



WHAT'S THIS AND WHO'S IT FROM?

The Georgia Department of Law-Consumer Protection Unit enforces Georgia's Fair Business Practices Act (FBPA) which 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 and Sales Practices Enforcement Policies* (AAEP). Although the policies found in the AAEP are not actual law, they highlight those industry practices that we believe are unfair and deceptive, and thus violations of the FBPA. Expect to find discussions of common advertising issues, as well as additional explanation of the AAEP, and information regarding services we offer.

REACQUIRED VEHICLES: WHAT DO YOU HAVE TO TELL CONSUMERS?

Georgia dealers that sell vehicles which were previously reacquired under a state Lemon Law have disclosure obligations to the first consumer who purchases or leases the vehicle after it is put back into the stream of commerce. The notice requirements detailed below do not apply to subsequent purchasers or lessees. *Prior* to your transfer of a reacquired vehicle to the first purchaser or lessees you must:

- 1) **Provide the consumer the reacquired vehicle notice form.** This form and its contents are prescribed by the Attorney General's Office.
- 2) **Allow the consumer an opportunity to read the form in its entirety.** Burying the form in a stack of papers and rushing the consumer through the execution process does not meet this requirement. This form contains important information, such as the reasons the vehicle was reacquired and the existence of the manufacturer's warranty of the lemon law defect.
- 3) **Sign the form.** Assuming the consumer decides to purchase the vehicle, both a dealer representative and the consumer must sign the form; and
- 4) **Give the consumer the original of the form to take with them when they leave the dealership.** You must retain a copy for your records and then provide a copy of the completed form to the Attorney General's office within 30 days of the transaction.

Remember, it is not sufficient to simply hand the consumer the form after he or she has executed purchase or lease documents and ask for a signature. Furthermore, the particular form mandated by the Attorney General's office must be used – another state's form is insufficient. Failure to comply with any of the above requirements is a violation of the FBPA.

Other Considerations:

As always, you should ensure the verbal and written representations made to consumers are accurate. While you are not required to provide the reacquired vehicle form to subsequent purchasers or lessees, if you know a particular vehicle has been reacquired, you cannot misrepresent this fact to any consumer, first purchaser or not. Furthermore, when responding to questions or offering information about these types of cars, be careful to avoid generalizations that may downplay the seriousness of potential defects or mislead consumers as to the vehicle's history. For instance, while vehicles are reacquired for numerous reasons, it would be misleading to generalize that reacquired vehicles are usually taken back by the manufacturer for non-safety related issues, when in fact, vehicles *are* reacquired for safety concerns. Such a representation would be particularly concerning if the specific vehicle the consumer is looking at was recalled for brake failure or some other safety defect.

CERTIFIED USED VEHICLES: BE CAREFUL YOUR CERTIFIED CAR MATCHES YOUR MANUFACTURER'S STANDARDS

Manufacturers generally tout their certified vehicles as superior quality autos that have been extensively inspected and subjected to stringent reconditioning procedures. For example, these vehicles are generally represented as having undergone exhaustive reviews, often through the use of detailed checklists or repair sheets. In addition to overall representations about the high quality of these cars and trucks, certification programs usually highlight specific criteria used in the selection process, such as only allowing the certification of vehicles with certain mileage or model years. A dealership can find itself facing potential liability under the FBPA if it advertises and sells certified vehicles that do not actually meet or comply with the manufacturer's standards and requirements for certification. Although there may be other unfair or deceptive practices related to your handling of these vehicles, below are several considerations of which you should be particularly aware:

1) Ensure Compliance with Certification Criteria:

At a minimum, a certified vehicle must meet the criteria described in the relevant certification program. For instance, if a vehicle must be of a certain age and mileage with no history of any unibody or frame damage, you must ensure any vehicle you are certifying meets these criteria.

2) Ensure Compliance with General Program Representations:

Because of the type of advertising that generally surrounds a certified vehicle, a consumer reasonably expects a higher than average quality used car. Therefore, even if the manufacturer's criteria would allow vehicles with certain conditions to be sold as "certified," under certain circumstances some vehicles may not meet the standards that have been advertised to consumers. Consider the following examples:

- a. **Accident History.** A particular manufacturer, based on its own criteria, permits a dealership to certify a vehicle that has been involved in an accident so long as the vehicle is properly repaired. Depending on the type of damage sustained and the quality of the repair work, it might not be deceptive to certify that vehicle. However, it could be deceptive to certify that same vehicle if it had sustained very significant damage or numerous accidents. Under those facts, it may be unfair to characterize the vehicle as the type of "high" or "superior" quality vehicle that is usually certified.
- b. **Open Safety Recalls.** Your manufacturer might not require you to repair a vehicle with an open safety recall before certification. However, given the certification program's literature highlighting your detailed inspection of everything from mechanical to cosmetic considerations, no consumer reasonably expects a certified vehicle to have an unresolved safety issue. At the very least, failure to disclose the existence of the recall prior to sale or lease is a violation of the FBPA.

