

BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF:

H # 08-026

ROGERS OUTDOOR SPORTS

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Arkansas Motor Vehicle Commission (hereinafter the “Commission”) held a hearing on March 18, 2009, to determine whether Rogers Outdoor Sports (hereinafter “Rogers”) violated the Arkansas Motor Vehicle Commission Act, Ark. Code Ann. § 23-112-101 et seq. The charges before the Commission concerned whether Rogers violated Commission statutes when it acted as a distributor without holding a valid distributors license.

The Respondent, Rogers, was represented by Bryan Berman and Legal Counsel Ken Shemin.

After hearing testimony from Danny Holmes, Greg Kirkpatrick, Bryan Berman, and reviewing documents received in evidence, the Commission makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

- F1. Responding to a telephone complaint, Investigator Danny Holmes traveled to Manila, Arkansas, on January 30, 2008, to investigate whether a used vehicle dealer was selling new motor vehicles. This telephone complaint was followed on February 12, 2008, by a notarized complaint from Harvey’s Motorsports & More alleging Rogers was selling product on their website for less than Harvey’s cost.
- F2. Upon arriving in Manila, Investigator Holmes observed three (3) Mountaineer ATV’s on display and for sale at Towell and Sons Auto Sales.

- F3. Mr. Holmes spoke with a sales person, Monte Towell, who stated the vehicles were new and would be sold on a certificate of origin.
- F4. Mr. Towell stated they purchased the vehicles at an auction held by Rogers. Mr. Holmes requested the purchase documents, and was presented with Certificates of Origin and documents from 166 Auto Auction-Manheim. The documents reflected the purchase price and the purchaser.
- F5. Following this discovery, Investigator Holmes obtained a list of vehicles sold at the Manheim auction on December 7, 2007, by Rogers and discovered that sixty ATV's were sold to six buyers. Four of these buyers were used car dealers with H & B Auto Sales of Farmington buying thirty-seven (37) units, North West Motorsports buying nine (9) units, Towell and Sons Auto Sales buying seven (7) units, and Kidd's Auto Sales in Lincoln buying two (2) units. Investigator Holmes traveled to each of these dealerships to confirm the purchases.
- F6. On February 16, 2008, Mr. Holmes traveled to Farmington, Arkansas to meet with the owner of H & B Auto Sales. According to auction documents, H & B Auto Sales purchased thirty-seven (37) vehicles from the Rogers auction held on December 7, 2007.
- F7. Mr. Holmes spoke with Mr. Omid Samavati with H & B Auto Sales who stated he was not a Mountaineer dealer. He also stated he was not allowed to give out MSO's.
- F8. Mr. Holmes then visited Mr. Samavati's business partner, Mr. Silva, at the H & B Auto Sales location. Mr. Silva stated the MSO's would come directly from Roger's.

- F9. Mr. Silva indicated to Mr. Holmes that H & B Auto Sales had purchased a total of forty-five (45) new units from Rogers. Mr. Silva offered to sell Mr. Holmes a new 2006 300 Mountaineer ATV for \$2,400.00. Mr. Silva stated he could supply the MSO with each ATV purchased if wanted.
- F10. On February 16, 2008, Mr. Holmes traveled to Rogers, Arkansas, to meet with the owner of North West Motorsports. According to auction documents, North West Motorsports purchased nine (9) vehicles from the Rogers auction held on December 7, 2007. Upon arrival, Mr. Holmes found several units on display and offered for sale.
- F11. Mr. Holmes spoke with Steve who stated the vehicles were brand new, and offered to sell Mr. Holmes a new 2006 80cc Mountaineer ATV for \$599. Steve stated he had the MSO's for each ATV. Steve stated they had sold two or three vehicles but still had five (5) units in stock.
- F12. On February 16, 2008, Mr. Holmes traveled to Lincoln, Arkansas, to Kidd Auto Sales. According to auction documents, Kidd's Auto Sales purchased two (2) vehicles from the Rogers auction held on December 7, 2007.
- F13. Upon arrival, Mr. Holmes found the dealership appeared to be closed. Mr. Holmes then called the number on the business sign.
- F14. Mr. Holmes spoke with Mr. Gerald Kidd who stated he sold his ATV stock. Mr. Kidd stated he had purchased the vehicles at the Rogers auction and the vehicles were brand new and sold on MSO's, not titles.
- F15. On February 22, 2008, Investigator Otis Hogan traveled to Springdale, Arkansas, to serve Mountaineer Power Sports with a subpoena for all documents related to new vehicles sold to Rogers between December 2007 and February 2008.

- F16. On February 26, 2008, Investigator Hogan received invoices, an accounts receivable aging report, and bills of lading indicating the vehicles purchased and the price paid by Rogers. These documents showed Rogers purchased a number of units listed with freight-damaged discounts and additional cash discounts of varying amounts.
- F17. Mr. Hogan found Rogers sold vehicles to unlicensed businesses for less than the wholesale price that licensed Mountaineer dealers could have purchased them from the distributor.
- F18. Investigator Hogan contacted other Mountaineer dealers to obtain the dealers price list from Mountaineer and to inquire if they were offered the freight damage units and the cash discount provided to Rogers.
- F19. On April 8, 2008, Mr. Holmes traveled to Gentry, Arkansas, to Cherokee Auto Sales responding to a complaint.
- F20. Upon arrival, Mr. Holmes found several vehicles on display and offered for sale. Mr. Holmes was approached by Mr. Don Evans, the owner, who stated the vehicles were brand new.
- F21. Mr. Holmes requested the purchase paperwork from Mr. Evans. Mr. Evans stated he had purchased the ATV's from Rogers at an auction held by Manheim 166 Auto Auction. Mr. Evans stated he paid Manheim for the units, but he had no other paperwork.
- F22. Additional investigation of this situation showed that according to Mountaineer's franchise agreement signed by Rogers on October 24, 2007, Section 2(c): Obligations of Dealer states the "Dealer agrees that they will not advertise for sale or sell Manufacturers Products on any internet auction website. If Manufacturers

Products are placed on Dealers Website or any other website as for sale will be at Manufactures MSRP.”

CONCLUSION OF LAW

Based on the foregoing Findings of Fact, the Commission makes the following Conclusion of Law:

- C1. Rogers violated Commission statutes when it acted as a distributor without holding a valid distributors license.

ORDER

The Commission finds that the violations of Commission statutes by Rogers warrants a total civil penalty of two thousand dollars (\$2,000.00) 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: _____