

## RULES OF THE ARKANSAS MOTOR VEHICLE COMMISSION

### **RULE 3** **ADVERTISING**

#### **OBJECTIVE:**

Rule 3 implements the Legislative intent of the law governing advertising as stated in the Arkansas Motor Vehicle Commission Act. False and misleading advertising will be defined and prohibited in a unified effort to insure truthful and accurate product advertising that will benefit the consumers and businesses of this State affected by legislation. Certain key examples of prohibited advertising will be exhibited, but shall not be construed as an all-inclusive exhibit of prohibited practices. The Commission has been granted the authority to review all advertising pertaining to new and used motor vehicles. The Commission will review each advertisement for misleading and deceptive practices and will govern them accordingly.

- (a) Rule 3 establishes standards of practices which set forth certain basic principles in advertising the sale and lease of new and used motor vehicles. These standards apply to advertisements both in the print and electronic media.
- (b) The primary responsibility for truthful and non-deceptive advertising rests with the advertising dealer. Advertising dealers must be prepared to substantiate any or all offers made before publication or broadcast, and upon request, present such substantiation.
- (c) Rule 3 does not apply to any radio or television broadcasting station, or any publisher, printer, distributor or owner, of any newspaper or magazine, billboard or other advertising medium, or any owner, operator, agent or employee of any advertising agency or other business engaged in preparing or disseminating advertising for public consumption on behalf, of any other person when the advertising is in good faith and he is without knowledge of its untrue, deceptive or misleading character.
- (d) It shall be the DEALER'S RESPONSIBILITY to provide a copy of Rule 3 to any advertising agent or agency or other business engaged in preparing or disseminating advertisements for the dealer, including outside web page designers or web page design firms; and each employee assigned to preparing or disseminating advertisements for the dealer.
- (e) Violation of any Advertising Rule(s) by any licensee shall be considered a *prima facie* violation of A.C.A. § 23-112-402(3) or A.C.A. § 23-112-403(a)(2)(D).
- (f) The Commission will monitor and evaluate each dealer's advertisement regarding its compliance with laws and rules. The advertising sections activities include, but are not limited to:
  - 1. Review of advertisements in any medium.
  - 2. Review all complaints as received.
  - 3. Answer advertisement inquiries.
  - 4. Address advertising violations.

**1. DEFINITIONS:**

- A. Advertisement and or advertising” means any oral, written, telecommunicated, graphic, pictorial or other statement made in the course of soliciting business, including without limitation a statement or representation made in a newspaper, magazine, Internet, or other publication or contained or appearing in or on a notice, sign, poster, display, circular, pamphlet, letter, flyer, price tag, window sticker, banner, billboard, handbill, radio, television, web page, or any other medium.
- B. “Bait and switch” means an alluring but insincere offer to switch consumers from buying the advertised motor vehicle, in order to sell or lease a different motor vehicle on terms more advantageous to the advertiser.
- C. “Clear and conspicuous” means that the statement, representation, or term being used is of such size, color, contrast, audibility and is presented so as to be readily noticed, understood and non-deceptive. All language and terms, including abbreviations, shall be used in accordance with their common or ordinary usage and meaning by the general public.
- D. “Dealer discount” means an amount of reduction or contribution by the dealer to reduce the selling price of the vehicle from “MSRP”.
- E. “Dealership addendum” an equipment list displayed on a window of a motor vehicle when the dealership installs special features, equipment, parts or accessories, or charges for service not already compensated by the manufacturer or distributor for work required to prepare a vehicle for delivery to a buyer.
- F. “Disclaimer” means those words or phrases used to provide a clear understanding of an advertised statement, but not used to contradict or change the meaning of the statement.
- G. “Disclosure” means required information that is clear, conspicuous, and accurate shall be in the immediate proximity of the year, make and model offered in the advertisement or stated at a clear and concise level in broadcast mediums.
- H. “Dealer Service and Handling Fees” means a fee that a dealer may charge in connection with the sale or lease of a new or used motor vehicle for handling, processing, and storage of documents and other administrative and clerical services.
- I. “Incentive” means anything of value offered as an inducement directly or indirectly towards the purchase of a vehicle, including but not limited to, discounts, savings claims, and other dealer programs, but not including factory rebates.
- J. “Limited rebate” means rebates not available to all consumers and is defined as any payment of money to a consumer, or any payment to a dealer or third party on behalf of a consumer, and that is confined, or restricted, to a certain class of consumers, including, but not limited to, on the basis of the consumer’s status, sponsorship, affiliation, or association
- K. “Line make” means a group or series of motor vehicles that have the same brand identification or brand name, based upon the manufacturer’s trademark, trade name or logo.
- L. “List” or “Sticker” price when used in a new motor vehicle advertisement refers only to the

