

SUMMARY: This chapter describes advertising practices by new and used motor vehicle dealers that are unfair and deceptive in violation of the Maine Unfair Trade Practices Act, 5 MRSA sec. 207.

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SECTION 1. DEFINITIONS

- A. “Advertisement,” “advertising,” or “ad,” unless otherwise noted, means any oral, written, electronic or graphic statement made by, for, or in the name of a car dealer that is in any manner connected with the solicitation of business. The term includes statements made in newspapers or other publications or on radio or television, or contained in any sign, motor vehicle window sticker, circular, brochure, letter, or other writing.
- B. “Disclosure” means a clear and conspicuous statement made in such size, color, contrast, location, duration, and audibility that it is readily noticeable, readable and understandable. The disclosure may not contradict or be inconsistent with any other information with which it is presented. If the disclosure modifies, explains, or clarifies other information with which it is presented, or states “see dealership for details,” then it must be presented in proximity to the information it modifies, in a manner readily noticeable, readable, and understandable, and it must not be obscured in any manner. An audio disclosure must be delivered in a volume and cadence sufficient for a consumer to hear and comprehend it. A visual disclosure for television must appear on the screen for a duration sufficient for a consumer to read and comprehend it. In a print or internet advertisement or promotional material, including without limitation point of sale display or brochure materials directed to consumers, a disclosure must be in a type size and location sufficiently

noticeable for a consumer to read and comprehend it, in a print that contrasts with the background against which it appears. Commonly known abbreviations may be used in disclosures; however, those not generally known cannot be.

- C. “Dealer” means a natural person, firm, corporation, partnership, and any other legal entity licensed by the State to sell new or used motor vehicles, as defined in 29-A M.R.S.A. § 101, and the officers, employees and agents thereof, except auctioneers licensed by the State.
- D. “Extra charge” means any consumer charge listed or requested by the dealer for the purchase of a new or used motor vehicle which is not included in the manufacturer’s suggested retail price for that vehicle. Some examples are the following charges that are typically not listed on a “Monroney sticker” (the manufacturer’s suggested retail price sticker): handling charges, floor planning costs, dealer installed options, charges for preparing documents or other dealer preparation services.
- E. “Monroney sticker” or “MSRP sticker” means the window sticker required by the federal Automobile Information Disclosure Act, 15 U.S.C. §1231 *et seq.*
- F. “Motor vehicle” means vehicles as defined at 29-A M.R.S.A. § 101 (42).

SECTION 2. GENERAL PROVISIONS

- A. **General prohibition against unfair and deceptive advertising.** These advertising rules are issued pursuant to the Maine Unfair Trade Practices Act (5 M.R.S.A. § 207). All motor vehicle advertising by dealers, whether printed or broadcast, shall be in plain language, with disclosures of material facts that are clear and conspicuous and non-deceptive. By way of example and not of limitation, the following are in violation of this rule:
 - 1. direct statements or reasonable inferences that have the tendency to mislead consumers;
 - 2. advertising whose overall impression has the tendency to mislead consumers;
 - 3. disclaimers that contradict, confuse or unreasonably limit or significantly alter a principal message of an advertisement;
 - 4. the failure to make clear and conspicuous disclosures of limitations, disclaimers, qualifications, conditions, exclusions or restrictions;
 - 5. statements susceptible to both a misleading and a truthful interpretation; and

6. deceptive statements, even though the true facts are subsequently made known to the consumer.
- B. Enforcement not limited.** The fact that a particular advertising practice is not expressly referred to in these rules does not limit the Attorney General's authority to take legal action with respect to that practice under the Maine Unfair Trade Practices Act (5 M.R.S.A. § 207).
- C. Complaints not necessary.** An advertisement may be deceptive even though no consumer has complained about it.
- D. Selling in accordance with advertised terms.** A dealer shall not refuse to sell a motor vehicle in accordance with any terms or conditions which the dealer has advertised; except that it will not be considered a violation of this subsection where either:
1. the dealer can document that the advertised term was the result of an error on the part of the advertising medium or an outside advertising agent, or
 2. the error was made in good faith by the dealer and was clearly and conspicuously a mistake (e.g., a vehicle advertised at "\$1,000" rather than "\$10,000"), and
 3. the dealer corrected the error as soon as it knew or reasonably should have known of it.
- E. Responsibility for advertising.** The dealer is responsible for knowing the law as it applies to advertising and is ultimately responsible for its advertising product. This does not preclude a finding that parties other than the dealer are also liable for a deceptive ad.
- F. Disclosure of material facts.** Any disclosures about material facts which are contained in advertisements and which involve types of motor vehicles and transactions must be made in a clear and conspicuous manner to minimize the possibility of misunderstanding by the audience.
- G. Sale price available to all.** Advertised vehicles shall be offered at or below the advertised price regardless of whether the customer has actually seen the advertised price prior to the sale, unless the ad clearly and conspicuously discloses that a customer must bring the ad to the dealer in order to receive the sale price, and the sale price is not given to anyone who does not do so.

