6</sup> The effectiveness of disclosures is also enhanced by their proximity to the representation they qualify. Therefore, disclosures must be in immediate proximity to the terms they modify. Consumers should not have to search for terms and conditions at the bottom of the page or on the opposite side of an advertisement.

Representations will be considered deceptive if necessary disclosures or disclaimers are not made, if material facts are not stated, and/or if disclosures or disclaimers are inconspicuous.<sup>7</sup> A

---

<sup>5</sup> In the Matter of Cliffdale Assoc., Inc., 103 F.T.C. 110, 176 (1984).

<sup>6</sup> Cliffdale Assoc., Inc., 103 F.T.C. 110 at 183.

<sup>7</sup> See, e.g., Energy Four, Inc. v. Dornier Medical Sys., Inc., 765 F. Supp. 724, 731-733 (D. Ga. 1991).

representation will be considered inconspicuous if consumers are required to search for disclosures or disclaimers in fine print or on the opposite side of an advertisement. Disclosures and disclaimers that attempt to modify the message should not be listed in the fine print, but instead in immediate proximity to the message. No disclosure or disclaimer should appear anywhere in the advertisement except for in immediate proximity to the term the disclosure or disclaimer modifies, and never beneath the name and address of the dealership.

Examples of deceptive disclosure placement include, but are not limited to:

1. The use of asterisks, footnotes, or other symbols that are used to refer consumers to another place in an advertisement;
2. The use of any print or type size so small as to be not easily readable. Any type size 10 point or larger is deemed to be easily readable;
3. The use of color contrasts which render the text difficult to read;
4. The use of any unexplained abbreviation, term or jargon which is confusing, misleading and/or not readily understood by the general public, including, for the purpose of illustration only:
  - a. W.A.C., O.A.C., F.M.C., T.T.T., T.T. & L., A.D.M., F.T.B., E.P.P., L.E.V., and terms of similar import; and
  - b. Beacon score.
5. The use of inaccurate photographs or illustrations when advertising specific vehicles for sale or lease. For example, a photo of a four-door vehicle accompanied by a two-door vehicle price, or a deluxe model pictured next to a standard model price. Such terms as “pictures for illustration only,” “art work may vary,” “illustrations not exact,” or similar disclaimers are not acceptable;
6. The use of audio disclaimers that are confusing or unclear due to lower volume, the speed of the speaker, different voices, background noises or music, or the placement of the disclaimer before or after the main body of the advertisement; and
7. The use of terms such as “Select Models,” “Select Vehicles,” “A Special Selection,” and other terms of similar import should only be used in connection with advertised offers if, and only if, the advertisement specifies which models or vehicles are included in the offer.

This office expects that its guidelines will be followed regardless of the media in which the advertisement is communicated. Therefore, as stated earlier, these guidelines apply to all forms of advertising, including internet advertising.

In order to ensure that disclosures are clear and conspicuous in online advertisements, advertisers will often have to take care to clearly and conspicuously disclose material terms to consumers. To be sure that disclosures are clear and conspicuous, advertisers should:



1. Place disclosures near, and when possible, on the same screen as the triggering claim.
2. Use text or visual cues to encourage consumers to scroll down a Web page when it is necessary to view a disclosure.
3. When using hyperlinks to lead to disclosures:
  - a. Make the link obvious;
  - b. Label the hyperlink appropriately to convey the importance, nature and relevance of the information it leads to;
  - c. Use hyperlink styles consistently so that consumers know when a link is available;
  - d. Place the hyperlink near relevant information and make it noticeable;
  - e. Take consumers directly to the disclosure on the click-through page; and
  - f. Assess the effectiveness of the hyperlink by monitoring click-through rates and make changes accordingly.
4. Recognize and respond to any technological limitations or unique characteristics of high tech methods of making disclosures, such as frames or pop-ups.
5. Prominently display disclosures so they are noticeable to consumers, and evaluate the size, color and graphic treatment of the disclosure in relation to other parts of the Web page.
6. Review the entire advertisement to ensure that each element, including text, graphics, hyperlinks and sound does not distract consumers' attention from the disclosure.
7. Repeat disclosures, as needed, on lengthy Web sites and in connection with repeated claims.
8. Use audio disclosures when making audio claims, and present them in a volume and cadence so that consumers can hear and understand them.
9. Display visual disclosures for a duration sufficient for consumers to notice, read and understand them.<sup>8</sup>

---

<sup>8</sup> F.T.C. Guide, "Dot Com Disclosures," available at <http://www.ftc.gov/bcp/online/pubs/buspubs/dotcom/> (May 2000).

## **VI. SPECIFIC POLICIES AND EXAMPLES**

---

The following policies and examples are not an exhaustive list of the types of practices that may be prohibited by the Fair Business Practices Act. These policies and examples are meant to illustrate the types of acts and practices that are covered by the FBPA and, therefore, should not be used to limit its scope.

### **A. Credit Advertising Principles and Precedents**

#### **Truth in Lending**

The purpose of the disclosures required by the Truth in Lending Act (TILA) is to promote the informed use of consumer credit by requiring disclosures about its terms and cost.<sup>9</sup> Advertising that fails to include all of the disclosures required under TILA will be considered unfair and/or deceptive.