FLOOR MATS, CAR KEYS, AND THE FBPA

When you advertise any vehicle, new or used, the advertised price must include all extra fees and charges other than those collected on behalf of the government (e.g. tax, tag and title). As you may have noticed, this office reiterates this policy at every opportunity. Despite these admonitions, we continue to see pricing violations, particularly with regard to the addition of dealer or service fees to ad prices. Be aware that we have and will continue to take action against any dealers who misrepresent their vehicle prices. While the most common violation in this context occurs with the addition of a dealer fee, please note that your use of dealer addendums is also subject to this policy.

A dealer addendum, or add-on charge, must be included in your advertised price when: 1) the services or products listed in the addendum have already been added to the vehicle, or 2) a service or product has not yet been added, but inclusion of the item is *required* in order to purchase or lease the vehicle. For example, if your dealership provides floor mats and an extra set of keys for every used vehicle purchase, the charges for these items might be found listed in a dealer addendum. Clearly, these items can easily be removed from a particular car, so are not necessarily already added to the transaction. If, however, you require that all customers buy the mats and keys as a condition of buying a car, the

charges for these items are a mandatory cost that must be included within your advertised price. By way of illustration, consider a vehicle you are advertising for \$20,000 and for which you require the purchase of car mats and an extra key. If you charge \$200 for the mats

and \$100 for the key, the vehicle must be advertised for \$20,300. Alternatively, if the consumer, may, at his or her option, elect not to purchase these items, you could advertise this vehicle for \$20,000.

Two Other Matters related to Addendums:

Adequate Performance and Actual Cost: We consider it unfair and deceptive 1) not to actually perform or provide a service or product that is advertised as included in the purchase price or 2) to misrepresent your actual cost to supply that product or service. While the consumer in the above example would readily know whether or not you had provided floor mats and an extra key, adequate performance is more difficult to determine when looking at services such as paint protection or nitrogen injected tires. Simply put, if you charge for a service or product, you must provide it. Additionally, dealers are prohibited from misrepresenting to consumers the dealership's actual costs on services or products.

LARGE PRINT OFFERS VS. SMALL PRINT DISCLAIMERS

Advertisements should always be in clear language, reflect truthful and accurate information, and be free from any misleading representation, express or implied. Furthermore, ads will be considered deceptive if they fail to clearly and conspicuously state material terms and conditions. Consider the following examples:

- **Misleading Monthly Payments:** An ad claims a vehicle is available for purchase at "only \$59 a month!" The ad fails to disclose or only discloses in tiny print that the \$59 payment is limited to several months before significantly higher monthly payments become due for the remainder of the term. Failed disclosure or inadequate disclosure, like the use of small font at the bottom of an advertisement, is deceptive. You should also note that advertising certain finance terms, such as a monthly payment, implicate federal disclosure requirements under the Truth in Lending Act (TILA) and must be included. (See pages 8 & 9 of the AAEP for more information on TILA requirements).
- **Sales v. Leases:** An ad tells customers they can "drive for \$199 a month." The ad also states in small font, buried among numerous unrelated disclosures, that the advertised offer is a lease, rather than a sale. Like the first example, this claim is deceptive for failure to include material information. Also, like the above example, certain federal disclosure requirements are required because the ad references the amount of a payment on a lease. (See pages 9 & 10 of the AAEP for more information on the Consumer Leasing Act's disclosure requirements).

UPDATED LEMON LAW STATEMENT OF RIGHTS

Earlier this year, this office distributed a letter notifying franchise dealers of certain updates to the Georgia Lemon law and/or related dealer forms. In particular, effective September 1, 2016, all franchise dealers must use the updated Lemon Law Statement of Consumer Rights form which reflects changes in the Lemon Law and the transfer of responsibility for administration of the Lemon Law to the Attorney General. Please ensure you are using the updated form for all applicable new vehicle transactions.

AD REVIEW

This office offers a complimentary review service to help dealers and their advertisers identify those areas that might violate the FBPA or related rules or laws. **We cannot approve any 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. Email our advertising compliance investigator, Victor Hudson, at vhudson@law.ga.gov for advertising review. You may also contact Lauren Villnow, the assistant attorney general who assists in monitoring auto related issues, at lvillnow@law.ga.gov. **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.**