

BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF:

H#06-011

CRAIN CHEVROLET

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Arkansas Motor Vehicle Commission (hereinafter the “Commission”) held a hearing on January 17, 2007, to determine whether Crain Chevrolet (hereinafter “Crain”) violated the Arkansas Motor Vehicle Commission Act, Ark. Code Ann. § 23-112-101, et seq. and the Advertising Rules promulgated by the Commission pursuant to Ark. Code Ann. § 23-112-204. The charges before the Commission concern whether a series of advertisements which appeared in the Arkansas Democrat Gazette violated Commission statutes and Advertising Rule 3 when Crain advertised two unavailable vehicles over a number of dates as detailed below.

The Respondent, Crain, was represented by Larry Crain, General Manager for the Crain Automotive Team.

After hearing testimony from Investigator Otis Hogan, Greg Kirkpatrick, Larry Crain, and reviewing documents received in evidence, the Commission makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

F1. On Monday, August 7, 2006, Investigator Hogan traveled to Crain to follow up on a television advertisement in which Crain stated that new and used vehicles could be purchased for a \$49.00 acquisition fee with payments as low as \$99.00 per month, and vehicle prices starting as low as \$2,888. Additionally, the television ad stated that you could make the payments posted on the windshield.

- F2. The vehicle that was listed as an example for the \$49.00 acquisition fee and payments as low as \$99.00 per month was a 2003 GMC Sonoma Pickup, stock # 6CT1436B, for \$5,271. The vehicle that was listed as an example of a vehicle priced as low as \$2,888 was a 2002 Chevy Cavalier, stock # 6CC0911A.
- F3. Mr. Hogan was approached by a sales associate named Lisa Findahl who showed Mr. Hogan the available and comparable 2003 GMC Sonoma trucks as well as the available and comparable Chevy Cavaliers. The available Sonoma trucks were priced above \$10,900 and the available Cavaliers were priced above \$10,000.
- F4. Mr. Hogan also discovered that the available vehicles had a sticker advertising \$49.00 down, but none of the vehicles had payments posted on the windshield.
- F5. The above referenced advertisement was also televised and recorded by Commission staff on August 9, 2006.
- F6. On Friday, August 18, 2006, Mr. Hogan again traveled to Crain to follow up on a newspaper advertisement in the Arkansas Democrat Gazette which advertised the above referenced promotion in F1 and included the same example vehicles described above in F2, a 2002 Chevy Cavalier, stock # 6CC0911A and a 2003 GMC Sonoma, stock # 6CT1436B.
- F7. Mr. Hogan was again approached by Lisa Findahl, a sales associate with Crain. Mr. Hogan asked Ms. Findahl to show him the two vehicles identified above and advertised in the Arkansas Democrat Gazette on Friday, August 18, 2006. Ms. Findahl, after confirming with a sales manager named Chad Easterly, informed Mr. Hogan that both of the vehicles identified above had already sold.

- F8. Ms. Findahl then showed Mr. Hogan four (4) comparable vehicles to the advertised 2003 GMC Sonoma priced at \$5,271. The four comparable vehicles were priced at \$17,995, \$18,995, \$14,995, and \$15,995. Ms. Findahl then showed Mr. Hogan the closest comparable vehicle to the advertised 2002 Chevy Cavalier priced at \$2,888 which was a 2004 Chevy Cavalier priced at \$8,397.
- F9. Later on Friday, August 18, 2006, Investigator Holmes followed up Mr. Hogan's investigation. Upon arriving at Crain, Mr. Holmes approached Eddie Wise, the General Manager, and asked to see the two vehicles identified above and listed in the Democrat Gazette advertisement from Friday, August 18, 2006.
- F10. Mr. Wise told Mr. Holmes he thought the truck had sold "yesterday or last night," however, neither vehicle could be found on Crain's lot. Mr. Holmes asked for the sales records from the two vehicles listed above in F6. Mr. Wise instructed a Crain employee named Carl to assist Mr. Holmes in obtaining the sales information.
- F11. Carl provided Mr. Holmes with the following sales information for the above referenced vehicles: 2002 Chevy Cavalier, stock # 6CC0911A, was sold to Downtown Motors at the ADESA auction in Little Rock on July 28, 2006 for \$3,485.00, and the 2003 GMC Sonoma, stock # 6CT1436B, was sold to Chuck Frazier Chevrolet at the ADESA auction in Little Rock on July 28, 2006, for \$6,865.00.
- F12. Mr. Holmes traveled to the Crain Automotive corporate office to obtain copies of the sales information for the above referenced vehicles and discovered the 2002 Chevy Cavalier referenced above which was acquired by Crain on July 17, 2006,

and the 2003 GMC Sonoma referenced above which was acquired by Crain on July 15, 2006.