It should be clear that the advertised prices are for the purchase of a vehicle. Words such as “sale,” “buy,” “purchase,” or words of similar import may only be used in conjunction with an offer to sell a vehicle.

Some credit advertisement terms require additional disclosures. Whenever an advertisement for the purchase of a vehicle states these listed terms, or “trigger terms,” then other disclosures must be made in the immediate proximity of the trigger term.

Dealers must comply with TILA regulations before the credit transaction with the consumer is consummated. In other words, the TILA terms must be properly disclosed before the consumer becomes contractually obligated to purchase the vehicle.

The following are lending “trigger terms”:

1. The amount or percentage of any down payment;
2. The number of payments or period of repayment;
3. The amount of any payment; OR
4. The amount of any finance charge.

If any one of the above terms is stated in the advertisement, then all of the following terms must also be stated in immediate proximity to the “trigger term”:

1. The amount or percentage of the down payment;
2. The terms of repayment; AND

---

<sup>9</sup> 12 C.F.R. § 226.1(b) (2007).

3. The annual percentage rate, using that term, and, if the rate may be increased after consummation, that fact.<sup>10</sup>

When disclosing these terms in accordance with TILA, it will be necessary to include a statement regarding fees imposed by the government. Since tax, tag, title, and WRA fees are not included in the calculation of the financing, they should be stated separate from the finance terms (see examples below), clearly and conspicuously, and in immediate proximity to the financing disclosures.

In those instances in which multiple vehicles are advertised and where all the financing terms are identical, this office will consider acceptable an example of a representative vehicle transaction containing all required disclosures, rather than a full disclosure on each and every vehicle in the advertisement.

When advertising special payment plans that involve “balloon,” “graduated,” or “deferred” payment terms or programs of a similar import, the terms must be properly and clearly disclosed.

It is acceptable to qualify offers of credit with the statement “with approved credit.”

### **“No Money Down” Advertising**

While use of terms such as “no money down” and “no down payment” are permissible under the federal Truth in Lending Act, they should only be used in those instances in which consumers may take delivery of vehicles with no out of pocket expenses. If the consumer is required to pay any money whatsoever to the dealer or lien holder, including, but not limited to, first month’s payment or any other dealer fees, then such claims may not be used. A consumer may be required to pay government fees, such as tax, tag, title, or Georgia Lemon Law fees, and still be considered to have purchased the vehicle for “no money down,” so long as those amounts are actually collected by or on behalf of the government. Disclosing non-government fees/payments elsewhere in the advertisement will not cure a violation.

### **Consumer Leasing Act/Truth in Leasing**

The purpose of the disclosures required by the Consumer Leasing Act is to “ensure that lessees of personal property receive meaningful disclosures that enable them to compare lease terms with other leases and, where appropriate, with credit transactions; to limit the amount of balloon payments in consumer lease transactions; and to provide for the accurate disclosure of lease terms in advertising.”<sup>11</sup>

Whenever an advertisement for the lease of a vehicle states certain terms, then other disclosures must be made in the immediate proximity of the initial term.

The following are terms used in conjunction with leases for which other terms must be disclosed:

---

<sup>10</sup> 12 C.F.R. § 226.24(c) (2007).

<sup>11</sup> 12 C.F.R. § 213.1(b) (2007).

1. The amount of any payment; or
2. A statement of any capitalized cost reduction or other payment prior to or at consummation or by delivery, if delivery occurs after consummation.

If any one of the above terms is stated in the advertisement, then all of the following terms must also be stated in immediate proximity to the initial term:

1. That the transaction advertised is a lease;
2. The total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;
3. The number, amounts, and due dates or periods of scheduled payments under the lease;
4. A statement of whether or not a security deposit is required; and
5. A statement 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.<sup>12</sup>

### **“No Money Due at Lease Inception” Advertising**

While use of terms such as “no money due at lease inception” are permissible under the federal Consumer Leasing Act, they should only be used in those instances in which consumers may take delivery of vehicles with no out of pocket expenses. If the consumer is required to pay any money whatsoever, including, but not limited to, security deposit, capital cost reduction, first month’s payment and/or dealer fees, then such claims may not be used.

Disclosing the fees/payments elsewhere in the advertisement will not cure a violation.

It should be clear that the advertised prices are for the lease of a vehicle. Terms that are typically associated with purchasing, such as “No Money Down,” “No Down Payment,” “Zero Down,” and terms of similar import may never be used in conjunction with lease advertising.

### **Special Finance Rates**

Special finance rates available by means of dealer buy-downs should specifically disclose that “dealer participation may affect purchase price.” Those special finance rates that are only available on certain models or for limited periods of time must disclose such limitations in the immediate proximity of the offered rate.

## **B. Price Representations**

---

<sup>12</sup> 12 C.F.R. § 213.7(d) (2007).

Advertised prices must state the actual total purchase price of the vehicle, excluding only government fees, which include tax, tag, title and Georgia Lemon Law fees. All additional fees must be included in the advertised price. Any advertisement which lists a price "plus" some additional amount will be considered to be deceptive.

