

BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF:

Hearing # 06-006

CRAIN PONTIAC, BUICK, GMC

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Arkansas Motor Vehicle Commission (hereinafter the “Commission”) held a hearing on August 17, 2006, to determine whether Crain Pontiac, Buick, GMC (hereinafter “Crain”) violated the Arkansas Motor Vehicle Commission Act, Ark. Code Ann. § 23-112-101, et seq. and the Advertising Rules promulgated by the Commission pursuant to Ark. Code Ann. § 23-112-204. The charges before the Commission concerned whether an advertisement which appeared on the radio on May 5, 2006, was in violation of the prohibition on false and misleading advertising and whether Crain failed to disclose additional financing terms required by Rule 3.

The Respondent, Crain, was represented by Chris Crain, General Manager for Crain, Drew Dees, Advertising Manager for the Crain Automotive Team, and Jay Meyers, Sales Manager for Crain.

After hearing testimony from Commission Investigator Otis Hogan, Chris Crain, and reviewing documents as well as audio recordings received in evidence, the Commission makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

F1. Crain advertised on radio on May 5, 2006, using the phrase “\$88 down, \$88 a month.” There were no disclosures stated in the advertisement and the phrase “see dealer for details” was utilized at the end of the attached radio spot.

- F2. Investigators Otis Hogan and Danny Holmes arrived on the Crain lot on May 8, 2006. Mr. Hogan was approached by a Crain salesman named Harry Sylar who advised Mr. Hogan that Crain was still honoring the “\$88 down, \$88 a month” promotion, and that this promotion applied to any vehicle on the lot.
- F3. Mr. Hogan expressed interest in purchasing a 2006 Pontiac Torrent for \$88 down, \$88 a month. Mr. Sylar told him the \$88 a month payment was good only for the first three months of the sales contract.
- F4. After further inquiry, a sales manager named Jay provided Mr. Hogan with additional details about the promotion by stating that Crain would “cut you back a check for the difference” in your first three months payments. Jay provided the following example: “If your payment was \$288 a month, we would send you a check for \$200, \$400, or \$600, whatever the difference was for the first three payments.” Jay went on to say the contract would be a regular contract and would not state the \$88 down, \$88 a month stipulation.
- F5. Later in the transaction, Mr. Hogan advised Mr. Sylar that his credit score was very high at which time Mr. Sylar advised Mr. Hogan that the “\$88 down, \$88 a month” promotion was not meant for customers with good credit, but rather customers with poor credit.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Commission makes the following

Conclusions of Law:

- C1. Crain employed false and misleading advertising in violation of the Commission Act and Commission Rule 3 in connection with the above mentioned radio

advertisement when the advertised monthly payment of \$88 was not the actual monthly payment, but instead only represented the first three months of the transaction. This is a violation of Commission Rule 3 Advertising, Section 2, Paragraph A and Rule 3, Section 2, Paragraph A(4).

- C2. Crain violated the Commission Act and Commission Rule 3 in connection with the above mentioned radio advertisement when it failed to disclose the additional financing terms required by Rule 3 when the triggering term of \$88 down was utilized in the advertisement. This is a violation of Commission Rule 3 Advertising, Section 7, Paragraph C.

ORDER

The Commission finds that the violation of the advertising rule warrants a civil penalty of \$3,500.00 which is to be paid within thirty (30) days of receipt of this Order.

This is a final Order of the Commission and as such is subject to judicial review pursuant to Ark. Code Ann. § 25-15-212.

ARKANSAS MOTOR VEHICLE COMMISSION

By _____
F. S. Stroope, Chairman

Date: _____