Manufacturer's Suggested Retail Price (Monroney Sticker or "MSRP")

- M. "Manufacturer label" means the label required by the Federal Automobile Information Disclosure Act, 15 U.S.C. Sections 1231-1233 (normally referred to as Monroney Label), to be affixed by the manufacturer to the windshield or side window of each new automobile delivered to a dealer.
- N. "MSRP," or "Manufacturer Suggested Retail Price," means the "list price" shown on the window sticker or "Monroney Label" and is the manufacturer's baseline price for that vehicle. "Dealership addendums" or "temporary factory value packages" are not a part of "MSRP".
- O. "Rebate" means the payment of money from the manufacturer to a consumer, or payment to a dealer or third party on behalf of a consumer on the condition that the consumer purchases or leases a new motor vehicle.

## **2. ADVERTISING GUIDELINES FOR SALE OR LEASE OF NEW AND USED MOTOR VEHICLES:**

### **A. General Advertising Guidelines**

- (1) The advertised price of a motor vehicle must be the full cash price for which the dealer will sell or lease the vehicle to any consumer and shall exclude only the following charges:
  - (a) State, county, local and other applicable taxes,
  - (b) License fees, and
  - (c) Title fees.

Charges including but not limited to dealer service and handling fees, freight and transportation fees, and preparation fees must be included in the advertised price.
- (2) The price of a new motor vehicle, when advertised by a dealer, must be the price that is available to every consumer. Rebates or incentives that are available to all consumers without qualification can be deducted from the price. Limited Rebates or incentives that are only available to select or qualifying consumers shall not be deducted from the advertised price.
- (3) Additionally, a qualification may not be used when advertising the sales price of a vehicle such as "with trade", "with acceptable trade", or "with down payment".
- (4) Dealers must clearly and prominently identify themselves by their dealership name or their DBA name listed on file with the Commission.
- (5) Specific motor vehicles, new or used, or line-make of vehicles advertised for sale or lease shall be in the possession of the dealer as advertised at the address given at the time the advertisement is placed. However, if the time between the placement and the broadcast of the advertisement to the public is excessive, the dealer must have a similar line-make new motor vehicle or an equivalent used motor vehicle to the specific motor vehicle advertised. The vehicles shall be in condition to be demonstrated, and shall be willingly shown and sold or leased at the advertised prices and upon the terms advertised.
- (6) Specific claims or discount offers shall only be used in connection with new or demonstrator vehicles.

- (7) Specific claims or discount offers must only be used to show the difference between the dealer's current selling price and the Manufacturer's Suggested Retail Price. The dealer shall include dealer add-ons identified in the dealership addendum when advertising the current selling price.
- (8) If an advertisement discloses a rebate, cash back, discount savings claim or other incentive, the full price of the vehicle (MSRP) must be conspicuously disclosed or stated in the ad as well as the price of the vehicle after deducting the incentive(s). Rebates cannot be combined as one.

