

BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF:

AP# 16-005

ORR NISSAN, HYUNDAI, CHRYSLER DODGE JEEP RAM

NOTICE OF VIOLATION

IT HAS BEEN determined by the Arkansas Motor Vehicle Commission (hereinafter "Commission") that Orr Nissan, Hyundai, Chrysler Dodge Jeep Ram (hereinafter "Orr"), a licensed dealer, violated the motor vehicle commission statute when they advertised a vehicle at an inflated manufacturer suggested retail price (hereinafter "MSRP"). This action is in direct violation of the Arkansas Motor Vehicle Commission Act, Ark Code Ann. §23-112-101, et seq., pursuant to Ark. Code Ann. §23-112-204. If the Commission determines that a firm or individual violated the Commission Act or Rules, the Commission may revoke or suspend the license, or impose a monetary penalty in lieu of revocation or suspension if the public interest would not be impaired thereby and the payment of the penalty will achieve the desired disciplinary results.

FACTUAL BACKGROUND

The Commission finds the following facts as true:

- F1. Orr is a licensed new motor vehicle dealer located at 3115 East Main Street, Russellville, AR.
- F2. In a newspaper advertising supplement entitled "RIDES OF MARCH", Orr advertised a 2015 Ram Crew Cab 4WD Diesel for \$16,000 off MSRP. The disclosure listed Stock #18754 with MSRP \$56,725, Orr Discount \$7,500, Pkg Discount \$3,000, Rebates \$5,500.

- F3. Commission Investigator Gordon McCoy traveled to Russellville on March 15, 2016, and spoke to the Sales Manager James Parker. Investigator McCoy confirmed the actual MSRP for the advertised truck was \$51,730.00. According to Mr. Parker, the MSRP of \$56,725 listed in the advertisement included both dealer added equipment and services, and the \$3,000 package discount. This \$3,000 package discount listed in the disclosure was a discount from the manufacturer that was deducted prior to the vehicle arriving at the dealership.
- F4. A subsequent newspaper advertising supplement from Orr entitled "Rides of March!" continued to list the above referenced 2015 Ram Crew Cab 4WD Diesel at \$16,000 off MSRP. The disclosure listed Stock #18754 MSRP \$56,725, Orr Discount \$7,500, Pkg Discount \$3,000, Rebates \$5,500; MSRP is after \$3,000 Pkg Discount and Before adds of leather, lift custom tires and wheels.
- F5. The Commission's ad hoc committee met on April 20, 2016, and made a recommendation which was approved during the April 20, 2016, Commission meeting to issue a Notice of Violation to Orr.

APPLICABLE LAW

- L1. Motor vehicle dealers are required to conform their conduct to the Motor Vehicle Commission Act, Ark. Code Ann. § 23-112-101, *et seq.* and the Rules promulgated by the Commission pursuant to Ark. Code Ann. § 23-112-204.
- L2. Violations of Commission Rules are considered to be a prima facie violation of Ark. Code Ann. § 23-112-402(3) which states it is unlawful for a motor vehicle dealer or salesperson to use any false or misleading advertisement.

- L3. Failure to comply with any provision of the Commission Act or Rules may lead to revocation or suspension of the license as per Ark. Code Ann. § 23-112-308(a)(4). The Commission may issue a monetary penalty in lieu of revocation or suspension as per Ark. Code Ann. § 23-112-309.
- L4. Arkansas Motor Vehicle Commission Rule 3 Advertising including the following:
- A. MSRP means the list price shown on the 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, Rule 3(1)(N);
 - B. Specific claims or discount offers must only be used to show the difference between the dealer's current selling price and the MSRP, Rule 3(2)(A)(7);
 - C. 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 incentives. Rebates cannot be combined as one, Rule 3(2)(A)(8);
 - D. Licensees shall not use false and misleading advertising, Rule 3(2)(B); and,
 - E. In all printed media the minimum advertising requirement for an advertisement to be clear and conspicuous shall be not less than 8-point type, Rule 3(2)(D).

CHARGE

- C1. Orr violated the Motor Vehicle Commission Act when it failed to disclose the correct MSRP in two (2) separate advertisements. This charge is based on the facts above and the provisions of law set out in paragraphs L1, L2, L3, and L4.

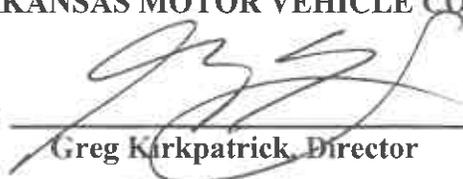
- C2. Orr violated the Motor Vehicle Commission Act when it utilized an inflated MSRP to advertise a larger available discount. This charge is based on the facts above and the provisions of law set out in paragraphs L1, L2, L3, and L4.
- C3. Orr violated the Motor Vehicle Commission Act when it failed to use the minimum type size for the advertisements. This charge is based on the facts above and the provisions of law set out in paragraphs L1, L2, L3, and L4.

AS A RESULT OF THESE VIOLATIONS, you are hereby directed to pay a civil penalty in the amount of two thousand five hundred dollars (\$2,500.00). The Commission finds that in lieu of a suspension of Orr's license the public interest would not be impaired and the payment of a penalty will achieve the desired disciplinary result by issuing a monetary penalty against Orr in accordance with Ark. Code Ann. § 23-112-309 in the amount of five hundred dollars (\$500.00) per day for five (5) days for an aggregate amount of two thousand five hundred dollars (\$2,500.00).

This amount should be sent to the Commission within seven (7) days of receipt of this Notice of Violation.

IF YOU DESIRE TO CONTEST the alleged violation or the penalty imposed, please so indicate on the attached form and return to the Commission Office within seven (7) days and this matter will be set for an evidentiary hearing before the Commission.

ARKANSAS MOTOR VEHICLE COMMISSION

By: 
Greg Kirkpatrick, Director

Date: 6/9/2016