

Chapter 15 – Advertising

Subchapter 1 - General Provisions

465:15-1-1. Purpose

The purpose of this Chapter is to implement the intent of the legislature as declared in the Oklahoma Motor Vehicle Commission Law by regulating the advertising of Commission licensees by requiring truthful and accurate advertising practices for the benefit of the citizens of this State.

465:15-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Advertisement" means an oral, written, graphic, or pictorial statement made in the course of soliciting business, including, without limitation, a statement or representation contained in a newspaper, magazine, publication, notice, sign, poster, display, circular, pamphlet, letter, or on the Internet, radio, television, or any other type of media.

"Bait Advertisement" means an alluring but insincere offer to sell a product of which the primary purpose is to obtain leads to persons interested in buying merchandise of the type advertised and to switch consumers from buying the advertised product in order to sell some other product at a higher price or on a basis more advantageous to the advertiser.

"Clear and Conspicuous" means that the statement, representation, or disclosure is of such size, color, contrast, and audibility and is presented so as to be readily noticed and understood. All language and terms, including abbreviations, shall be used in accordance with their common or ordinary usage and meaning. This standard shall be met by the following:

(A) In a print advertisement:

- (i) The type size of 5 ½ caps or larger shall be used in all disclosures.
- (ii) Disclosures shall be located adjacent to the price or in an area clearly marked with reference symbols. All reference symbol marks, such as asterisks, must be type size 5 ½ caps or larger.

(B) In an audio advertisement:

- (i) The disclosure shall be clear and understandable in pace and volume; and,
- (ii) The disclosure shall be placed at the end of the advertisement.

(C) In a television advertisement:

- (i) The disclosure shall be in visual form so that the average viewer can easily read and understand it.
- (ii) The disclosure size shall be at least twenty (20) scan lines and each disclosure shall appear continuously on the screen at least ten (10) seconds.

"Dealership addendum" means a form which is to be displayed on a window of a new motor vehicle when the dealer installs special features, equipment, parts or accessories, or charges for services not already compensated by the manufacturer or distributor for work required to prepare a vehicle for delivery to a buyer. The addendum is to disclose:

- (A) That it is supplemental and it should not be deceptively similar in appearance to the manufacturer's label, which is required to be affixed by every manufacturer to the windshield or side window of each new motor vehicle under the Automobile Information Disclosure Act;
- (B) Any added feature, service, equipment, part, or accessory charged and added by the dealership and the retail price thereof;
- (C) Any additional charge to the selling price such as additional dealership markup; and,
- (D) The total dealer selling price.

"Demonstrator" means those vehicles that are of the current or previous model year which have not been sold, titled or registered to any type of purchaser and are used by dealership personnel for demonstration purposes. Service vehicles, courtesy cars, daily rentals, loaners, driver education and factory executive cars shall not be described as "demonstrator" vehicles. Demonstrators may be advertised for sale, as such, only by a franchised dealer of the same line-make of vehicle.

"Disclosure" means required information that is clear, conspicuous, and accurate.

"Factory executive/official vehicle" means a new motor vehicle with an original Manufacturer's Statement of Origin, that has been used exclusively by an executive or official of the dealer's franchising manufacturer, distributor, or their subsidiaries.

"Licensee" means any entity or person required to obtain a license from the Oklahoma Motor Vehicle Commission.

"Manufacturer's label" means the label required by the 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.

"Program car" means a car that is purchased at a manufacturer's closed auction or sold by or directly from the manufacturer or distributor which is a current or previous year model, that has been previously tagged and/or titled, and returned to the manufacturer for disposal.

"Rebate" or **"Cash back"** means a sum of money refunded to a purchaser or for the benefit of the purchaser. The purchaser may choose to reduce the amount of the purchase price by the sum of money or the purchaser may opt for the money to be returned to the purchaser for his or her benefit.

Subchapter 3 - Specific Advertising Regulations

465:15-3-1. General prohibition

A licensee shall not use false or misleading advertising.

465:15-3-2. Availability of vehicles

(a) **Specific advertising.** A licensee may advertise a price or savings claim for a specific vehicle or line-make of vehicles for sale if:

- (1) the specific vehicle or line is in the possession of the licensee at the time the advertisement is placed, or the vehicle may be obtained from the manufacturer or distributor or some other source, and this information is disclosed in the advertisement; and,
- (2) the advertisement sets forth the number of vehicles available or if the advertisement pertains to only one specific vehicle, then the advertisement must disclose that vehicle's stock number.

(b) **General advertising.** This Section does not prohibit general advertising of vehicles by a manufacturer, dealer advertising association, or distributor, and the inclusion of the names and addresses of the dealers selling such vehicles in the particular area.

465:15-3-3. Accuracy

All advertised statements shall be accurate, clear and conspicuous.