**B. False or misleading advertising.**

- (1) Licensee shall not use false or misleading advertising.
- (2) All advertising shall be in plain language, with disclosures of material facts that are clear and conspicuous and non-deceptive. By way of example and not limitation, the following are in violation of this rule:
  - (a) Direct statements or reasonable inferences that have the tendency to mislead consumer;
  - (b) Advertising whose overall impression has the tendency to mislead consumers;
  - (c) Disclaimers or disclosures that contradict, confuse, or unreasonably limit or significantly alter a principal message of an advertisement;
  - (d) The failure to make clear and conspicuous disclosures of limitations, disclaimers, qualifications, conditions, exclusions or restrictions;
  - (e) Statements susceptible to both a misleading and a truthful interpretation; and
  - (f) Deceptive statements, even though the true facts are subsequently made known to the consumer.
  - (g) Using in any advertisement, footnotes, asterisks, or various superscripted symbols which, confuse, contradict, materially modify or unreasonably limit the material terms of an advertisement.
- (3) No advertisement containing an offer to sell or lease a motor vehicle shall be published when the offer is not a bona fide attempt to sell or lease that specific advertised motor vehicle. Certain acts or practices that will be considered in determining if an advertisement is not a bona fide offer to sell or lease the advertised motor vehicle include:
  - (a) The refusal to show, demonstrate, sell or lease the motor vehicle offered in accordance with the terms of the offer.
  - (b) The failure to have available at all outlets listed or stated in the advertisement, the number of motor vehicles advertised to meet reasonably anticipated demands, unless the advertisement clearly and adequately discloses that a supply is limited the merchandise is available only at designated outlets and any other applicable restrictions, to which the advertised vehicle may be subject.
- (4) It is false and misleading to use, in any advertising, inaccurate photographs or illustrations when describing specific automobiles. If a vehicle description or photograph is inaccurate, the dealer must prove to the Commission, that a more acceptable photograph or description was unavailable.
- (5) It shall be false and misleading to advertise or represent the dealer service and handling fee charge as a required governmental fee.

**C. Bait and Switch Advertising.**

- (1) Licensees shall not use bait and switch advertising.
- (2) No act or practice shall be engaged in by an advertiser to discourage the purchase of the advertised motor vehicle if such act or practice is part of a bait and switch scheme to sell or lease other motor vehicles.
- (3) Sales or leases resulting from an advertisement for a motor vehicle do not by themselves rule out the existence of a bait and switch scheme.
- (4) To prevent Bait and Switch Advertising from occurring, the vehicle(s) advertised must be:
  - (a) At the advertised location as defined in Section 2, paragraph A(5);
  - (b) In condition to be shown;
  - (c) Willingly shown to the consumer;
  - (d) Willingly shown under the same terms as advertised, and
  - (e) Sold at the same terms as advertised, unless the consumer was unharmed in the transaction.

**D. Minimum Advertising Requirements.**

The following are minimum requirements needed to meet the clear and conspicuous standard as described in Section 2(B)(2):

- (1) In all printed media, written, typed and/or graphic advertisements:
  - (a) Not less than 8-point type print;
  - (b) Shall be displayed and phrased in a manner which is clear and conspicuous.
- (2) In broadcast commercials:
  - (a) Terms, conditions or disclosures shall be clearly and conspicuously displayed or announced during the advertisement;
  - (b) Shall be at a speed equal to or slower than any other statement, representation or term contained in the advertisement.
  - (c) "See dealer for details," shall only be used in radio broadcast commercials provided the advertisements meet the federal truth in lending guidelines as defined in Section 5(A).
- (3) For broadcast graphics or advertisement(s) in any other audio-visual medium the minimum height of fonts and display time should:
  - (a) Appear on the screen for duration sufficient to allow a viewer to have a reasonable opportunity to read and understand the statement, representation or term; and
  - (b) The broadcast graphics shall remain on the screen for a minimum display time of:
    - (i) Three seconds for the first line of text; and
    - (ii) One second for each additional line.