- F13. Commission staff identified the above referenced vehicles in the following advertisements: Arkansas Democrat Gazette on Saturday, July 29, 2006; Arkansas Democrat Gazette on Saturday, August 5, 2006; Fox News, Comcast Channel 42 on Monday, August 7, 2006, and Wednesday, August 9, 2006; Arkansas Democrat Gazette on Friday, August 18, 2006.
- F14. On December 6, 2006, the Commission granted a continuance until January 17, 2007, for further review of evidence by Crain Chevrolet.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Commission makes the following Conclusions of Law:

- C1. Crain violated Commission statutes and Commission Advertising Rule 3, Section 2, Paragraph A(2); Rule 3, Section 2, Paragraph A(5)(a) and (b); Rule 3, Section 2, Paragraph A(3); Rule 3, Section 2, Paragraph A(4); and Rule 3, Section 3 when it failed to have available the advertised 2002 Chevy Cavalier, stock # 6CC0911A and the advertised 2003 GMC Sonoma, stock # 6CT1436B in the above referenced July 29, 2006, advertisement.
- C2. Crain violated Commission statutes and Commission Advertising Rule 3, Section 2, Paragraph B(1) and Rule 3, Section 2, Paragraph B(2) when it engaged in bait and switch advertising in connection with the above referenced July 29, 2006, advertisement.

- C3. Crain violated Commission statutes and Commission Advertising Rule 3, Section 2, Paragraph A(2); Rule 3, Section 2, Paragraph A(5)(a) and (b); Rule 3, Section 2, Paragraph A(3); Rule 3, Section 2, Paragraph A(4); and Rule 3, Section 3 when it failed to have available the advertised 2002 Chevy Cavalier, stock # 6CC0911A and the advertised 2003 GMC Sonoma, stock # 6CT1436B in the above referenced August 5, 2006, advertisement.
- C4. Crain violated Commission statutes and Commission Advertising Rule 3, Section 2, Paragraph B(1) and Rule 3, Section 2, Paragraph B(2) when it engaged in bait and switch advertising in connection with the above referenced August 5, 2006, advertisement.
- C5. Crain violated Commission statutes and Commission Advertising Rule 3, Section 2, Paragraph A(2); Rule 3, Section 2, Paragraph A(5)(a) and (b); Rule 3, Section 2, Paragraph A(3); Rule 3, Section 2, Paragraph A(4); and Rule 3, Section 3 when it failed to have available the advertised 2002 Chevy Cavalier, stock # 6CC0911A and the advertised 2003 GMC Sonoma, stock # 6CT1436B in the above referenced television advertisement on Fox News, Comcast Channel 42, on August 7, 2006, and August 9, 2006.
- C6. Crain violated Commission statutes and Commission Advertising Rule 3, Section 2, Paragraph B(1) and Rule 3, Section 2, Paragraph B(2) when it engaged in bait and switch advertising in connection with the above referenced television advertisement on Fox News, Little Rock Comcast Channel 42, on August 7, 2006, and August 9, 2006.

- C7. Crain violated Commission statutes and Commission Advertising Rule 3, Section 2, Paragraph A(2); Rule 3, Section 2, Paragraph A(5)(a) and (b); Rule 3, Section 2, Paragraph A(3); Rule 3, Section 2, Paragraph A(4); and Rule 3, Section 3 when it failed to have available the advertised 2002 Chevy Cavalier, stock # 6CC0911A and the advertised 2003 GMC Sonoma, stock # 6CT1436B in the above referenced August 18, 2006, advertisement.
- C8. Crain violated Commission statutes and the Advertising Rule 3, Section 2, Paragraph B(1) and Rule 3, Section 2, Paragraph B(2) when it engaged in bait and switch advertising in connection with the above referenced August 18, 2006, advertisement.

ORDER

The Commission finds that the violation of Commission statutes and the advertising rule warrants a total civil penalty of \$10,000.00 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: _____