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January 9, 2024

Ted Smith
President
Florida Automobile Dealers Association
400 Meridian Street
Tallahassee, Florida 32301

Dear Mr. Smith:

I am the Associate Deputy Attorney General for Enforcement for the Florida Office of Attorney General (“OAG”). Almost twenty years ago one of my predecessors, Mary Leontakianakos, wrote you as President of the Florida Automobile Dealers Association (“FADA”) regarding OAG’s interpretation of section 501.976(16), Florida Statutes and its enforcement approach.¹ While Florida law remains unchanged over the intervening almost twenty years, how automobiles are sold and advertised has changed substantially with the growth of the internet. Recently, in connection with our review of different motor vehicle dealer practices, the OAG became concerned about how some dealers are advertising prices on the internet and in social media, namely with how required fees are being placed and included in internet and social media motor vehicle advertisements. From our review, practices varied across the industry, but we were troubled by a number of methods that we saw being used by Florida dealers. Instead of commencing a series of actions against some of your members, we thought we would first engage with FADA.

As you are aware, buying or leasing a motor vehicle is one of the largest investments many consumers will ever make. Transparency and accuracy in advertising and selling vehicles is essential to allow consumers to fairly and accurately price compare for this significant purchase. In light of significant changes to the advertising landscape in recent years, including the rise of online and social media advertising, this office would like to remind FADA and its members of their legal obligations regarding inclusion of fees or add-on costs in motor vehicle price advertisements. Florida law requires that if a vehicle price is advertised the vehicle must be identified by year, make, model, and a commonly accepted trade, brand, or style name. Further **“the advertised price must include all fees or charges that the customer must pay, including freight or destination charge, dealer preparation charge, and charges for undercoating or rustproofing.** State and local taxes, tag, registration fees, and title fees, unless otherwise required by local law or

¹ A copy of that letter is attached for your reference.

standard, need not be disclosed in the advertisement.” § 501.976(16), Fla. Stat. (emphasis added). Failure to comply with the advertising requirements of section 501.976(16), Fla. Stat., is specifically identified as an unfair and deceptive trade practice in violation of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”). Therefore, omitting add-on fees or required charges in an advertised price not only violates section 501.976(16) but is also a misleading and deceptive practice under FDUTPA. Should a business or individual be found to be in violation of FDUTPA, the law provides for monetary and injunctive relief as well as the recovery of penalties and attorney’s fees by the OAG.

The OAG makes an individualized determination when deciding whether a particular advertisement is false or misleading. It also applies a totality of the circumstances analysis when determining whether to commence an enforcement action against a particular party. That being said, after viewing numerous internet and social media advertisements of Florida automobile dealerships, we wanted to provide you with some guidance on common features that we observed that could lead to OAG taking enforcement action. Advertisement methods that would likely be considered false or misleading by the OAG include, but are not limited to, the following:

- Advertisements that contain a price and have removed from that price amounts, like down payment amounts, other than fees or charges for state or local taxes, tag, registration, or title fees;
- Advertisements that bold or otherwise emphasize a price that is not the actual total purchase price that would be charged to a consumer, other than the amounts for state or local taxes, tag, registration and title fees, which need not be included;
- Advertisements that present a price and have an asterisk, footnote, or link that discloses additional fees or charges that will be due in addition to the advertised amount, other than state or local taxes, tag, registration, and title fees, which need not be included; and/or
- Advertisements that require a consumer to scroll or go to another page from an advertised price to learn that there are fees and charges due in addition to the advertised price other than state or local taxes, tag, registration, and title fees.

The inclusion of separate disclaimers within an advertisement that disclose additional fees or charges, such as pre-delivery service fees, private tag agency fees, electronic registration filing fees, dealer preparation fees, “advantage fees,” reconditioning fees, market adjustment fees, or any fees other than state and local taxes, tag, registration, and title fees, will not prevent the OAG from finding that the advertisement is false or misleading if the advertised price does not contain those fees.