**E. Required Disclosures.**

- (1) Disclosures should only be used in limited circumstances and must meet the following qualifications:

- (a) Must be adjacent to the advertised vehicle depicted or stated in a clear and conspicuous level in any broadcast medium.
  - (b) Asterisks (\*) may only be used to give additional information about a word or phrase.
- (2) In any advertisement, the motor vehicle shall be clearly identified as to year, make, model, and commonly accepted trade, brand, or style name and the advertisement must clearly define the vehicle as a new, used, demonstrator, leased, rental, factory off-lease, loaner, executive/official or factory program vehicle.
  - (3) When advertising a new motor vehicle, the use of stock numbers will not preempt the requirements of full disclosure.
  - (4) Advertising conditions involving a change in the monthly payments or graduated payments must be of the same size in print advertisements and given the same prominence in all other mediums and shall not be referenced by an asterisk.

**3. MANUFACTURER ADVERTISING FOR NEW, USED AND/OR LEASED VEHICLES:**

- A. Manufacturers must comply with Commission Rule 3 on Advertising.
- B. The suggested retail price of a new motor vehicle when advertised by a manufacturer or distributor shall include the following:
  - (1) All charges, except destination charges, dealer service and handling fees and/or state or local sales taxes.
  - (2) Such advertising shall state that dealer service and handling fees, and/or state or local sales taxes are excluded.
- C. It shall be unlawful for any manufacturer or distributor to advertise, a rebate, refund, discount or other financial incentive paid by, financed by, or contributed by the dealer selling the motor vehicle, unless such advertising discloses clearly and discernibly the following:

**“The dealer’s contribution may affect the final negotiated price of the motor vehicle.”**

**4. PROHIBITED STATEMENTS AND ADVERTISING TECHNIQUES:**

The following statements or advertising techniques are presumptively false and misleading, and the burden of proving otherwise shall be on the Advertiser/Licensee.

- A. Statements using abbreviations or shortened terms for words or initials for groups of words not commonly understood, including but not limited to “FTB,” “A/R,” “TOP,” and “POF,” must not be used. Commonly understood abbreviations, including but not limited to “2 DR,” “AM/FM,” “APR,” “WAC,” “DEMO,” and “EXEC,” may be used.
- B. Statements such as “write your own deal,” “name your own price,” “pick your monthly payments,” “appraise your own motor vehicle,” or statements with similar meaning are obviously untrue and shall not be used.
- C. No statement or advertisement shall be worded to imply that because of large sales volume, a dealer is able to purchase motor vehicles for less than another dealer selling the same line-make of vehicles.

- D. No motor vehicle advertisement shall contain the following statements or terms “cost,” “percent or dollars over or under cost, invoice, or profit,” “profit” or “invoice” “take over payments”, “fleet pricing”, “wholesale,” “x pricing,” “employee pricing”, or terms with similar meaning. However, a dealer may utilize the phrase “employee pricing or terms with similar meaning” only when the event is a manufacturer sponsored campaign that is available to all dealers of that line-make.
- E. A used vehicle shall not be advertised in a manner that creates the impression it is new. Product nameplates and/or logos of any franchise line-make shall not be used in an advertisement that is a “used only” vehicle advertisement.
- F. The following statements or terms “sale”, “discount”, “savings”, “price cut”, “reduced”, “clearance”, “tent sale”, and other similar terms, without clearly and conspicuously disclosing that such “clearance” or other such terms are limited to certain vehicles and/or specific dates of the sale if it is a limited time offer.
- G. Using any advertising statements or terms such as “Closing Out Sale”, “Lost Our Lease Sale”, “Forced to Vacate Sale” or similar terms used to imply a court-ordered closure or to induce a belief that upon disposal of the stock of goods on hand, the business will cease and be discontinued at the premises where the sale is conducted, unless such is the case.
- H. Statements such as “sales tax paid,” or terms with similar meaning shall not be used, unless it is truly paid by the dealer and not financed or added to the price of the vehicle.
- I. Statements or terms inferring a vehicle has been “repossessed” from an immediate former owner. Neither shall a dealer advertise that a purchaser will be receiving benefits on an existing loan on a vehicle when no such benefit exists.
- J. Statements such as “big volume buying power,” “manufacturer’s outlet,” “factory authorized outlet,” “factory sale”, “factory approved”, and “factory wholesale outlet”, or terms with similar meaning shall not be used. Any term or statement that gives the consumer the impression the dealer has a special arrangement with the manufacturer or distributor as compared to similarly situated dealers, is misleading and shall not be used
- K. “Double Rebates,” “Triple Rebates” or any other amount of rebates that are not truly offered by the manufacturer are prohibited.
- L. The statement “no reasonable offer refused,” shall not be used because, what may be reasonable to the dealership may not be reasonable to the consumer. As a result, the statement is almost impossible to prove.
- M. Terms or phrases that may be unfamiliar to a consumer must be fully defined in the advertisement.
- N. Statements offering a specific trade-in allowance (i.e., \$2500 minimum trade-in”), or a range of amounts for trade-ins (e.g., “up to \$1,000” or “as much as \$1,000”) including, without limitation, that the trade-in will be valued at a specific amount or guaranteed minimum amount.