By way of illustration only, not meant to be exhaustive, the following are examples of fees that MUST be included in the advertised price of vehicles:

1. Additional fees, such as document fees, documentary fees, lot fees, processing fees, administrative fees, customer services fees, and any other terms of similar import;
2. Additional charges, such as freight charges, transportation charges, destination charges, dealer preparation charges, overhead charges, and any other terms of similar import; and

Dealer installed options or accessories that are required or are routinely installed, or options which are already installed on the advertised vehicle at the time the advertisement is published, must be included in the advertised price. Only those options installed at the request of the consumer following contact/negotiation with the dealership may be omitted from the advertisement.<sup>13</sup>

### **Specific Credit Scores**

The use of a specific credit score in conjunction with advertised vehicles may be a deceptive practice if the dealership has not ascertained whether a substantial number of the consumers to whom the advertisement is directed would qualify or if the score is so high that it is extremely unlikely that a substantial number of the consumers would be able to take advantage of the advertised offers. It is highly recommended that dealers refrain from conditioning claims on a specific credit score. For example, it is deceptive to condition offers on a credit score of "750 and above," if the dealership has not determined whether the consumers to whom the advertisement is disseminated would qualify or if the dealership purchased consumer lists and knows or should know from that information that a substantial number of consumers would not qualify. "With approved credit" is an acceptable qualification, unless the advertisement contains representations that directly state or imply that the consumer has been "pre-approved."

The meaning of terms such as "tier" and "beacon score" may not be readily understood by the consuming public, so their use should be avoided. For policies regarding the use of unexplained terms, please review the section on Disclosure/Disclaimer Placement, above.

### **Dealer Installed Options**

The practice of adding on costs for rustproofing, alarms, gas and glaze packages, undercoating, glass etching, and other similar services is an unfair and deceptive practice when:

1. A required or mandatory option the price of which is discussed *after* a final purchase or lease amount has been reached;

---

<sup>13</sup> See, e.g., In the Matter of Bill Crouch Foreign, Inc., 96 F.T.C. 111 (1980) (consent order).

2. When the cost for the service is listed *below* the final purchase or lease amount, which gives the appearance of a standard, pre-printed cost;
3. When the dealer represents to the purchaser that a specific price was paid by the dealership for the option or service, when, in fact the price is inflated and is used to justify the cost to the purchaser; or
4. When a dealer fails to perform the service adequately despite receiving payment for it.

### **Duration of Offers**

The duration of a sale or advertised offer shall be until the next advertisement is published. Otherwise, if any time or date limitations apply, the duration of the sale or advertised offer must be accurately disclosed in the advertisement. Extra caution is recommended for self-renewing advertisements, such as Internet classifieds.

### **Monroney Sticker**

When a dealership is offering to sell a vehicle for which a federal Monroney sticker is required, it is deceptive to charge or attempt to charge more than the Manufacturer's Suggested Retail Price, unless the dealer's asking price or supplemental price is clearly and conspicuously disclosed on a supplemental sticker adjacent to the Monroney sticker. It is deceptive for a dealership to misrepresent or conceal the reasons for additional charges listed on a supplemental sticker (e.g., using abbreviations, such as "ADP" for "Additional Dealer Profit," which conceal the actual reason for the additional charge).

### **Unique/Special Sales Events**

It is a violation of the Fair Business Practices Act to represent or imply in any advertisement that the dealership is selling or leasing vehicles in a manner that differs from the regular business practice, when such is not the case. "Unique sales event" representations lead consumers to infer that they will receive special deals or pay less to purchase or lease a vehicle than they otherwise would.

By way of illustration, examples of representations of special sales events include, but are not limited to:

1. **Pre-auction Sales**  
The dealership must be able to show that vehicles that were available for sale during the sales event, but were not purchased, were then sent off to auction. The term "pre-auction sale" implies that consumers will receive a bargain price on a vehicle.
2. **Verified/Certified Events**  
The dealership must be able to substantiate that the vehicles were verified or certified, the credentials of the entity that verified/certified the vehicles prior to sale, and the criteria that must be met in order for vehicles to be verified/certified.

3. **Seized Vehicle Events**  
The term “seized” usually implies that the goods being sold were confiscated from the prior owner by a law enforcement agency or other government entity. Dealerships should avoid using this term in advertisements.
4. **Repossessed Vehicle Sales Events**  
The dealership must be able to substantiate that it had a significant number of “repossessed” vehicles available for sale to the consuming public. Vehicles purchased at auction, regardless of whether they were repossessed prior to being sold at auction, may not be advertised as “repossessed.”
5. **Reprocessed Vehicle Sales Events**  
This term is intended to confuse or mislead the public into believing that repossessed vehicles are being sold and its use will be considered an unfair and deceptive practice.
6. **Representing that a sale is Endorsed by the Government**  
The dealership may not utilize, in connection with advertisements, official government seals, insignia or symbols, or what reasonably appear to be official government seals, insignia or symbols. Representations containing these elements reasonably appear to be sanctioned by a government entity, when such is not the case.

### **Wholesale/Wholesale Prices**

It is illegal for any person, firm, or association to misrepresent the true nature of its business by use of the word "wholesaler" or words of similar import.<sup>14</sup> No person, firm, or association may represent that it is a “wholesaler” or selling goods at “wholesale prices,” unless it is actually selling at wholesale those items for the purpose of resale, and not to consumers. A violation of this statute is a misdemeanor, as well as an unfair and deceptive practice under the Fair Business Practices Act.

