



AUTO INFORMER

July 24, 2020

The Georgia Department of Law-Consumer Protection Division enforces Georgia's Fair Business Practices Act (FBPA) which, among other things, prohibits unfair and deceptive acts or practices within the context of consumer transactions. This newsletter is part of our efforts to raise awareness among auto dealers and advertisers regarding the FBPA, as well as this office's *Auto Advertising & Sales Practices Enforcement Policies (AAEP)*. These policies identify practices that we believe are unfair and deceptive and thus violations of the FBPA. Within the Auto Informer, expect to find discussions of common advertising issues, as well as explanation of the AAEP and information regarding services that we offer.

COVID-19 ADVERTISEMENTS: CAREFULLY REVIEW PROPOSED MARKETING

Continue exercising caution when evaluating whether to use marketing or advertising materials that reference the pandemic. Third party marketers, particularly those unfamiliar with Georgia law, may suggest materials that pose serious FBPA concerns. In determining if and how to reference the pandemic in your advertising and sales efforts, be particularly aware of representations that imply unique relationships with government entities, special dealership authorization to accept or distribute relief, and among other things, event descriptions suggesting an event is unique when it is not. For example, consider the following:

- **Misleading affiliations and endorsements.** Remember that only the government is providing "stimulus funds" or other types of similar relief. Dealers are not selected by government entities to aid in distribution or serve as unique headquarters for receiving special benefits or savings. Be especially cognizant of the misleading impact that symbols or language may take on when presented as time-sensitive, urgent, and/or from a government source. If presented with a direct mailer, evaluate both the external envelope and the substantive contents.
- **Unique Events.** Accurately represent your event. A marketer might suggest you run a campaign indicating that due to Covid-19, you need to move inventory and consequently, consumers should visit the dealership immediately to receive a special deal. There are of course, any number of variations, but ultimately, if you represent that something other than business as usual is occurring at the dealership, business should, in fact, be different than normal. Put differently, the deal available to the consumer during the sales event cannot have also been available before the sale. If so, there is nothing unique or "special" about the "sale" and any representation suggesting otherwise is misleading.

At least one federal agency is also monitoring Covid-19 related ads as evidenced by a recent lawsuit filed by the Federal Trade Commission (FTC). In June 2020, the FTC sued Traffic Jam Events, LLC, a LA-based marketer, and its owner, for allegedly misleading advertisements suggesting, among other things, that consumers were receiving "Important Covid-19 Stimulus Documents," that a particular dealership had been designated as "relief headquarters," and that consumers should proceed there to collect such relief. That case is pending. *Federal Trade Commission v. Traffic Jam Events, LLC*, Civil Action No. 2:20-cv-1740, USDC Eastern District of Louisiana. Like the FTC, we also believe that these types of representations are unlawful.

ELECTRONIC TITLING FEES – DESIGNATIONS AND AMOUNTS

Our office has previously reminded dealers that "title" fees in Georgia are generally \$18. Dealers should take care that in the event they offered optional electronic titling services, any fees associated with that service were not rolled into an inflated title fee. For example, we view a \$50 "title fee" as misleading, even if the other fees rolled into that charge are purportedly for the purpose of applying for a vehicle title.

Since titling through the Georgia Electronic Title and Registration system became mandated for most transactions, we have noted an increasing trend in dealers charging large “ETR” or similar fees intended to capture the costs of electronic titling as well as unspecified dealer costs or profit. When determining what amount to represent for such fees, accurately represent the amount that you are actually remitting to others for the ETR service and ensure that you truthfully represent the purpose for this fee. Remember that non-government fees must be included in advertised prices.

TRADE-IN TRANSACTIONS – ENSURE ACCURATE REPRESENTATIONS

Our office has received complaints related to discrepancies between the transaction that the purchaser believed that he or she had agreed to and the transaction reflected in the sales documents. While a dealer might believe that reference to a signed document definitively resolves any question raised by such a discrepancy, in reviewing this type of complaint we may consider additional facts such as:

- Inadequate opportunity to review the contracts. Was the purchaser rushed through the process or pressured to quickly sign a document? Car buying involves the review of numerous documents to which a consumer will be bound. The review and signing process can be lengthy and a consumer must be afforded sufficient time to read the contract carefully.
- Representations made to the consumer. Was the consumer lead to believe that her current vehicle was included in the transaction as a trade-in when it actually was not? Problems might arise where, over the course of a negotiation, a deal is restructured so that a trade-in that was initially included within the deal is excluded at a later point but the dealer continued to represent that the trade-in was taken care of or otherwise addressed.
- Elderly Consumer. Is the consumer 65 or older? These type of complaints are particularly concerning when they involve an elderly consumer as, in the event of an FBPA violation, Georgia law accords heightened penalties.

ADVERTISED PRICES: DO I HAVE TO SELL MY VEHICLE AT THE AD PRICE?

Do I really have to sell my vehicle at the ad price? I have the same vehicle listed on two different sites at different prices! At which price do I have to sell? The answer is simple. If you list a vehicle, let’s say on your dealership website, and identify that particular car as available for purchase at a specific price, you have represented that you will sell that vehicle at that price to anyone who comes to purchase. If there are multiple sites at which you list your vehicle, the consumer should receive the lowest advertised price. Failure to do so in an unfair and deceptive practice.

The only exception to this requirement are circumstances where the vehicle ad clearly indicates a limitation that

requires the consumer to reference the ad and/or bring in a copy of the advertisement in order to receive the advertised price. Such a limitation must be clear and conspicuous and in close proximity to the ad price. Put differently, placing this type of material disclaimer at the bottom of your website, or anywhere else not close to the ad, will not be considered an effective disclaimer. Vehicle price is a highly material term and if you are using this limited exception to restrict the circumstances under which you will honor the ad price, take care that it is abundantly clear to the consumer how they must use the ad. Finally, if you do include such a requirement to any of your advertisements, the ad price should not be given to any consumer that does not follow the instructions.

AD REVIEW

Although **this office cannot approve any advertisements**, as a service to dealers, we do review proposed ads for issues that implicate the laws that we enforce. We are generally able to review advertisements within 2-3 business days. Email Investigator Victor Hudson at vhudson@law.ga.gov for advertising review. **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.**