

BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF:

AP# 11-001

ORR CHEVROLET CADILLAC

NOTICE OF VIOLATION

IT HAS BEEN determined by the Arkansas Motor Vehicle Commission (hereinafter "Commission") that Orr Chevrolet Cadillac (hereinafter "Orr"), 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 January 18, 2011, Jennifer Padgett with the Commission reviewed an Orr advertisement from the January 8, 2011, edition of Arkansas Democrat Gazette.
- F2. The advertisement featured a selection of new vehicles with sale prices provided. Three of the six vehicles listed included an "Owner Loyalty Rebate" in the sale price, which means the consumer must qualify to receive the rebate by owning a General Motors product.
- F3. The advertisement also listed a 2010 Cadillac CTS with an MSRP price of \$40,890, an Orr discount of \$9,549, and a sale price of \$27,462. The sale price should have been listed for no less than \$31,341.

- F4. On January 18, 2011, Ms. Padgett sent a letter to Orr advising the dealership of the violations, and notifying the dealership that the matter would be reviewed by the Commission's Ad Hoc Committee during the January 19, 2011, meeting.

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. 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.
- L5. False or misleading advertising is prohibited by Rule 3 Advertising, Section 2.

CONCLUSIONS OF LAW

- C1. Orr violated Commission statutes and the Advertising Rule when they advertised a sale price utilizing a limited rebate. This conclusion is based on L1, L2, L3, and L4.
- C2. Orr violated Commission statutes and the Advertising Rule when they utilized false and misleading advertising by misrepresenting a vehicle sales price. This conclusion is based on L1, L2, L3, and L5.

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: _____

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ACKNOWLEDGEMENT

I, _____, owner or a representative of Orr Chevrolet Cadillac, acknowledge 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