### **Fleet Prices**

It is the position of this office that the use of the term "fleet" in advertising directed to the consuming public has the tendency and capacity to mislead. This is due to the fact that manufacturers sell vehicles to rental car firms, major corporations, and government agencies at true “fleet” prices, which are often less than the prices at which dealerships sell vehicles to consumers. Actual “fleet” prices are based on the large volume of vehicles sold and are not available on single vehicle purchases. Since actual “fleet” prices are not available to the consuming public, advertisements disseminated to consumers using this term will be considered misleading and deceptive.

### **Factory Prices/Factory Authorized Sale**

---

<sup>14</sup> GA. CODE ANN. § 10-1-424 (2007).

Use of words which falsely represent or imply the ownership, operation, or control of a factory, such as “factory showroom,” “factory direct to you,” “factory program headquarters,” and similar terms are unfair and deceptive.

Use of the term “factory authorized” and similar terms is deceptive, unless the advertising dealer can substantiate that it has received a unique authorization from the manufacturer and such authorization is in addition to their normal authority to act as a franchisee of the manufacturer. Receiving a special allocation or consignment of vehicles does not, in and of itself, constitute a “factory authorized sale.” Businesses may not advertise, by use of terms such as “direct factory outlet,” “factory sale,” or words of similar import, that a special relationship exists between a manufacturer and a particular dealer, when, in fact, no special relationship exists.

It is a deceptive practice to represent that retailers are selling goods at “factory prices,” or words of similar import, to consumers, when they are, in fact, selling at prices in excess of the amount paid by those purchasing directly from the manufacturer.

### **Liquidation/Emergency Sales**

“Liquidation” implies that a dealer is selling all of a particular year/make/model of a vehicle and that this specific type will no longer be sold at that particular dealership or that the dealer is selling all of the inventory and ceasing to operate the business. It is a deceptive practice to use the terms “liquidation,” “Selling Out,” or other similar terms to refer to a sale of vehicles after which the advertiser will continue to operate the business or will continue to sell the year/make/model of vehicles included in the advertised liquidation.

Words such as “Inventory Liquidation,” “Emergency, Forced to Sell,” “Prices Slashed,” “Inventory Liquidation,” or similar terms should not be used, unless the price has been permanently reduced by a significant amount from the actual price and will not be increased at a later date.

The word “liquidation” used in conjunction with terms such as “bankruptcy” or “court-ordered” will be considered deceptive if such sale is not ordered by a court or a result of a bankruptcy sale.

### **Going Out of Business Sales**

It is unlawful to conduct a “going-out-of-business sale,” or other form of distress sale, for more than 90 days.<sup>15</sup> After the ninety-day time limit, it shall be an unfair and deceptive practice to continue to do business in any manner contrary to any representations which were made regarding the nature of the going-out-of-business sale.

### **Auctions**

It is an unfair and deceptive practice to state in any advertisement that a dealership is conducting or will conduct an auction of vehicles for sale to the consuming public, unless the name and

---

<sup>15</sup> GA. CODE ANN. § 10-1-393(b)(24) (2007).



Georgia license number of the auctioneer is listed in the advertisement and an auction of vehicles actually occurs.<sup>16</sup>

### **Use of the Word “Free”**

The word "free" should not be used in connection with the purchase or lease of a vehicle or related product or service whose price is arrived at through bargaining. The same representation is also improper where there may be a regular price, but where other material factors such as quantity, quality, or size are arrived at through bargaining.

Whenever a consumer is required to purchase or lease any goods or services in order to receive a second offered item, and it is represented in an advertisement that the second item is “free,” then the consumer cannot be charged for that item. When the purchaser is told that an item is "free" to him if another article is purchased, the word "free" indicates that he is paying nothing for that article and no more than the regular price for the other. Thus, a purchaser has a right to believe that the merchant will not directly and immediately recover, in whole or in part, the cost of the free merchandise or service by marking up the price of the article which must be purchased, by the substitution of inferior merchandise or service, or otherwise.<sup>17</sup>

Use of the words “gifts,” “given at no charge,” “bonus,” “complimentary,” or other similar terms which tend to convey the impression that an item is free are also subject to the above guidelines and relevant FTC Rules.

In a promotion dealing with the provision of any product that requires a subscription or an additional requirement or commitment to purchase monthly service, such as a cellular telephone, with the purchase/lease of a vehicle, full disclosure of these charges, conditions, requirements or obligations must be made in the advertisement. Likewise, if there are other terms, conditions, or obligations that apply to the offer of free merchandise or services, those terms must be disclosed in close proximity to the claim. For example, if a consumer is required to mail a letter in order to claim a prize, this requirement must be disclosed in the advertisement.

### **"Guaranteed" or "Minimum" Trade-in Offers**

Dealerships may not use terms such as “guaranteed trade-in,” “minimum trade-in” “Push, Pull, Drag,” “Push It, Pull It, Tow It,” or terms of similar import. Dealerships may not advertise a guaranteed minimum trade-in amount, because the consuming public believes that no matter the fair market value of the vehicle they bring in as a trade, they will receive the guaranteed amount and this guaranteed amount will be subtracted from the price of the vehicle they are purchasing. This is not the case, because the lowest price at which a dealer is prepared to sell the vehicle is increased to compensate the dealership for the loss it will incur for accepting a trade-in whose value is less than the offered guaranteed minimum.