465:15-3-4. Bait advertisement

Any advertising of a "Bait" or "Bait and switch" nature is prohibited.

465:15-3-5. Layout

The layout, headlines, illustrations, or type size of a printed advertisement and the broadcast words or pictures of radio/TV advertisements shall not convey or permit an erroneous or misleading impression as to which vehicle or vehicles are offered at featured prices. No advertised offer, expression, or display of price, terms, down payment, trade-in allowance, cash difference, savings, or other such material terms shall be misleading and any necessary qualifications shall be clearly, conspicuously, and accurately set forth to prevent any misunderstandings.

465:15-3-6. Manufacturer's suggested retail price

The suggested retail price of a new motor vehicle when advertised by a manufacturer or distributor shall include all costs and charges for the vehicle advertised, except that destination and dealer preparation charges, and state and local taxes, title, and license fees may be excluded from such price, provided that the advertisement conspicuously states that such costs and charges are excluded. However, with respect to advertisements placed with local media in Oklahoma by a manufacturer, distributor, or advertising association which include the names of the local dealers for the vehicles advertised, if the price of a vehicle is stated in the advertisement, such price must include all costs and charges for the vehicle advertised, including destination and dealer preparation charges and may exclude only state and local taxes, license, and title fees.

465:15-3-7. Dealer price advertising

- (a) **Selling price.** The most conspicuous price of a new motor vehicle, when advertised by a dealer, must be the full and total selling price for which the dealer will sell the vehicle to any retail buyer. The only charges that may be excluded from the advertised price are:
- (1) state and local taxes,
 - (2) license, and
 - (3) title.
- (b) **Qualification.** A qualification may not be used when advertising the price of a vehicle such as "with trade", "with acceptable trade", "with dealer-arranged financing", or "with down payment".
- (c) **Rebate or savings claim.** If an advertised price includes any rebates, cash back, or other incentive, the ad must clearly disclose that the price includes the rebate or incentive.
- (d) **Rebates only available to select consumers.** The most conspicuous price or payment of a new motor vehicle, when advertised by a dealer, must be the true price that is available for every consumer. Rebates that are only available to select consumers shall either be presented as additional savings to the select group, or presented as separate prices or payments which clearly identify to whom the price or payment applies.

465:15-3-8. Identification

- (a) When the price, payment or savings claim of a vehicle is advertised, the following must be disclosed:
- (1) model year;
 - (2) make;
 - (3) trade, brand or style name; and
 - (4) if other than a new vehicle, the vehicle must be identified as a used, demonstrator, or a factory executive/official vehicle, or a factory program vehicle.
- (b) An illustration of a motor vehicle used in an advertisement must be that of the motor vehicle advertised. If an illustration of the advertised vehicle is not available then the dealer must clearly and conspicuously disclose the difference between the illustration and the vehicle being advertised.

465:15-3-9. Demonstrators, executives and officials vehicles

If a demonstrator or factory executive/official vehicle is advertised, the advertisement must so disclose.

465:15-3-10. Auction

Terms such as "auction" or "auction special" and other terms of similar import shall be used only in connection with a vehicle offered or sold at a bona fide auction.

465:15-3-11. Authorized dealer

The term "authorized dealer" or a similar term or indication shall not be used unless the advertising dealer holds a franchise and a license to sell at the advertised location those vehicles he is holding himself out as "authorized" to sell.

465:15-3-12. Lease advertisements

Vehicle lease advertisements shall clearly and conspicuously disclose that the advertisement is for the lease of a vehicle. Statements such as "alternative financial plan", "drive away for \$____ per month", or other terms or phrases that do not use the term "lease", do not constitute adequate disclosure of a lease. Lease terms that are not available to the general public shall not be included in advertisements directed at the general public. All limitations and qualifications applicable to the lease terms advertised shall be clearly and conspicuously disclosed as per Federal Trade Commission Regulation "M".

465:15-3-13. Payment disclosure

All payment advertising shall be in compliance with Federal Trade Commission Regulations "M" (Lease Regulation) and "Z" (Truth in Lending Act).