SECTION 3. ADVERTISING LAYOUT

The following advertising techniques are in violation of these rules:

- A. **Footnotes and asterisks.** Using footnotes or asterisks which, alone or in combination, contradict, confuse, significantly alter or unreasonably limit the principal message of the ad.
- B. **Print size.** Using any type size so small that it is not easily readable if it alters a principal message of the ad.
- C. **Color Contrasts.** Using color contrasts which render the text difficult to read if it alters a principal message of the ad.
- D. **Photos and illustrations.** Using inaccurate photographs or illustrations when describing specific motor vehicles, except when used as a general illustration of the kind of vehicle advertised (e.g., a truck, sedan, family van, etc.).
- E. **Abbreviations and technical jargon.** Using any unexplained abbreviations or technical jargon which is unfamiliar to the general public, with respect to any aspect of the advertisement on which consumers could reasonably be expected to rely, if it would significantly alter the ad.
- F. **Disclosures.** Using statements of material facts that do not meet the definition of a clear and conspicuous disclosure.

SECTION 4. AVAILABILITY OF VEHICLES

- A. **Identification of sale vehicles.** Where a specific motor vehicle is advertised by a dealer as being for sale at a specific price, the invoice or VIN of that vehicle or the vehicle itself must be in the possession of the dealer and must be shown and sold as advertised, illustrated or described at the advertised price and terms, at the advertised address.
- B. **Sufficient supply.** If the dealer does not limit the number of advertised motor vehicles available, then the dealer must have in stock a sufficient supply to meet reasonably expected public demand of all vehicles advertised, with the equipment advertised and at the price advertised.
- C. **Limited supply.** In the event that a dealer has a limited supply of motor vehicles advertised, the advertisement must disclose this fact by stating that the quantity is limited to only a specified number of vehicles available at the specified price or by stating the stock numbers of the available vehicles.
- D. **Not immediately available.** If in order to make delivery of the advertised motor vehicle, the dealer has to obtain the vehicle from the manufacturer or some other source, this fact must be disclosed in the ad.

- E. **General offers.** This section does not prohibit general advertising of motor vehicles by a manufacturer or distributor and the inclusion therein of the names and addresses of the dealers selling such vehicles in the particular area.

SECTION 5. PRICE DISCLOSURES

- A. **Vehicle identification.** When the price of a motor vehicle is advertised in a local medium, the vehicle must be fully identified as to year, make, model, and, if the current or immediately preceding model year, whether the vehicle is new or used.
- B. **Advertised price.** When advertising the motor vehicle's price the stated price must include all extra charges, as defined at Section 1(D), which the customer is asked to pay.
- C. **Non-required disclosures.** The advertised price need not include state and local taxes, or title fees. Options installed at customer request need not be included in the advertised price.
- D. **\$0.00 Down payment.** An ad that offers \$0.00 down payment cannot require immediate payment of extra charges, as defined at Section 1(D).
- E. **Discount advertising.** When an automotive advertisement contains an offer of a price discount on a new motor vehicle, the amount of such discount must be stated by reference to the manufacturer's suggested retail price (Monroney Sticker or MSRP) of the vehicle or the dealer's regular asking price, including any additional dealer markup and extra charges. If the dealer advertises a discount of a manufacturer or dealer option package, such discount must be from the suggested retail prices of the options in the package.
- F. **List or sticker price.** When the words "list" or "sticker" or words of similar import are used in an advertisement for a new motor vehicle, they must only refer to the manufacturer's suggested retail price (Monroney Sticker or MSRP).

SECTION 6. COMPARATIVE MSRP ADVERTISING

Advertising a comparison of the dealer's price with a manufacturer's suggested retail price (MSRP) is prohibited, unless:

- A. the advertised MSRP is in fact the "bottom line" manufacturer's suggested retail price listed on the Monroney sticker (including all accessories and options physically attached to the motor vehicle at the time of delivery to the dealer, and any charge to the dealer for transportation to the dealer), after all manufacturer

discounts and manufacturer savings listed on the Monroney sticker have been deducted;

- B. the advertised MSRP does not include any extra charges added by the dealer;
- C. the advertised MSRP is referred to as the “manufacturer’s suggested retail price” or “MSRP”;

SECTION 7. MINIMUM TRADE-IN ALLOWANCES

Since the amount of trade-in allowance will vary depending on the condition, model, and age of a buyer’s motor vehicle, no specific trade-in amount or range of amounts can be used in advertising.

SECTION 8. REBATES

- A. **Rebate offers.** The terms “rebate”, “cash rebate”, or similar terms can be used only when payment of money will be made by the dealer or manufacturer to a purchaser after the sale or the amount will be credited to the purchaser at the time of sale.
- B. **Rebate availability.** If an advertisement states that a motor vehicle is offered at a specified price which “includes all rebates,” the rebates must only include those for which a substantial majority of customers will qualify – all others must be separately stated.
- C. **Inflated price.** If the advertised price of the motor vehicle has been increased to offset the rebate in part or in whole, this information must be clearly and conspicuously disclosed in the ad.