---

<sup>16</sup> See, GA. CODE ANN. § 43-6-9 (2007).

<sup>17</sup> Guide Concerning Use of the Word ‘Free’ and Similar Representations, 16 C.F.R. § 251 (2007).

## **Vouchers and Coupons**

It is an unfair and deceptive practice to require consumers to reveal whether they will make use of a voucher or coupon that was disseminated by the dealership or a person acting on behalf of the dealership *prior to* negotiating the purchase price on a vehicle. The consuming public believes that the value as represented on the coupon or voucher will be deducted from the price of the vehicle to be purchased. However, this is not the case, because the lowest price at which a dealer is prepared to sell the vehicle is increased to compensate the dealership for the loss it will incur for accepting a coupon or voucher.

## **Absorption of Sales Tax**

Georgia law generally prohibits anyone engaged in retail sales, such as automobile dealers, from advertising or representing, either directly or indirectly, that the retailer will absorb all or part of the sales tax or relieve the purchaser of the payment of that tax. The law does provide, however, an exception for retailers who want to make such a claim so long as they abide by two conditions. First, the retailer must include in the advertisement a statement that any portion of the tax not paid by the purchaser will be remitted by the retailer. Second, the retailer must give the purchaser written evidence showing the retailer will be liable for and pay the tax the consumer would otherwise be obligated to pay.<sup>18</sup> A dealer who advertises it will cover or absorb a consumer's sales tax without complying with these two requirements is in violation of this statute, as well as the Fair Business Practices Act.

## **Credit Approval Claims**

It is this office's position that terms such as "pre-approved" may be used only if the person to whom the offer is made has an unqualified right take advantage of it. There can be no conditions that a consumer must meet in order to take advantage of the offer, because "pre-approval" implies that a potential purchaser's credit status has already been evaluated and found to be acceptable. Furthermore, offers of "pre-approval," when used in conjunction with "an amount up to," will be considered deceptive. It is, however, permissible to state that a consumer is pre-approved for a minimum amount.

## **Discounts on Used Cars**

It is deceptive to compare used vehicle prices with the original Manufacturer's Suggested Retail Price (MSRP) for the vehicles, because there is no MSRP for used cars. Advertisers may not state that consumers can save a specific percentage off of the MSRP, such as "up to 50 percent off."

False price comparisons on used vehicles, such as "was \_\_\_, now \_\_\_," should not be used.

It is a deceptive practice to compare a "sale" price to a reference price, unless the vehicle on sale and the nature of the reference prices are explicitly identified and the seller can substantiate the reference price. Therefore, references to a common source for vehicle values, such as N.A.D.A.

---

<sup>18</sup> GA. CODE ANN. § 48-8-36 (2007).

prices may be used, only if the dealer can substantiate the reference price for the vehicle with the same features and mileage in the most recent edition of the pricing guide. Sellers should state the edition and pricing category.

**Example:**

May 2007 N.A.D.A. Official Used Car Guide, Southeastern Edition  
Retail Price: \$12,996  
[Dealer Name] Price: \$11,995

**Discounts on New Cars**

Advertising which utilizes price comparisons should clearly and accurately identify the terms used to make comparisons or to list reductions. When offering discounts or savings of “up to,” “as high as,” or terms of similar import, the advertisement must disclose the source of the "up to/saving" amount, for example “save \$7000 off MSRP.” The disclosure must be made in close proximity to the offer. In addition, an example of a vehicle which qualifies for the largest advertised “up to” amount should be included in the advertisement. If a new vehicle is reduced from or compared to the MSRP, the advertisement must accurately state the original price.

**Rebates**

Advertisements must clearly disclose if a rebate involves dealer participation. If rebates are further limited to certain categories within a specific model, then these additional limitations must be disclosed.

Advertisements must clearly disclose whether rebates have already been incorporated into the advertised prices.

Use of claims of rebates "up to" a certain amount is deceptive unless the advertisement clearly and conspicuously discloses in close proximity to such offer the actual dollar amount of the largest advertised rebate and the vehicles or models to which they apply.

**Special Incentive Programs**

Special incentive programs are those that involve rebates, discounts, and/or financing that only apply to a small percentage of the buying public. Incentive programs that apply only to first time buyers, college graduates, military personnel, previous owners or programs of similar import will be considered special incentive programs. Since this special incentive only applies to a small percentage of the consuming public, it may not be figured in the advertised price. The amount of the special incentive may be listed in the advertisement as an additional incentive to those who qualify.

**Factory Invoice**

“Factory invoice” is generally understood to refer to the manufacturer’s initial charge to the dealer. Offers to sell vehicles for below, at, or near "factory invoice" are acceptable, provided they are

honored and can be substantiated. The advertised price may exclude only tax, tag, title and Georgia Lemon Law fees.

The term "factory invoice" may only be used if the dealer has a sufficient supply of vehicles with no dealer installed options to satisfy reasonably expectable public demand.

### **Dealer Cost/Dealer Invoice/Dead Cost Offers**

It is deceptive and misleading practice and a violation of the Fair Business Practices Act to advertise the terms "dealer cost," "cost," "dealer invoice," or terms of a similar import unless the term is fully explained in immediate proximity to the claim.

The vehicle must be sold for the actual net cost that the dealer paid, less any dealer holdbacks, dealer factory rebates, or incentives, and not including overhead expenses or profit. Only tax, tag, title, and Georgia Lemon Law fees may be added.

