

BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

**IN THE MATTER OF:
PHIL WRIGHT AUTOPLEX**

AP# 10-003

NOTICE OF VIOLATION

IT HAS BEEN determined by the Arkansas Motor Vehicle Commission (hereinafter “Commission”) that Phil Wright Autoplex (hereinafter “Phil Wright”), 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 28, 2011, Jennifer Padgett with the Commission sent Phil Wright a letter regarding a January 22, 2011, advertisement in the *Courier* that featured a selection of new motor vehicles listing the current selling price without explaining the details of how the dealership reached the sales price. The selling price also advertised an *owner rebate* and an *Ally Finance Bonus* which is not available to every consumer.
- F2. On March 15, 2011, Jennifer Padgett sent a letter to Phil Wright regarding a February 25, 2011, advertisement in the *Courier* that again included rebates and incentives not available to all consumers.
- F3. On August 18, 2011, Jennifer Padgett sent a letter to Phil Wright regarding an August 18, 2011, advertisement in the *Courier* promoting a “Guaranteed \$3500 minimum trade-in allowance.”

F4. On September 21, 2011, the Commission Ad Hoc Committee discussed these violations to determine whether to issue a penalty in lieu of suspension of Phil Wright's dealer license.

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 a 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. Rule 3 Advertising Section 2 (A)(8) states if an advertisements disclose a rebate, cash back, discount saving claim or other incentive, the full price of the vehicle (MSRP) must be conspicuously disclosed or stated in the ad as well as the price of the vehicle after deducting the incentive(s).

L6. According to Rule 3 Advertising Section 4(N) statements offering a specific trade-in allowance, or a range of amounts for trade-ins including without limitation, that the trade-in will be valued at a specific amount or guaranteed minimum amount.

CONCLUSIONS OF LAW

- C1. Phil Wright violated Commission statutes and the Advertising Rule when they utilized false and misleading advertising.
- C2. Phil Wright violated Commission statutes and the Advertising Rule when they advertised limited rebates and incentives in the advertised price.
- C3. Phil Wright violated Commission statutes and the Advertising Rule when they offered a guaranteed trade-in allowance.

AS A RESULT OF THESE VIOLATIONS, you are hereby directed to pay a civil penalty in the amount of two thousand dollars (\$2,000.00). 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 #10-003
PHIL WRIGHT AUTOPLEX

ACKNOWLEDGEMENT

I, _____, owner or a representative of Phil Wright Autoplex, 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 two thousand dollars (\$2,000.00). 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