SECTION 9. FREE OFFER

The word “free” may be used in advertising only when the advertiser is offering an unconditional gift that is unrelated to any purchase. Receipt of the “free” merchandise or service cannot be conditional on a purchase of a motor vehicle whose price is negotiable.

SECTION 10. BUY-DOWN INTEREST RATES

No buy-down interest rate can be advertised if any of the costs of securing the buy-down are passed on to the customer in any way, unless the dealer discloses clearly and conspicuously that contribution by the dealership may increase the negotiated price of the vehicle to the customer. (A buy-down interest rate is one in which the dealership pre-pays some of the interest expense in order to allow the customer to finance at a lower APR than the finance institution’s current rate.)

SECTION 11. FACTORY, EXECUTIVE, AND FULLY-EQUIPPED VEHICLES

- A. **“Factory” and “Executive” vehicles.** A motor vehicle cannot be advertised:
1. as a "factory" vehicle if it is previously registered or titled.
 2. as an "executive" vehicle unless it has been used exclusively by factory, manufacturer, or distributor personnel.
- B. **“Fully equipped,” “Loaded” etc.** A motor vehicle cannot be advertised in any print media as "fully equipped" or "loaded," or similar terms unless the following minimum equipment is available in that make or model: air conditioning, power steering, power brakes, AM/FM radio with tape or CD player, power windows, and cruise control.

SECTION 12. MISLEADING CLAIMS OF POTENTIAL SAVINGS

The following claims of potential savings are in violation of these rules:

- A. **“Factory outlet”.** Using terms such as "factory outlet," "factory authorized sale," or similar terms (which imply that the dealer has a special connection or relationship with the manufacturer that is greater or more direct than that of other dealers), when in fact no such special connection or relationship exists, or when any such special connection or relationship has no discernible effect on vehicle prices.
- B. **“Liquidation sale”.** Advertising a "liquidation sale," "public notice," "public sale," "bankruptcy sale" or similar terms, where the sale is not required by court order, by operation of law, in conjunction with an action in bankruptcy, or by the scheduled cessation of the dealer's business.
- C. **"Dealer cost," "dealer invoice," etc.** Using terms which represent that a vehicle is available for sale at a price below cost, at cost, or slightly above cost, such as "dealer cost," "dealer invoice," "inventory price," "factory invoice," "wholesale," "factory billing," or similar terms, unless the advertisement clearly discloses any factors that may reflect the ultimate cost to the dealer, such as manufacturer incentives, awards, dealer holdbacks, decreased trade-in allowances or increased finance charges.
- D. **Unsubstantiated pricing.** Advertising "lower prices than anyone else," or similar terms, if such claims cannot be substantiated by the dealer.
- E. **"As low as," "from," "rebates up to," and stock number ads.** Using the terms "as low as [a certain price or finance charge]," "from [a certain price]," "rebates up to [a certain dollar amount]," or similar terms, or stating a stock number,

unless the advertised vehicles are available for sale as required by Section 4 of these Rules.

- F. **"Money-back guarantees" or "free trials"**. Advertising "satisfaction guaranteed," "money-back guarantee," "risk free trial," or similar terms unless the dealer will readily refund the full purchase price of the vehicle upon complaint by the buyer, and any conditions or limitations are disclosed.
- G. **List price comparisons**. Advertising a price that is compared to a "list" price or other similar term unless the list price is the Manufacturer's Suggested Retail Price (MSRP).

SECTION 13. CREDIT SALES

- A. **Financing rates**. If an advertised financing rate will increase the advertised price of a motor vehicle, then that fact must be disclosed. Where financing is described in terms that do not trigger disclosures under the federal Truth-in-Lending Act (for example, "below market financing"), the ad must nevertheless disclose all conditions and limitations on the advertised financing other than creditworthiness. For instance, a dealer shall not fail to disclose a required down payment.
- B. **"No money down."** If an advertisement states "no money down" or similar terms, then the dealer must deliver the advertised vehicle, so described, to the purchaser without any initial payment or other initial obligation other than the negotiation of a lien contract for the advertised purchase price.
- C. **"Everybody financed."** If an advertisement states "everybody financed," "no credit rejected," "we finance anyone," or similar terms implying that no prospective credit purchaser will be rejected because of his or her inability to qualify for credit, then the dealer must provide credit to a purchaser who requests it. If as a result of extending credit in these circumstances the dealer will increase the price of the vehicle, the advertisement must disclose this fact.
- D. **Truth-in-Lending**. When credit terms are advertised, they must comply with State and Federal Truth-in-Lending requirements.

SECTION 14. LEASE ADVERTISING DISCLOSURES

- A. **Lease advertisements**. Whenever any advertisement relates to a lease, the advertisement must clearly and conspicuously disclose that the transaction advertised is a lease.
- B. **Truth in lending**. When lease terms are advertised, they must comply with the disclosure requirements of State and Federal Truth-in-Leasing requirements.