The terms "dealer cost," "dealer invoice," and similar terms do not refer to universal or standard documents in the industry, and therefore, these terms should not be used to advertise vehicles, unless it is disclosed in immediate proximity to the offer what is included in the advertised price.

Dealer installed options on vehicles included in a "dealer invoice" sale must be sold at the dealer's actual documented internal cost.

Options installed at the request of the customer following contact/negotiation with the dealership may be sold at prices other than the dealer's actual documented internal cost.

### **Lifetime Warranties**

If an advertisement uses "lifetime," "life," or similar representations to describe the duration of a warranty or guarantee, then the advertisement should disclose, with such clarity and prominence as will be noticed and understood by prospective purchasers, the life to which the representation refers.<sup>19</sup> It is important to note that businesses that advertise lifetime warranties on goods and thereafter go out of business may not be relieved of responsibility to honor those warranties.

### **"Money-Back" Guarantees**

A seller may use the terms "Money Back Guarantee," "Satisfaction Guaranteed," "Risk-Free Trial," or similar representations only if the seller refunds the full purchase price of the product at the buyer's request, and clearly and conspicuously discloses any conditions or limitations in the advertisement.

### **"Number One Volume Dealer" or "Largest Dealer" Claims**

Use of terms such as "Number One," "#1," "Largest," "Biggest," or similar terms are considered to represent vehicle retail sales volume (total number of vehicles). The source for the claim, including, but not limited to, time frame and category, must be disclosed in immediate proximity

---

<sup>19</sup> 16 C.F.R. § 239.4 (2007).

to the claim. These claims should not be made unless the dealer can substantiate the claim with documentation from the manufacturer, distributor, or some other independent and reliable source.

### **Price Matching/Price Equaling Offers**

Use of terms such as “guaranteed lowest prices,” “we'll beat any deal,” “we'll match your best offer,” “we won't be undersold,” or similar terms must include clear and conspicuous disclosure of all conditions or limitations on the offer. “We'll beat any advertised price” is an acceptable offer.

The consumer may be required to produce a competing dealer’s advertisement in order to substantiate a claim of a lower offer. However, such offers shall not require the presentation of any evidence which places an unreasonable burden on the consumer or the competing dealer. Examples of unfair requirements include, but are not limited to:

1. Requiring the consumer to produce a signed buyer's order or contract;
2. Requiring that the consumer pay a deposit to the competing dealer;
3. Requiring a competing dealer to sell the vehicle to the advertising dealer; or
4. Requiring the production of a written offer from a competing dealer.

### **“New”/“Demo” Vehicles**

“New” Vehicles: It is deceptive to advertise or represent a vehicle as “new” if it is not new for any of the following reasons without affirmatively disclosing the nonconformity in writing to the customer:

1. Vehicle has been previously titled; or
2. Vehicle has been previously sold or leased to a retail customer.

These disclosures should be made regardless of whether or not a title application has been made on such vehicles, and notwithstanding the issuance or correction of a title to designate the vehicle as “new” for titling purposes.

“Demonstrator” vehicles: It is deceptive to advertise or represent a vehicle as a "demo" or “demonstrator” unless it has been used exclusively for demonstration purposes by dealership personnel. Used cars, previously leased cars, driver education cars, former rental cars, loaner cars, or cars which have been delivered to a retail customer and then returned for credit reasons, are not considered to be “demonstrators.”

### **C. Availability**

Advertised vehicles must be sold at or below the advertised price regardless of whether or not the advertised price has actually been communicated to the purchaser prior to the sale.

Exception: When the advertisement clearly and conspicuously discloses a requirement to bring in the advertisement, or a coupon in the advertisement, in order to receive the sale price, and the sale price is not given to anyone who does not follow those instructions.

There must be a sufficient supply of advertised vehicles to meet reasonably expectable public demand; otherwise the advertisement should disclose a limitation of quantity. Dealerships shall not misrepresent the number, makes, or models of vehicles that will be available at sales events.

Use of a stock number is sufficient to indicate that only one vehicle is available. Other acceptable disclosures include “only 2 in stock,” “limited supply,” or “quantities limited.” Use of the terminology “select models” or “choose from a selection of vehicles” cannot be used to indicate a limitation of quantity.

If an advertised vehicle is not in stock, but is available only by order, the advertisement should clearly and conspicuously disclose this fact. Such advertisements should not be used when the manufacturer's model year production run has ceased or when orders may not be placed with the factory.

**D. Promotions: Contests, Giveaways, Sweepstakes, Gifts, Awards, Prizes and Prize Certificates<sup>20</sup>**

1. Definitions, Exceptions to Georgia Criminal Statute

- a. A “promotion” is defined in the FBPA as any procedure for promoting consumer transactions in which 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 sales presentation in order to receive their prize or determine which prize they will receive;
- b. Promotions that fail to fully comply with the requirements of the FBPA and require consumers to purchase an item, pay any money, or participate in a sales presentation in order to win a prize, violate the FBPA and may be treated as illegal lotteries.<sup>21</sup> Persons found to be conducting illegal lotteries are subject to potential criminal prosecution for commercial gambling, which is a felony under Georgia law.<sup>22</sup>

2. Fair Business Practices Act Provisions

- a. **Written Notice Requirements:** Written notice must be given to all participants prior to their traveling to the place of business, and/or prior to any seminar or sales presentation of any kind. Written notice may be given by hand, mail, newspaper or periodical. Any notice or offer to participate made through any other medium (e.g., in person/verbal, telephone, fax, Internet, or email) must contain all the same required disclosures, and a

<sup>20</sup> GA. CODE ANN. § 10-1-393(b)(16), (22), (23), (27) (2007).

