



AUTO INFORMER

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Issue 08

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. To this end, you will find discussions of common advertising issues, additional explanation of our *Auto Advertising and Sales Practices Enforcement Policies (AAEP)*, and information regarding services offered by this agency.

What does OCP do?

OCP enforces the Georgia Fair Business Practices Act (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.

This Quarter's Common Violation

OCP has recently noted an increase in the number of advertisements with Truth in Lending Act (TILA) violations. This federal statute mandates the disclosure of specific financing information when advertisements list certain "trigger terms". These "trigger terms" include the following:

- the amount or percentage of down payment,
- the period for repayment (generally expressed as the number of months),
- the amount of weekly or monthly payment,
- the amount of any finance charge.

If an advertisement lists any one of these "trigger terms", it must list the following:

- the amount or percentage of down payment,
- the period for repayment,
- the amount of weekly or monthly payment, and
- the APR, and if the rate may be increased after consummation, a statement of that fact.

All of these terms must be in close proximity to each other. For example, if an advertisement lists a monthly payment, (a "trigger term" under TILA) it must also list the amount of down payment, the number of months or weeks for

repayment, the APR, and if the rate may be increased after consummation, a statement of that fact.

Alternatively, it is permissible for an advertisement to simply state an available APR. For example, an advertisement may state “2.9% APR available, see dealer for details” and not be required to list any other financing information. It is not acceptable, however, to advertise the APR in conjunction with a financing term unless the above referenced TILA disclosures are listed. “2.9% APR for 60 months, see dealer for details”, for example, requires further disclosures.

Claims & Substantiation: “We’re #1!”

OCP considers claims such as “Number One”, “biggest”, “largest” and similar terms, to represent vehicle retail sales volume. While this type of statement is acceptable, the AAEP requires that the advertisement list the source of the claim from a reputable, independent source such as the manufacturer or distributor. The advertisement must also state the time frame and category for the claim. For instance, if a dealership is considered “#1” in sales for a particular model vehicle, it is deceptive and misleading for the dealership to simply state “#1 in retail sales” without disclosing that the sales volume relates to a particular model.

Like all disclosures, the information regarding source, time frame and category must be clear and conspicuous and in close proximity to the “#1” or “largest” claim. Please pay particular attention to disclosure size and placement when utilizing media such as billboards.

To Disclose or Not To Disclose

If an advertisement makes an express or implied representation that has the tendency, capacity or effect of misleading consumers, without certain qualifying information, the failure to include this information is a violation of the FBPA. This information must be in close proximity to the terms it modifies and should be a minimum of 10 point font (10 point font may be inadequate for some mediums, such as television or billboards).

OCP has recently seen many advertisements that fail to disclose such qualifying information. For example, this spring, one such common disclosure issue related to consumer tax returns. Claims such as “double your tax return” were common and are unacceptable without further qualifying information. For instance, what does this statement mean? May a consumer come into the store with a \$1500 tax return and be given a \$3000 discount? Are there any limitations or restrictions? Such statements must be qualified.

Other examples of potentially misleading claims include advertising gas cards and/or oil changes with the purchase of a vehicle. In order to use the gas card, must the consumer travel to the dealership or to a particular gas station? Are there any limitations? With regards to the oil changes, how many oil changes are included? Are there any restrictions? These types of questions highlight how these claims can mislead consumers unless information is listed to qualify and explain the representation.

The examples listed above are offered as illustrations of the type of disclosure issues OCP has recently noted. Keep in mind that any representation may require further disclosure if the statement or claim can be misleading absent additional information.

Internet Advertisements

The AAEP applies to all forms of advertising, including internet advertisements such as dealer websites. OCP is in the process of reviewing Georgia dealer websites for violations of Georgia law. Please be aware that this office takes seriously advertising compliance issues and is taking appropriate action when such violations are found. Some of the most common violations include:

- Advertising vehicle prices that exclude fees such as dealer or documentary charges. The AAEP specifically prohibits the exclusion of any fees not collected on behalf of the government. Consequently, the only fees that may be excluded are tax, tag, and lemon law fees. Any other fee must be included in the vehicle price or payment.
- Violations of TILA. This federal law (discussed above) mandates specific disclosures when advertising certain financing terms. OCP has particularly noted an increase in representations such as “0% APR for 36 months” or other phrases that relate an available APR to the amount of time for repayment. As discussed above, such a disclosure is incomplete unless accompanied by the remaining TILA disclosures.
- Disclosure Placement. Both the AAEP and the Federal Trade Commission (FTC) have propounded guidelines regarding online disclosures. As a general rule, remember that all disclosures must be clear and conspicuous. In regards to internet sites, consider the following:
 - Generally, disclosures should appear on the same screen and in close proximity to the term they modify.
 - If a consumer must scroll down to access disclosures, then visual clues or text must be used to encourage consumers to use the scroll bar. The existence of a scroll bar, in and of itself, is insufficient for this purpose.
 - If a consumer must click on a hyperlink, the link must be obvious and set up in such a way to convey the importance and nature of the information to which it leads. The link should be near the relevant information it modifies.

Further information is available in the AAEP as well as the FTC’s manual on internet disclosures, Dot Com Disclosures, available at <http://business.ftc.gov/documents/bus41-dot-com-disclosures-information-about-online-advertising.pdf>.

Lemon Law News

Dealers Confused Regarding Georgia Lemon Law Rights Statement Issuance Requirements

In a recent survey of Georgia franchised dealers, more than 60% failed to identify the correct Lemon Law Rights Statement consumers are to receive and sign when they lease or purchase a new motor vehicle. The respondents who answered incorrectly either did not know the consumer had to sign the form, did not know that the form had to be on **yellow paper**, or identified the old Motor Vehicle Warranty Rights Act Rights Statement (defunct since Dec. 31, 2008) as the form. A majority of the respondents also did not know that the dealer’s representative is required to print his or her name on the Lemon Law Rights Statement and that the dealer is required to keep a copy of the Statement for a period of at least three years. [For detailed information about these requirements and penalties for non-compliance, see Auto Informer 04, April 29, 2010.]

While we are on the subject of surveys, OCP is now surveying consumers who contact us regarding new motor vehicle issues. If consumers indicate that they did not receive the correct Lemon Law Rights Statement from your dealership, we may be contacting you to produce copies evidencing compliance.

FREQUENTLY ASKED QUESTIONS

Q: Is it acceptable to compare a used vehicle to its original price?

A: NO.

Because there is no MSRP for pre-owned vehicles it is not acceptable to compare such a vehicle to the MSRP or original price. For example, “75% off original price” is a violation of the AAEP if used in reference to a pre-owned vehicle. Only a new vehicle may be compared to the MSRP.

Q: Does OCP automatically consider national advertisements (created by a manufacturer) to comply with Georgia law?

A: NO

Just because an advertisement has been approved or created by a manufacturer, does not necessarily mean the ad complies with Georgia law. OCP does not review these advertisements for the manufacturer and such ads are created for dissemination throughout the U.S., not just our state. If you use such an ad, remember to review it to ensure it complies with Georgia’s specific requirements.

Q: May a dealer advertise that it will match a competitor’s price?

A: YES

The AAEP allows such price matching claims; however, OCP prohibits any requirements that would place an unreasonable burden on the consumer. For instance, a dealer may not require the buyer to produce a signed buyer’s order from the competing dealer. On the other hand, it is permissible to ask the consumer to produce a copy of the competitor’s advertisement.

OCP Ad Review

As a courtesy to dealers and marketing companies, our office will review advertisements prior to publication. OCP will not approve any proposed advertisements; however, we will identify those representations we consider problematic. We require a minimum of two full business days for review (excluding ads submitted during the weekend, which will be considered received on Monday at 9:00 a.m.). By way of illustration: an advertisement received on Wednesday at 4 p.m. will be reviewed no later than Friday at 4 p.m.

All advertisements and any advertising related questions should be submitted directly to Lauren Villnow, the Staff Attorney responsible for advertising monitoring. Please contact Lauren at 404-656-4481 or lauren.villnow@ocp.ga.gov. Proposed advertisements may also be submitted by fax to 404-463-8212.

Suggestions

If you notice any ongoing advertising issues that you would like addressed in future newsletters, please email your suggestions to lauren.villnow@ocp.ga.gov. To unsubscribe from this newsletter, please send an email to Lauren with “unsubscribe” in the subject line.