



2022 Advertising Update

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The information provided in this presentation is intended for educational purposes only. It is not intended to be and should not be considered legal advice. Be sure to consult competent legal counsel before taking any action based on the information contained therein.

Maryland Advertising Laws and Regulations

Maryland Transportation Article, Section 15-313
Maryland Commercial Law Article, Section 13-301

- A Dealer **MAY NOT** use any advertisement that is in any way false, deceptive or misleading pursuant to Commercial Law Article. **ATTORNEY GENERAL FINES CAN BE UP TO \$10,000 PER VIOLATION.**
- A Dealer **MAY NOT** by ANY means advertise or offer to the public any vehicle without the intent to sell it as advertised or offered. A Dealer must have advertised vehicle in stock or be able to acquire it for buyer within specified time. **CONSIGNMENT SALES ARE ILLEGAL UNDER MARYLAND LAW.**
- A Dealer **MAY NOT** advertise the purchase price of a vehicle unless the price is the **“FULL DELIVERED PRICE,” WHICH EXCLUDES ONLY TAX, TITLE FEES AND ANY APPLICABLE FREIGHT OR DEALER PROCESSING CHARGE.**

Maryland Transportation Article, Section 15-313

If a **DEALER, AGENT OR EMPLOYEE** advertises the Full Delivered Price, the price shall be in the **LARGEST FONT** used to provide vehicle information on pricing. **It is essential to remember per Maryland law, the advertised Full Delivered Price cannot exclude any fees other than tax, title fees and any applicable freight or dealer processing charge.**

1) If multiple vehicles show an advertised price that excludes freight, the freight for each vehicle must be separately disclosed.

2) The dealer processing charge disclosure must read:

DEALER PROCESSING CHARGE (NOT REQUIRED BY LAW): XXX

If the MVA issues citations for violations of the Transportation Article, statutory fines may include imprisonment up to two months or \$500 fine or both if found guilty.

- **THE ADVERTISED “FULL DELIVERED PRICE” MAY NOT INCLUDE DISCOUNTS NOT EVERYONE QUALIFIES FOR SUCH AS MILITARY, COLLEGE, LOYALTY, ETC.** Your advertisement may state qualifying discounts are available, but they cannot be deducted from the largest font advertised price. The discounts must be separately itemized below the largest font advertised price.
- **IF YOU ARE CHARGING A FEE NOT PERMITTED TO BE EXCLUDED FROM THE “FULL DELIVERED PRICE,” SUCH AS A MARKET ADJUSTMENT FEE OR ADDITIONAL RETAIL MARKUP, THE FEE MUST BE INCLUDED IN THE “FULL DELIVERED PRICE” IN THE LARGEST FONT PERTAINING TO VEHICLE PRICING.**
- **IT IS NOT PERMISSABLE to advertise a Vehicle for \$50,000 online (with exclusions for tax, tags, freight, dealer processing charge) to drive showroom traffic and expect a sticker on the vehicle accompanied by a line item on the buyers order for the \$2,000 Market Adjustment to satisfy proper disclosure. THIS IS A BAIT AND SWITCH ADVERTISING VIOLATION OF STATE AND FEDERAL CONSUMER PROTECTION LAWS.**
- **IT IS NOT ILLEGAL TO SELL ABOVE MSRP IN MARYLAND, BUT MARYLAND REGULATORS MAY DEEM AN MSRP ADVERTISED PRICE ONLY AS THE DEALERSHIPS RETAIL SALE OFFER.**

Maryland COMAR: Bait and Switch Advertising and Selling Practices

- The practice of increasing the selling price of a vehicle above that originally quoted to a purchaser, after the purchaser has made an initial deposit or payment, either with money or with a trade-in, or signed contract is prohibited, unless the price is increased by the manufacturer. In this case, the dealer shall substantiate, upon request, evidence of the increase, and the customer shall have the right to cancel the contract.
- Advertising the immediate availability of a new vehicle with the intent not to supply reasonable expectable public demand is prohibited unless the advertisement discloses a specific limitation of quantity.
- Advertising a sale or promotion in connection with the sale of a vehicle shall clearly and conspicuously disclose the expiration date, if any, and any other conditions of the sale or promotion, including but not limited to whether the supply is limited and, if so, in what manner.
- The advertising of a specific vehicle offered for sale when the advertised vehicle is not in stock on the date of the advertisement is prohibited unless the advertisement states "Not in Stock" or "Order Yours Now" or other phrases of similar import which clearly indicate that the vehicle is not available for immediate delivery and a reasonable estimate of the period of time in which delivery will be made.