<sup>21</sup> GA. CODE ANN. §§ 10-1-393(b)(16), 16-12-36 (2007).

<sup>22</sup> GA. CODE ANN. § 16-12-22 (2007).

written notice containing the required disclosures must still be given to participants prior to any seminars or sales presentations. These written notice requirements apply to all promotion offers made by a Georgia business or sent to a Georgia resident. The written notice must contain the following required disclosures:

- i. The name and address sponsor, which is the business whose goods or services are being advertised;
- ii. The name and address of the promoter, such as the marketing company, advertising agency, or sweepstakes organization;
- iii. If the written notice is sent by mail, the envelope must identify on its face that the contents are a "commercial solicitation," and if there is an element of chance in winning a prize, the odds of winning each prize must also be properly disclosed on the face of the envelope;
- iv. Any limitation on eligibility for a prize must be disclosed in the notice;
- v. The geographic area covered by the notice must be clearly stated. If any of the prizes may be awarded to persons outside the geographic area of the notice, or to persons or to participants in promotions for other sponsors, those facts must also be stated, with a corresponding explanation that every prize may not be given away by that particular sponsor/business;
- vi. If the prize will not be awarded in the event the winning number is not presented during the promotion, that fact must be disclosed in the notice;
- vii. Each notice must state the "verifiable retail value" of each prize offered, in Arabic numerals. The "verifiable retail value" means: (a) the price at which the promoter or sponsor can prove that each prize has been regularly sold for at retail by other merchants; **or** (b) no more than three times what the promoter or sponsor actually paid for the prize;
- viii. If there is an element of chance, each notice must state the odds of a participant's receiving each prize as "odds." Odds must be stated as the total number of that particular prize and of the total number of notices issued (e.g., "Odds of winning: 1 in 10,000" or "Odds - 999,997 out of 100,000"). The total number of notices must include all notices in which the prize may be given, including those given by other sponsors, if applicable;

- 1) Note: If the odds cannot be accurately stated based on the number of notices, they may be stated in another manner, but only if this does not deceive or mislead participants;
- ix. The verifiable retail value and odds for each prize must be stated in conjunction and in immediate proximity with each listing of the prize in each place where it appears on the written notice. The verifiable retail value and odds must be listed in the same size type and boldness as the prize. Disclosures must not require the participant to refer from one place in the notice to another in order to determine odds and verifiable retail value of the particular prize;
  - x. If no element of chance is involved, and if the participant will be required to participate in a seminar or sales presentation in order to receive a particular prize, this must be conspicuously disclosed in the written notice. The disclosure must be printed in at least ten-point type; and
  - xi. If a particular prize will require a participant to purchase additional goods or services in order to make the prize conform to what it reasonably appears to be in the initial offer/notice, the written notice must disclose such requirements and the additional cost. This disclosure must appear in each place where the prize is listed, and must be in the same size print and boldness as the prize listed.
- b. Conduct and Operation of the Promotion
- i. A list of all winning tickets, numbers, tokens or other devices used to identify winners must be prominently posted at the place of business or distributed to all participants. A copy of such list shall be furnished to each participant who requests one;
  - ii. A participant may not be required to pay any money (such as service fees, mailing fees, handling fees), or to furnish any consideration in order to receive any prize, other than traveling to the place of business or allowing a presentation to be made in their home;
    - 1) There is one exception to this requirement, which applies only to deposits for securing reservations in connection with “vacation” and “holiday” promotions. (See section c. below for details);
  - iii. Upon arriving at the place of business or allowing the sponsor to enter the participant's home, the participant must be immediately informed which, if any prize they will receive, and the prize (or any voucher, certificate or other evidence of obligation in lieu of the



actual prize) must also be given at that time. This must be done prior to any attempts at sales presentations of any kind;

- iv. Substitution of prizes cannot be made. If the represented prize is not available, the sponsor must give the participant a certificate which guarantees shipment within 30 days at no cost to the participant. If the prize is not shipped within 30 days, the sponsor must mail to the participant a valid check or money order for the amount listed in the notice as the verifiable retail value;
  - v. If a participant receives a voucher or certificate for a prize which names another party as responsible for delivering the prize, and that party fails to deliver the prize as represented in the original notice, the sponsor, which is defined as the business whose goods or services are being promoted or advertised, is responsible for delivering the prize; and
  - vi. Upon request of the Attorney General, the sponsor and/or promoter must provide the names, addresses and telephone numbers of all prize recipients within ten days of the request.
  - vii. All prizes offered and awarded must be noncash prizes only and cannot be redeemable for cash.
- c. Special Provisions Relating to Vacations and Holidays. When one of the prizes offered is a vacation, holiday or item described by similar terms:
- i. The vacation or holiday must include all transportation, meals and lodging, unless the offer or notice specifically describes any transportation, meals or lodging which is not included;
  - ii. If a deposit is required to secure a reservation, the offer, notice or other representation must disclose that information; and
  - iii. The offer or notice may not say that a person is a winner, has been selected or approved, or is in any other manner involved in a select or special group for receipt of an opportunity or prize, or that a person is entering a contest, sweepstakes, drawing or other competitive enterprise from which a winner will be selected, if in fact the enterprise is designed to make contact with prospective customers, or if all or a substantial number of those entering will receive the same prize or opportunity.
- d. Penalties and Consequences. A promotion which does not comply with the provisions of the FBPA may potentially result in the following actions:
- i. The Attorney General may issue a Cease and Desist Order;