The guidance provided herein is consistent with the Federal Trade Commission’s (“FTC”) new Combating Auto Retail Scams Trade Regulation Rule (“CARS Rule”), effective July 30, 2024. Among other provisions, the CARS Rule provides that is a violation of Section 5 of the Federal Trade Commission Act for a motor vehicle dealer to fail to clearly and conspicuously disclose a vehicle’s offering price in any advertisement that references or represents, expressly or by implication: (a) a specific vehicle or (b) any monetary amount or financing term for any vehicle. In the CARS Rule, “Offering Price” is defined as “the full cash price for which a Dealer will sell or finance the Vehicle to any consumer, provided that the Dealer may exclude only required Government Charges.”

Please note, this letter is not intended to address all issues related to motor vehicle advertisements, nor is it an exhaustive description of all ways in which a dealer may comply with or fail to comply with the law. We cannot provide legal advice or answer legal questions. If your members have questions regarding compliance with sections 501.976 or 501.204, Florida Statutes, or the CARS Rule they may wish to consult a private attorney.

We would ask that you urge your members to take compliance with these laws seriously. Thank you for your attention to this important matter.

Sincerely,

s/ Nicholas J. Weilhammer

Nicholas J. Weilhammer
Associate Deputy Attorney General for Enforcement

Attachment: March 1, 2004 Letter



OFFICE OF THE ATTORNEY GENERAL

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

CHARLIE CRIST
Attorney General
State of Florida

Reply to:

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Economic Crime Division
(850)414-3600; SunCom 994-3600
Fax (850)488-4483

March 1, 2004

Mr. Ted Smith, President
Florida Auto Dealers Association
400 N. Meridian St.
Tallahassee, FL 32301

Dear Mr. Smith:

Recently, certain dealerships which have been subject to enforcement actions by this office have expressed a desire that our position as to specific acts and practices relating to advertisements for the sale of motor vehicles be clarified. One particular area of concern pertains to the method of disclosure of dealers fees.

Florida Statute 501 Part VI describes particular acts and practices which are considered unfair and deceptive, and thus actionable, under Florida's Deceptive and Unfair Trade Practices Act. Section 501.976 (16) states, in part, that:

...The advertised price must include all fees or charges that the customer must pay, including freight or destination charge, dealer preparation charge, and charges for undercoating or rust-proofing. State and local taxes, tags, registration fees, and title fees, unless otherwise required by local law or standard, need not be disclosed in the advertisement....(emphasis added)

In terms of traditional forms of advertising, including but not limited to print advertising, "advertised price" is the price most prominently displayed as to a particular vehicle. That price should include any and all fees or charges that the customer must pay, including dealer preparation fees, but excluding tax, tag, registration and title fees. From an enforcement standpoint, however, we look at the totality of the circumstances and evaluate each case independently. When deciding whether to initiate an action based on the advertisements of a particular dealership (where the issue concerns the disclosure of dealer fees), we consider numerous factors including, but not limited to:

- a) if the dealer fee is not included in the most prominent advertised price, is that additional fee **clearly, proximately and prominently** displayed in a manner that will draw the attention of the consumer;
- b) are there other facets of the advertisement (or series of advertisements) that would be considered unfair or deceptive;


Mr. Ted Smith, President
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- c) have there been prior complaints regarding the acts and practices of the dealership and
- d) do the current advertisements violate prior agreements between the dealership and this office.

It should be understood that the objective of Florida Statute 501 Part VI and 501 Part II is not solely the protection of the consumer. A dealership that, on a consistent and ongoing basis, engages in unfair and deceptive advertising does so to the detriment of its fellow dealerships. If and when such a pattern and practice of deceptive conduct on the part of a dealership is presented, this office has an obligation, not only to the consumer, but to "level the playing field" for the benefit of the dealerships' competitors.

I hope that this letter will provide your members some level of guidance and will provide insight into the manner in which we treat alleged violations of Florida's Deceptive and Unfair Trade Practices Act as it applies to the sale of new and used motor vehicles.

Sincerely,



Mary Leontakianakos
Director of Economic Crimes

ML/bc