

You AUTO KNOW®

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ADVERTISING COMPLIANCE?

In the October 2013 issue of *You Auto Know*®, I discussed ongoing Federal Trade Commission ("FTC") investigations regarding dealer advertising compliance. As you know, several dealers throughout the United States entered into 20 year consent agreements which stated that the dealership could not advertise prices or discounts unless the qualifications are clearly disclosed regarding the applicability to specific customers. They are further barred from "misrepresenting the existence of any discounts, rebates, bonus incentives or prices, the existence of any price value coverage or features of any product associated with the motor vehicle, unless specifically disclosed, the number of vehicles available at specific prices and any other material fact or price regarding the sale, financing or leasing of a vehicle." (*You Auto Know*®, October 2013)

The March 10, 2014, edition of *Automotive News* also addressed the issue of advertising. The headline on page 20 states, "Simple Rules: Don't Lie and Don't be Tricky". Curiously, there is a statement in the article which I have heard *ad nauseum* for over 30 years that "others do it, why can't I do it?" My canned response is, "because it is illegal and eventually, you will be the one who gets caught."

As you know, the dealerships that entered into the consent agreement barred them from any deceptive advertising. Additionally the dealerships have to maintain a history of their advertising for the FTC to review and the FTC can, at any time, review the dealerships' ads and can impose penalties up to \$16,000 per violation.

Ohio has very extensive rules and regulations regarding advertising. If you don't have a copy of the rules and regulations, your local Dealer Association can provide you with a copy, or the Attorney General's office will be more than happy to provide you with a copy. The biggest issue

regarding the ads is not out and out blatant lying, it is, as *Automotive News* stated on page 20, the ads are "literally true, but misleading".

This author represents, and has represented, several dealer advertising associations and has reviewed hundreds, if not thousands of ads for compliance. The biggest issue regarding compliance is the fact that third party vendors and advertising agencies are generally utilized to create the ads. Although 99.9% of them are well-intentioned, they do not know the specifics of Ohio advertising law and the ads must be reviewed, amended and conformed to comply with Ohio law. Obviously, as Tier II and Tier III advertisers, it is your responsibility to create excitement and bring customers to the dealerships. However, you still must comply with Federal and Ohio law. If the ads are too good to be true, then - you know what? They are and they will get you into trouble.

I have had numerous arguments with advertising agencies stating that, "Well, we put it in the disclaimer, isn't that sufficient?" No. If there is an issue of stacking, rebates or other offers, then this is a problem. Further, the disclaimers have to be of a certain size, depending on the largest size of the print in the ad, and must be in close proximity to the offer being made. Often I hear the comment from advertising agencies that, "This will not look good in print or on television." However, the law is the law and I tell them to do the best they can. However, the disclaimer has to be in close proximity to the offer.

On a personal note, it never ceases to amaze me that I am still answering the same questions I did when I first started practicing law regarding advertising issues. The only difference now is, it is a new generation attempting to try the same old tricks. Simply, as the *Automotive News* article said, and as I have stated for years, keep the ad simple -- "don't lie" and "don't be tricky" (*Automotive News*. *ibid* @ page 20).



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As always, these are highlights of the law and are not to be construed as containing the entire law. This is not to be construed or relied upon as a legal opinion. If you are presented with this problem, contact your legal counsel for advice.