

BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF:

Hearing # 06-001

JOE STEINBERG VS. BALE CHEVROLET

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Arkansas Motor Vehicle Commission (hereinafter the “Commission”) held a hearing on May 17, 2006, to determine whether Bale Chevrolet had 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 in the Arkansas Democrat Gazette on October 10 through 13, 2005, was in violation of the prohibition on false and misleading advertising and whether Bale Chevrolet violated Commission Rule 3 by engaging in bait and switch practices in connection with the October 2005 advertisement.

The Respondent, Bale Chevrolet, was represented by its legal counsel, Mr. David Grace.

After hearing testimony from Mr. Joe Steinberg, James Timothy Hall, General Manager of Bale Chevrolet, and Commission investigator Danny Holmes and reviewing documents received in evidence, the Commission makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

STEINBERG COMPLAINT

F1. Mr. Joe Steinberg viewed a Bale Chevrolet advertisement in the Arkansas Democrat Gazette on Thursday, October 13, 2005.

F2. The advertising material stated that a new Chevrolet Silverado pickup could be purchased for \$10,067.50, and included the following statements:

1. Half price Silverado Hurry!
2. Limited Time Offer!
3. 2005 Chevrolet Silverado
4. Over 300 Silverado's in Stock!

F3. In response to this advertisement, Mr. Steinberg made a telephone call to Bale Chevrolet to attempt to purchase the truck.

F4. Sales personnel at Bale Chevrolet told Mr. Steinberg that the vehicle he was inquiring about was no longer available and that the truck had been sold on Monday morning, October 10, 2005.

F5. Mr. Steinberg was told by employees of the dealership that they could not change the advertisement prior to Thursday, October 13, 2005.

F6. Mr. Steinberg was told by the advertising department at the Arkansas Democrat Gazette that the newspaper could change an advertisement with one day's notice.

F7. Mr. Steinberg filed a written complaint with the Commission upon the suggestion of the Public Protection Division of the Arkansas Attorney General's Office.

COMMISSION INVESTIGATION

F8. Commission investigators Danny Holmes and Phillip Jones went to Bale Chevrolet to attempt to purchase the vehicle pictured in the Thursday, October 13, 2005, advertisement in the Arkansas Democrat Gazette. They were not aware of Mr.

Steinberg's telephone conversation with employees of Bale when they went to the dealership.

F9. The advertising material stated that a new Chevrolet Silverado pickup could be purchased for \$10,067.50, and included the following statements:

1. Half price Silverado hurry!
2. Limited Time Offer!
3. 2005 Chevrolet Silverado
4. Over 300 Silverado's in stock!

F10. The Commission investigators were told by Mr. Chet Hemenway, a Bale sales representative, that the vehicle in the advertisement was no longer available and that the advertisement "broke on Monday (October 10, 2005)."

F11. Mr. Hemenway reported to the investigators that the dealership had three of the advertised Silverados when the advertisement ran on Monday, October 10, 2005.

F12. Mr. Hemenway offered to show the Commission investigators other vehicles at comparable prices. These vehicles were priced between \$15,500.00 and \$20,000.00.

F13. Investigator Holmes confirmed with the Arkansas Democrat Gazette that if a dealer sells out of a vehicle on Monday morning and contacts the newspaper that morning, the change could be made in the Wednesday edition. Depending on the circumstances, it is also possible to make a change in an advertisement with as little as one full day's notice.

F14. Mr. Hall testified that the dealership had one Silverado for sale at the \$10,067.50 price.

CONCLUSIONS OF LAW

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

C1. Bale Chevrolet employed false and misleading advertising, in violation of Arkansas Motor Vehicle Commission Act and Commission Rule 3 in connection with the above-mentioned October 13, 2005, newspaper advertisement in that they failed to have the number of vehicles available to meet reasonably anticipated demands and failed to clearly and adequately disclose that supply was limited to one vehicle. This is a violation of Commission Rule 3, Section 2, Paragraph A(5)(b) and Commission Rule 3, Section 3 regarding Availability of Vehicles.

C2. The Commission concludes that Bale has not engaged in bait and switch and Charge 2 should be dismissed.

ORDER

The Commission finds that the violation of the advertising rule warrants a civil penalty of \$2,500.00 which is to be paid within thirty (30) days of receipt of this Order.

The Commission further finds that the charges of bait and switch should be and are hereby dismissed.

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: _____