**5. REQUIRED DISCLOSURES FOR CREDIT TERM AND LEASE ADVERTISEMENTS:****A. Closed ended credit term advertising.**

- (1) The Federal Reserve System and the Federal Trade Commission are two agencies involved with the enforcement of Federal Regulation Z. If an advertisement, promoting closed-end credit sale on a motor vehicle purchase contains any of the following terms:
- (a) The amount of the down payment expressed either as a percentage or dollar amount;
  - (b) The amount of any payment expressed as a percentage or dollar amount;
  - (c) The number of payments;
  - (d) The period of repayment; or
  - (e) The amount of any finance charge.
- (2) Then the following terms must be disclosed:
- (a) Amount or percentage of down payment;
  - (b) Terms of repayment; and
  - (c) Annual percentage rate, using the term or the abbreviation "APR".

**B. Lease advertising.**

- (1) The word "Lease" or "Smart Buy" must appear in a prominent position in the advertisement.
- (2) Advertising that involves consumer leases falls under Federal Regulation M. If an advertisement, promoting consumer lease on motor vehicle contains any of the following terms:
- (a) The amount of any payment; or
  - (b) A statement of any capitalized cost reduction or other payment required prior to or at consummation or delivery.
- (3) Then the following terms must be disclosed:
- (a) That the advertised transaction is a lease;
  - (b) The total amount due prior to or at consummation or delivery;
  - (c) The number, amounts and due dates or periods of scheduled payments;
  - (d) A statement of whether or not a security deposit is required; and
  - (e) A statement that an extra charge may be imposed at the end of the lease term where the lessee's liability, if any, is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

**C. Open ended credit terms.**

Examples of open-end credit are bank and gas company credit cards and stores' revolving charge accounts. In open-end credit, the creditor reasonably expects the customer to make repeated transactions.

The triggering terms for open-ended credit are:

- (1) Statement of when the finance charge begins to accrue, including any "free ride" period, if any.
- (2) Statement of either the periodic rate used to compute the finance charge or the annual percentage rate.



- (3) The method of determining the balance on which a finance charge may be imposed.
- (4) The method of determining the finance charge, including a description of how any finance charge other than the periodic rate will be determined.
- (5) The amount of any charge (other than the finance charge) that may be imposed as part of the plan.
- (6) The fact that the creditor will acquire a security interest.

The required disclosures are:

- (1) Any minimum, fixed, transaction, activity, or similar charges that could be imposed.
- (2) Any periodic rate that may be applied, expressed as an "annual percentage rate". If the plan provides for a variable periodic rate, that fact must be stated.
- (3) Any membership or participation fee.