BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF: AP# 11-002

BALE CHEVROLET COMPANY, INC. D/B/A BALE KIA

NOTICE OF VIOLATION

IT HAS BEEN determined by the Arkansas Motor Vehicle Commission
(hereinafter "Commission") that Bale Chevrolet Company, Inc. d/b/a/ Bale Kia
(hereinafter "Bale"), a licensed dealer, utilized false and misleading advertising. This is
in direct violation of the Arkansas Motor Vehicle Commission Act, Ark Code Ann. §23-
112-101, et seq., pursuant to Ark. Code Ann. §23-112-204. If the Commission
determines that a firm or individual has violated the Commission Act or Rules, the
Commission may revoke or suspend the license, or impose a civil penalty in lieu of
revocation or suspension.

FACTUAL BACKGROUND

F1.   On March 11, 2011, Jennifer Padgett with the Commission reviewed a Bale
        advertisement from the March 3 – March 9, 2011, Vol. X No. 49 edition of
        Arkansas Auto Buyer upon receiving an anonymous complaint. Ms. Padgett sent
        a letter to the dealership informing them of the advertising violation. The
        advertised sale price of the vehicles included limited rebates that were not
        available to all consumers.

F2.   On March 31, 2011, Ms. Padgett reviewed a Bale advertisement from the March
        24 – March 30, 2011, Vol. X No. 52 edition of Arkansas Auto Buyer upon
        receiving an anonymous complaint. Ms. Padgett sent a letter to the dealership
        informing them of the advertising violation. The advertised sale price of the 2011

Kia Optima LX included a Kia financing rebate that was only available to a consumer who financed the vehicle.

F3. On June 7, 2011, Investigator Danny Holmes visited Bale Kia to validate and offer listed in the June 2 – June 8, 2011, Arkansas Auto Buyer upon receiving an anonymous complaint. The vehicle listed was a 2011 Kia Soul advertised for eleven thousand nine hundred eighty-five dollars ($11,985.00). Mr. Holmes attempted to purchase the vehicle at the advertised price. A sales manager named John Woolf informed Mr. Holmes that he had to finance the vehicle to obtain the advertised price. Mr. Woolf called Mr. Holmes later in the day to inform him the vehicle should have been listed at twelve thousand nine hundred ninety-four dollars ($12,994.00). According to Mr. Woolf, however, this price was still only available if you financed the vehicle with Kia.

F4. On June 28, 2011, Jennifer Padgett with the Commission reviewed a Bale advertisement from the June 23, 2011, Thrifty Nickel upon receiving an anonymous complaint. Ms. Padgett contacted Alan Parker with Bale Kia to notify him of the violation, and sent a letter to the dealership informing them of the advertising violation. The advertisement included a prohibited term of "$1.00 over invoice." The dealership was also notified the matter would be reviewed by the Commission's Ad Hoc Committee during the July 20, 2011.

APPLICABLE LAW

L1. Motor vehicle dealers are required to conform their conduct to the Motor Vehicle Commission Act, Ark. Code Act § 23-112-101, *et seq.* and the Rules promulgated by the Commission pursuant to Ark. Code Act § 23-112-204.

L2.   Violations of Commission Rules are considered to be a *prima facie* violation of Ark. Code Ann. § 23-112-402(3) which states it is unlawful for a motor vehicle dealer or salesperson to use a false or misleading advertisement.

L3.   Failure to comply with any provision of the AMVC Act or any Rule promulgated by the Commission may lead to revocation or suspension of the license as per Ark. Code Ann. § 23-112-308(a)(4). The Commission may issue a monetary penalty in lieu of revocation or suspension as per Ark. Code Ann. § 23-112-309.

L4.   False or misleading advertising is prohibited by Rule 3 Advertising, Section 2.

L5.   Rule 3 Advertising, Section 2 (A)(2) states the price of a new motor vehicle, when advertised by the dealer, must be the price that is available to every consumer. Rebates or incentives that are available to all consumers without qualification can be deducted from the price. Limited rebates or incentives that are only available to select or qualifying consumers shall not be deducted from the advertised price.

L6.   Rule 3 Advertising Section 2 (B)(2)(d) states that all advertising shall be in plain language, with disclosures of material facts that are clear, conspicuous, and non deceptive.

L7.   Rule 3 Advertising, Section 4 (D) states that no motor vehicle advertisement shall contain the statements or terms 'percent or dollars over or under cost', 'invoice', or terms with similar meaning.

CONCLUSIONS OF LAW

C1.   Bale violated Commission statutes and the Advertising Rule when they advertised a sale price utilizing limited rebates. This conclusion is based on L1, L2, L3, L4, L5, and L6.

C2.   Bale violated Commission statutes and the Advertising Rule when they utilized

prohibited terms in the dealerships advertisement. This conclusion is based on

L1, L2, L3, L4, and L7.

AS A RESULT OF THESE VIOLATIONS, you are hereby directed to pay a civil

penalty in the amount of three thousand dollars ($3,000.00). This amount should be sent

to the Commission within seven (7) days of receipt of this Notice of Violation.

IF YOU DESIRE TO CONTEST the alleged violation or the penalty imposed,

please so indicate on the attached form and return to the Commission Office within seven

(7) days and this matter will be set for an evidentiary hearing before the Commission.

ARKANSAS MOTOR VEHICLE COMMISSION

By: _____
          Greg Kirkpatrick, Executive Director

Date: _____

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BALE CHEVROLET COMPANY, INC. DBA BALE KIA

ACKNOWLEDGEMENT

☐   I, _____, owner or a representative of Bale Chevrolet Company, Inc. DBA Bale Kia acknowledges that I received and read the foregoing Notice of Violation.

☐   I admit that I violated the Arkansas Motor Vehicle Act and/or Rules as alleged in the attached Notice of Violation, and agree to pay a civil penalty in the amount of three thousand dollars ($3,000.00). My remittance in that amount is enclosed

☐   I desire to contest the allegations set forth in the attached Notice of Violation and the proposed civil penalty.

_____
Signature

_____
Date