465:15-3-14. Prohibited statements

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

- (1) Statements such as "everybody financed", "no credit rejected", "guaranteed approval", "you are pre-approved", and other similar statements representing or implying that no prospective credit purchaser will be rejected because of his inability to qualify for credit.
- (2) Statements representing that no other dealer grants greater allowances for trade-ins, however stated, unless such is the case.
- (3) Statements representing that because of its large sales volume a dealer is able to purchase vehicles for less than another dealer selling the same make of vehicles, unless such is the case.
- (4) Statements such as "factory direct prices", "wholesale prices", "factory sale", and other similar statements that create the impression that the vehicle is being offered for sale by the manufacturer or distributor of the vehicle, are prohibited. Dealers may use terms such as "factory authorized sale" only in conjunction with factory-sponsored promotions and/or advertising campaigns. Statements such as "we have been selected", "we have been chosen", and other similar statements, which imply that the dealership has exclusive arrangements not available to other dealers, are prohibited.
- (5) A savings claim or discount offer is prohibited except to advertise specific new or demonstrator vehicles. Statements such as "up to", "as much as", "from", shall not be used in connection with savings or discount claims, unless the vehicle for which the claim is made is clearly identified including stock number. Savings claims can only be offered from the bottom line MSRP sticker price. Discounts shown on the Monroney Sticker Label shall not be included in the advertised discount or savings claim. The featured savings claim or discount offer for a new motor vehicle, when advertised, must be the savings claim or discount which is available to any and all members of the buying public.

- (6) The use of the terms "Free", "Complimentary", or similar terminology is prohibited if a consumer must make a purchase to obtain the "free" offer.
- (7) The terms "dealer's cost", "invoice", "invoice price" or other reference to the cost of the vehicle to the dealer shall not be used.
- (8) No trade-in amount or range of amounts shall be advertised.
- (9) A used vehicle shall not be advertised in any manner that creates the impression it is new.
- (10) Statements such as "we pay tag, tax and license", or statements with similar meaning shall not be used.
- (11) The use of the terms "liquidation", "going out of business", or statements with similar meaning, are prohibited unless a dealer is actually going out of business and ceasing its operations at the licensed location. If a dealer is going out of business, these terms can only be advertised during the period between the execution of a buy-sell with the proposed buyer and written factory approval.
- (12) An offer of a buy down rate is prohibited without the appropriate disclaimer: "This is a buy down rate. The amount of the buy down may affect the price of the vehicle".
- (13) Terminology such as "we will pay off your trade no matter how much you owe" or statements with similar meaning shall not be used, unless accompanied by a disclaimer indicating that pay off amount is added into the contract and is dependent upon approved credit.

465:15-3-15. Dealership name

All advertisements must conspicuously display the name of the new motor vehicle dealership.

Subchapter 5 - Finding of Violation

465:15-5-1. Violation

The violation of an advertising rule shall be considered by the Commission as a violation of the Oklahoma Motor Vehicle Commission Law, created by Title 47 of Oklahoma State Statute. In addition to the specific advertising regulations, referenced in Subchapter 3, any other advertising or advertising practices found by the Commission to be false or misleading shall be deemed violations of the law, and shall also be considered violations of the general prohibition.

465:15-5-2. Hearing

No licensee shall be held to be in violation of the foregoing rules of this Chapter including the general prohibition, referenced in OAC 465:15-3-1, except upon a finding thereof made by the Commission after notice and hearing as provided in the Oklahoma Motor Vehicle Commission Law.

Subchapter 7 – Enforcement

465:15-7-1. Purpose

The rules in this Subchapter outline specific procedures the Commission shall use for enforcing the Advertising Rules and Regulations. However, at any time, the Commission has the authority, under Title 47, Section 565, to schedule a hearing concerning advertising violations.

465:15-7-2. Enforcement procedures

- (a) **Finding.** Upon a finding that an advertisement is in violation of the advertising regulations, referenced in Subchapter 3, the Commission shall apply the following procedures:
- (1) **Violation.** Any violation for unlawful advertising for each dealership location will result in a letter advising the dealer of the violation.
 - (2) **Second violation.** A second violation within the last six months will result in a letter, sent by certified mail, advising the dealer of the infraction and warning that a third violation within the last six months could require the dealer to appear before a hearing by the Commission to determine the possibility of an imposition of a fine and/or suspension or revocation of the dealer's license.
 - (3) **Third violation.** A third violation within the last six months will result in a letter, sent by certified mail, advising the dealer of dealer's hearing date to determine the possibility of an imposition of a fine and/or suspension or revocation of the dealer's license. A dealer may offer to pay a fine of \$250.00 in lieu of a hearing. The Commission may, at its discretion, accept the fine or schedule a hearing at the next regularly scheduled meeting.
 - (4) **Fourth violation.** A fourth violation within the last six months will result in a letter sent by certified mail advising the dealer of dealer's hearing date to determine the possibility of an imposition of a fine and/or suspension or revocation of the dealer's license. A dealer may offer to pay a fine of \$500.00 in lieu of a hearing. The Commission may, at its discretion, accept the fine or schedule a hearing at the next regularly scheduled meeting.
 - (5) **Fifth violation.** A fifth violation within the last six months will automatically result in a notice of hearing sent by certified mail. The dealer may not offer to pay a fine in lieu of a hearing.
- (b) **Correspondence.** All certified letters should be addressed to the licensee with "RETURN RECEIPT REQUESTED".