- ii. The Attorney General may issue a Civil Penalty Order in an amount up to \$2,000 per violation;
  - 1) In cases involving elderly or disabled consumers, additional civil penalties apply;
- iii. The Attorney General may file a civil action seeking injunctive relief and civil penalties of up to \$5,000 per violation;
  - 1) In cases involving elderly or disabled consumers, additional civil penalties apply;
- iv. Consumers/participants may file a private legal action under the FBPA, and, if successful, they may potentially recover treble damages and attorney's fees;
- v. Any contract entered into by a participant in connection with a promotion which is not in full compliance with the FBPA shall be voidable by the participant for ten business days following the date of the participant's actual receipt of the prize.
  - 1) In many cases this would create a right to cancel a contract that otherwise would not exist, or greatly extend the cancellation time frame for other contracts. In the case of a vacation or holiday promotion, this provision means a participant has 10 days from the first date they actually receive their travel accommodations, which could be literally months after the contract was signed.
- vi. The promotion may be deemed an illegal lottery and subject to potential criminal prosecution by the appropriate authorities.

## **E. Sales Practices**

### **Spot Delivery**

It is unfair and deceptive for a dealership that conditions a vehicle purchase or lease on the approval of consumer credit to represent to the purchaser or lessee that they have been approved by the prospective lender to a consumer credit transaction if such approval is not final.

If the sale or lease of a vehicle is conditioned on final approval of financing by a lender or lessor, the dealer must retain title and possession of any vehicle traded by a consumer as part of the transaction until financing is actually approved. The dealer is required to retain a copy of the original credit application for 25 months.<sup>23</sup>

If financing cannot be secured, and the consumer chooses not to execute another finance agreement for the purchase of the vehicle, then the dealer shall immediately return to the consumer any traded

---

<sup>23</sup> 12 C.F.R. §§ 202.2(l), 202.12(b) (2007).

vehicle and/or down payment previously tendered by the consumer as part of the transaction. The consumer is responsible for returning the delivered vehicle in accordance with the bailment agreement or any other contract executed between the dealership and the consumer.

If financing is not secured, but the consumer wishes to execute a subsequent agreement in order to obtain financing from a different finance company, then the dealer must ensure that the TILA terms are accurate according to the date of the subsequent contract, not as of the date of any prior contract.<sup>24</sup> For example, dealers should refrain from backdating subsequent finance agreements to the date of a prior agreement so that the interest begins to run on the date of the first agreement. This practice is a violation of TILA and will be treated as an unfair and deceptive practice.

### **Emission Inspection Fees not Permitted**

Dealers cannot charge purchasers of used vehicles for emission inspection fees when the vehicles were required by law to be sold with unexpired emissions certificates.<sup>25</sup>

Dealers cannot charge used vehicle purchasers for Georgia Lemon Law fees, when these fees are only properly charged for new automobiles.<sup>26</sup>

### **Spanish Used Car Buyer's Guides Required When Sales Conducted in Spanish**

If a dealership conducts used automobile sales in Spanish, certain forms in Spanish must be provided to the consumer, as required by Federal Trade Commission's Used Motor Vehicle Trade Regulation Rule.<sup>27</sup> This rule requires that sales conducted in Spanish should include a window sticker and contract language disclosures in both Spanish and English. As help to used automobile dealers, the requisite Spanish version of the window sticker is also reprinted in the rule.<sup>28</sup> Further, the FTC has accepted numerous consent agreements regarding the provision of contracts in the same language as that in which the sales presentations were primarily conducted.

### **Internet Sales Practices**

With regard to sales practices, more consumers are negotiating online with dealers to lease or purchase motor vehicles. Consumers often seek specific features and in many instances the dealer may not have that vehicle in stock. When conducting such transactions, dealers need to ensure that consumers receive, at a minimum, written information regarding the following five terms:

1. Whether the vehicle is currently in stock or the time period during which the vehicle will be available for delivery, if it is not in stock;
2. The vehicle identification number;
3. The price of the vehicle, excluding government fees;

---

<sup>24</sup> [Rucker v. Sheehy Alexandria, Inc., 228 F. Supp. 2d 711, 717 \(D. Va. 2002\)](#).

<sup>25</sup> GA. CODE ANN. § 12-9-54 (2007).

<sup>26</sup> GA. CODE ANN. § 10-1-789(a) (2007).

<sup>27</sup> 16 C.F.R. § 455.5 (2007).

<sup>28</sup> *Id.*

4. The vehicle's mileage or, if the vehicle is not in stock, the estimated mileage upon delivery; and
5. An accurate description of the vehicle, including, but not limited to, color, optional equipment and warranty information.