

BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF:

H # 07-011

TOYOTA OF NORTHWEST ARKANSAS

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Arkansas Motor Vehicle Commission (hereinafter the “Commission”) held a hearing on December 12, 2007, to determine whether Toyota of Northwest Arkansas (hereinafter “Toyota NWA”) violated the Arkansas Motor Vehicle Commission Act, Ark. Code Ann. § 23-112-101 et seq and the Commission advertising rule. The charges before the Commission concern whether Toyota NWA, as a licensed dealer, violated Commission statutes and the advertising rule by failing to have advertised vehicles available for sell, by switching consumers to a vehicle more advantageous to the dealer, and by failing to produce documents to show proof of previous sales of advertised vehicles.

The Respondent, Toyota NWA, was represented by D. Westbrook Doss, its attorney and by Chris Powers, its sales manager.

After hearing testimony from Commission Investigator Danny Holmes, Chris Powers, and reviewing documents received in evidence, the Commission makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

F1. Toyota of NWA advertised in The Morning News on Friday, August 25, 2006, utilizing the phrase “\$99 down and \$99 a month, over 400 vehicles, all makes all models.”

- F2. On August 25, 2006, Investigator Holmes visited Toyota NWA and spoke with Donald Joiner, a licensed sales person, regarding the vehicle listed in the above advertisement, a 1999 Toyota Corolla, stock #51683. Mr. Joiner was unable to locate the vehicle or an equivalent vehicle at the advertised payment. Mr. Joiner showed Holmes a dented up Hyundai that had just been traded-in, however, Holmes did not consider this vehicle comparable to a Toyota Corolla.
- F3. Holmes then spoke to a sales manager named Bill Ryan to obtain documentation regarding the sale of the above referenced Corolla. Mr. Ryan stated the ad was put together in Florida and that he did not have the paperwork on the vehicle. Holmes confirmed with Mr. Ryan that Toyota NWA never had the vehicle.
- F4. Toyota NWA continued to run the above referenced Toyota Corolla in its advertisement on September 3, 2006.
- F5. The August 25, 2006, Morning News advertisement also contained the following statement: "Trade in your old car for a brand new 2007 Toyota Camry. Get a lower monthly payment than your old car. Paying \$299 a month for that Ford? Pay less for a brand new Camry during Toyota Time! Guaranteed."
- F6. Mr. Joiner told Investigator Holmes that he had a 2007 Camry that he could sell for \$23,000. Holmes asked Mr. Joiner to explain how he could trade in a 1999 Ford Expedition and pay only \$299 a month. Mr. Joiner stated that Holmes vehicle was worth approximately \$3,500 which would require Holmes to put down an additional \$5,000 to be able to pay \$299 a month. The disclosure in the advertisement stated, "Down payment and term may vary," which is a prohibited disclosure.

- F7. On May 25, 2007, Investigator Holmes visited Toyota NWA based upon a radio advertisement on 98.3 FM. The radio spot stated, "\$5,000 cars, you get it for \$2,500, up to 50% off even Certified Pre-owned Toyota, these are savings right on the windshield. Cars, trucks, vans, SUV's, 20, 40 even 50 % off original MSRP. For special windshield pricing there is only one place to go. The all new Toyota of NW Arkansas, up to 50 % off." A disclaimer was also given, "50% example, 03 Ford Explorer XLT, original MSRP \$33,425 sale price \$16,712."
- F8. Holmes traveled to the dealership to confirm the offer in the advertisement and worked with a salesman named Michael Narx and a sales manager named Bill Ryan. Holmes asked Mr. Narx to show him the vehicles he had for sale that were 50% off the original MSRP. Mr. Narx showed him a Ford Explorer that was not the disclosed vehicle. Mr. Narx was unable to confirm the original MSRP to demonstrate the vehicle was priced at 50% off the original MSRP.
- F9. Holmes insisted on seeing a vehicle that was for sale for 50% off the original MSRP. Mr. Narx then showed Holmes a 2003 Chevrolet Trailblazer, stock #R038150A, and told him this is the vehicle that is 50% off the original MSRP. The price listed on the windshield was \$18,995.
- F10. Holmes inquired of Bill Ryan to see the MSRP on the aforementioned 2003 Chevrolet Trailblazer. After a few minutes, Holmes was given a copy of a page from the NADA Used Vehicle Valuation Book which stated the MSRP was \$23,960. The manager also added dollars for the equipment package and wrote on the quote worksheet \$24,235 then subtracted 50% and wrote \$12,125 on the quote worksheet. Two salesmen, Michael Narx and Randy Staton, confirmed to

Holmes that the 2003 Trailblazer was the only vehicle available for 50% off original MSRP on the Toyota NWA sales lot.