MARYLAND ADVERTISING TERMS SUMMARY

- **Manufacturers Suggested Retail Price** - MSRP is an acronym not universally known. Dealers should be aware advertising MSRP only may be considered the “Full Delivered Price” by regulators. A disclosure in close proximity to MSRP that identifies MSRP as a "suggested price“ or “not the dealer Full Delivered Price” may help consumers understand the advertisement clearly.
- **Full Delivered Price** - Maryland law requires the Full Delivered Price to be advertised in largest font. Again, the Full Delivered Price is the price ANYONE can pay for the vehicle EXCLUDING tax, tags and any applicable freight and dealer processing charge. The excluded fees must be disclosed separately in at least 10 point bold font in close proximity to advertised price.
- **Base Price** - The price listed on buyers order that excludes all dealer add-ons and charges not pre-installed before sale. Each add-on must have a clear and specific description and cannot be duplicative if not included in the base price. If dealer add-ons are pre-installed on the advertised vehicle, the cost must be included in the Full Delivered Price shown in largest font.

Federal Trade Commission

Advertising

- The FTC has concentrated its authority and increased budget over car dealers under the Dodd Frank Act on advertising
- Train managers with ad responsibility and ad agencies
 - TILA and Leasing ads non-compliance. If you use a trigger term, use the follow-on disclosures (amount of payments, downpayment, etc.)
 - Bait and switch – This is the FTC’s hot button. Do not advertise net of incentives of limited availability without adequate disclosure, do not advertise deals that are not available, and keep proof of availability of deals when advertised. **Know the vehicles advertised and their advertised prices. Selling the vehicle for more, even if the customer did not know of the advertisement at the time, can be the basis for a bait and switch claim**
 - The phrase “some customers may not qualify” is asking for trouble

Advertising a Credit Sale (TILA)

- In a credit sale advertisement, if a trigger term is used (the amount of a downpayment, the amount of an installment payment, the number of installments (term), or the amount of any finance charge) the following required terms are also disclosed:
 - The amount of the installment payment;
 - The amount or percentage of down payment;
 - The number of installments (term); and
 - The annual percentage rate.

- Interest rate is stated as an annual percentage rate by either abbreviating APR or using the words "annual percentage rate." If the APR is in lieu of a rebate, that fact must be disclosed.

- "No down," "\$0 down" or the equivalent is not used in the advertisement unless, in fact, no payment or trade-in of any kind is required at delivery (not even sales tax, license fees or use of any manufacturer's rebate).

Advertising a Lease (CLA)

- In a closed-end lease advertisement, if a trigger term is used (the amount of any payment; or the amount of any up-front payment, or that no down payment (e.g., "No down," "Zero drive-off") is required), the following required terms are also disclosed:
 - The fact that the transaction is a lease;
 - The total amount due at lease signing;
 - If a security deposit is required, the amount of the deposit. If no security deposit is required, the statement "No security deposit is required;" and
 - The number, amounts, due dates or periods of scheduled payments.

- If there is any reference to the amount due at lease signing (i.e. "\$1000 due at signing"), the total amount due at lease signing must be "equally prominent" (i.e., in the same type size and color and be immediately adjacent to the amount being qualified). This applies to the inclusion of a factory rebate in the offer and government fees and taxes that are required.

Advertising Reminders

- Identifying factory programs reducing price is not an excuse for advertising prices that are not available. For example, if itemized deductions are for offers that cannot be used together – customer loyalty and first time buyer incentives or lease and finance incentives – the resulting net prices will be seen by the FTC as deceptive
- Purpose of identifying programs is to tell customers what they must do to qualify – the bottom line price must be available to someone who can qualify for all deductions
- Same principles apply to “savings” ads – customers must understand what they must do to qualify, and total savings cannot include incentives that cannot be used together
- Have sufficient quantities at the advertised price for expected demand unless there is a limitation
- Avoid use of “free”, “at no additional cost”, and the like

Federal Trade Commission
Issues in Advertising Used Vehicles

- Is the vehicle properly identified as to make, model, trim level, and equipment?
- Is the vehicle properly disclosed as used?
- If you have a vehicle with an open recall, fix it or
 - Do not certify them.
 - Many manufacturer certification programs prohibit sales of vehicles with open recalls.
 - Do not claim that they were subject to a multi-point safety inspection
 - Do not make general claims of safety and reliability

SOCIAL MEDIA ADVERTISING

- Social media posts by your employees are advertising, and they are illegal advertisements if they include prices, discounts, offers not in compliance with the law
- Have a written social media policy with the Do's and Don'ts of employee use of social media
- Goal – use social media posts to drive prospects to dealer's website where full offers and disclosures are available

Responding to an Attorney General Subpoena

- Alert Maryland Automobile Dealers Association immediately
- Retain experienced counsel
- Engage AG office over burden v. probative value
- Seek to narrow subpoena requests and extend time to respond
- Consider filing a motion to quash if AG is uncooperative.
- Force the AG's office to convince a court it is entitled to an order enforcing subpoena