

**BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION**

**IN THE MATTER OF:**

**AP# 13-001**

**NORTH POINT NISSAN**

**NOTICE OF VIOLATION**

IT HAS BEEN determined by the Arkansas Motor Vehicle Commission (hereinafter "Commission") that North Point Nissan, 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, and Commission Rule 3. 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. North Point Nissan is licensed by the Commission as a new motor vehicle dealer in the State of Arkansas.
- F2. Commission Investigator Otis Hogan traveled to North Point Nissan after reviewing an advertisement in the Arkansas Democrat Gazette on December 21, 2012. The ad depicted several Nissan vehicles with assorted rebates and discounts. One of the vehicles listed in the ad was a 2013 Nissan Rouge S for nineteen thousand four hundred ninety-one dollars (\$19,491.00). Included in this advertised price was the disclosure "Financed through NMAC."
- F3. Investigator Hogan attempted to purchase the Nissan Rouge S with financing through a credit union at the advertised price. Investigator Hogan was informed by salesperson John Zinamon, after consultation with the General Sales Manager

Mike Poirier, that when financing the deal through his personal bank the price for the Rouge S would “be \$500.00 more dollars.” Investigator Hogan informed Mr. Poirier of the advertising violation.

F4. The December 21, 2012, advertisement listed the sales price of five new Nissan vehicles with each including the disclosure of “Financed through NMAC.”

F5. Jennifer Padgett, the Commission’s Fiscal Manager and advertisement compliance officer, reviewed an advertisement for North Point Nissan from the July 28, 2012, Arkansas Democrat Gazette. On August 28, 2012, Ms. Padgett sent a letter to North Point Nissan outlining the following Rule 3 advertising violation:

1. The advertised sales price of the new Nissan vehicles included an “NMAC Cash” discount.
2. Since a consumer would need to finance through NMAC to qualify for the discount, the advertisement is a direct violation of Commission Advertising Rule 3, Section 2(A)(2).

F6. Ms. Padgett also reviewed the December 21, 2012, advertisement for North Point Nissan, and sent a letter outlining the same Rule 3 violation as detailed in her August 28, 2012, letter.

#### **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 any 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. Arkansas Motor Vehicle Commission Rule 3 Advertising, Section 2.

**CONCLUSIONS OF LAW**

- C1. North Point Nissan violated Commission statutes and rules when utilizing a false and misleading advertisement. This charge is based on L1, L2, L3, and L4.
- C2. North Point Nissan violated Commission statutes and rules when listing limited rebates and/or incentives that are not available to all consumers without qualification. This charge is based on L1, L2, L3, and L4.

AS A RESULT OF THESE VIOLATIONS, you are hereby directed to pay a civil penalty in the amount of one thousand dollars (\$1,000.00). 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:** \_\_\_\_\_

**Case: AP #13-001**  
**NORTH POINT NISSAN**

**ACKNOWLEDGEMENT**

I, \_\_\_\_\_, owner or a representative of North Point Nissan, 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 one thousand dollars (\$1,000.00). 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**