- F11. Investigator Holmes researched the vehicle using the VIN # and discovered the figures on the worksheet did not accurately reflect the vehicles original MSRP.
- F12. On June 7, 2007, Investigator Holmes returned to Toyota NWA to attempt to validate all offers made by the May 25, 2007, radio spot. Upon arrival, Holmes spoke with the General Sales Manager Christopher Powers, and asked to see documents relating to the existence of the Ford Explorer offered and disclosed in the above radio spot.
- F13. Mr. Powers provided Holmes with paperwork for a 2003 Ford Explorer XLT stock # R590108A, and told Holmes this paperwork was for the vehicle disclosed in the advertisement. Upon inspection of the book out sheet provided by Mr. Powers, the Ford Explorer with the above stock number had an MSRP of \$27,845. This Ford Explorer is not the 2003 Ford Explorer XLT that was disclosed in the advertisement because the advertised Ford Explorer had an MSRP of \$33,425.
- F14. Holmes then asked to see the paperwork that would reflect a vehicle sold for \$2,500 based on the offer made in the advertisement from May 25, 2007. Investigator Holmes was given two quote worksheets and two rearview mirror hang tags that reflected vehicles priced at \$2,500 or less, a 1996 Oldsmobile Ninety-Eight for \$2,500 with the stock #R628036A and a 1994 Honda Accord for \$2,488 with the stock #R119243A. However, he received no sales paperwork, was not shown the vehicles, and it appeared both the quote worksheets and rearview mirror hang tags had been hastily put together.

- F15. Holmes also asked to see sales paperwork on any vehicle sold at the 50% off MSRP from the May 25, 2007 advertisement. Holmes was given paperwork and was told by the customer that the vehicle, a 2003 Toyota Avalon, was sold for \$17,995.00. The original MSRP of this vehicle was \$30,305 which means the customer should have paid \$15,152.50 in order for this vehicle to meet the 50% off of MSRP claim.
- F16. On June 14, 2007, Investigator Holmes again visited Toyota NWA to request more information in an attempt to validate offers made by the radio spot from May 25, 2007.
- F17. Investigator Holmes asked Mr. Powers for additional paperwork regarding the two vehicles offered for less than \$2,500 and that he was presented with quote worksheets and rearview mirror hang tags on June 7, 2007:
- a. The 1996 Oldsmobile Ninety-Eight for \$2,500 with the stock #R628036A. Holmes received an "Auction Sale Transportation" document stating the vehicle had been transported to the ADESA Auto Auction on May 16, 2007, and sold for \$1,350.
 - b. The 1994 Honda Accord for \$2,488 with the stock #R119243A. Holmes received an "Auction Sale Transportation" document stating the vehicle had been transported to the ADESA Auto Auction on June 5, 2007, and sold for \$1,800. No other information was provided to validate the offer was actually made to the public.
- F18. Holmes then asked for the paperwork for a 2003 Toyota Corolla with the stock #RP077934 which he was provided on a rearview mirror hang tag on June 7,

2007. This information was requested to help determine if a certified Toyota was actually offered at 50% off the MSRP as stated in the May 25, 2007, radio advertisement. Holmes was shown the Corolla which now had a price of \$14,995 written on the windshield.

- F19. Upon review, the rearview mirror hang tag provided on June 7, 2007, showed a price of \$7,199. From the information available, it is impossible to determine whether this vehicle was legitimately offered on May 25, 2007, for \$7,199 because Holmes was not shown this vehicle when he asked to see a vehicle for 50% off the MSRP. Instead, on May 25, 2007, two salesmen (see F10 above) stated the 2003 Chevrolet Trailblazer was the only vehicle available on the lot for 50% of MSRP.

CONCLUSIONS OF LAW

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

Conclusions of Law:

- C1. Toyota NWA violated Commission statute Ark. Code Ann. § 23-112-402 (3) and Section 2, Paragraph A of the advertising rule when it failed to offer or make available the advertised vehicles in accordance with terms of the offer in the advertisements from August 25, 2006, and May 25, 2007.
- C2. Toyota NWA violated Commission statute Ark. Code Ann. § 23-112-402 (3) and Section 2, Paragraph B of the advertising rule when it switched consumers from the advertised vehicle to a different vehicle more advantageous to Toyota NWA.
- C3. Toyota NWA violated Commission statute Ark. Code Ann. § 23-112-402 (3) and Section 2, Paragraph A of the advertising rule when it failed to produce

documents to show proof of previous sales of advertised vehicles.

ORDER

The Commission finds that the violations of Commission statutes and the advertising rule by Toyota NWA warrants a total civil penalty in lieu of suspension or revocation of its license of three thousand five hundred dollars (\$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: _____