

**BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION**

**IN THE MATTER OF:**

**AP# 16-009**

**STEVE LANDERS KIA**

**NOTICE OF VIOLATION**

IT HAS BEEN determined by the Arkansas Motor Vehicle Commission (hereinafter "Commission") that Steve Landers Kia, a licensed dealer, violated the motor vehicle commission statute when they utilized false and misleading advertising. 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, they 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. Steve Landers Kia is a licensed new motor vehicle dealer, F1071, located at 4600 South University Ave., Little Rock, AR.

**Better Business Bureau Correspondence:**

- F2. On August 19, 2016, the Commission received a correspondence from Salisa Harrison regarding an advertising mailer from Steve Landers Kia. The mailer promoted a vehicle sales event taking place on August 12, 2016, to August 18, 2016. The mailer included the following claims:

- A. "PRESS" YOUR LUCK GIVE-A-WAY EVENT;

- B. \$20,000 GIVE-A-WAY. 10 WINNERS OF \$1,000 & 1 - \$10,000.00 CASH!;
  - C. CONFIRMED WINNERS HAVE BEEN MAILED!;
  - D. PRESS THE KARD BUTTON TO ACTIVATE, IF YOUR NUMBERS MATCH, YOU HAVE WON!; and
  - E. Call Now: 1-855-782-9053
- F3. The mailer contained a Kard button requesting you press the button. According to Ms. Harrison, the number that appeared on the Kard was 789650. This number was adjacent to the “10 WINNERS, \$1,000 CASH” prize.
- F4. Upon arrival at the dealership, Ms. Harrison was informed she did not win the \$1,000 because the number on the Kard had to match the number listed above the recipient’s address. Instead she was told the number on the Kard entitled her to a smart watch. The sales representative returned and initially offered an MP3 player stating they were out of smart watches. Eventually the salesperson was able to find a smart watch.
- F5. Ms. Harrison asked for a manager to discuss the mailer, and was informed the mailer was approved by the Attorney General’s office. It was confirmed the Attorney General’s office did not approve the advertising mailer.

Commission Review of the Advertising Mailer:

- F6. The mailer included vehicles advertised with the disclosures “Only one vehicle available at this price” and “Photos for illustration purposes only.”
- F7. The mailer contains a “Discount Voucher” for \$2,532.00 with the disclaimer that states “Applies to purchase of used vehicles priced over \$10,000.”

- F8. The Commission's Ad Hoc committee met on September 21, 2016, and made a recommendation to the full Commission which was approved during the September 21, 2016, Commission meeting to issue a Notice of Violation to Steve Landers Kia.

**APPLICABLE LAW**

- L1. Motor vehicle dealers are required to conform their conduct to the Motor Vehicle Commission Act, Ark. Code Act § 23-112-101, *et seq.* and the Rules promulgated by the Commission pursuant to Ark. Code Act § 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 AMVC Act or any Rule promulgated by the Commission 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. False or misleading advertising is prohibited by Rule 3 Advertising, Section 2 and the following are in violation of this rule:
- a. Direct statements or reasonable inferences that have the tendency to mislead consumers, Rule 3 Advertising, Section 2(B)(2)(a);
  - b. When an advertisements overall impression has the tendency to mislead consumers, Rule 3 Advertising, Section 2(B)(2)(b);

- c. The failure to make clear and conspicuous disclosures of limitations, disclaimers, qualifications, conditions, exclusions, or restrictions, Rule 3 Advertising, Section 2(B)(2)(d); and,
  - d. Using in advertisement, footnotes, asterisks, or various superscripted symbols which, confuse, contradict, materially modify or unreasonably limit the material terms of an advertisement, Rule 3 Advertising, Section 2 (B)(2)(g).
- L5. Specific claims or discount offers shall only be used in connection with new or demonstrator vehicles. Rule 3 Advertising, Section 2(A)(6).
- L6. No advertisement containing an offer to sell a motor vehicle shall be published when the offer is not a bona fide attempt to sell that specific advertised motor vehicle. Certain acts will be considered in determining if an advertisement is not a bona fide offer to sell a vehicle such as failure to show, demonstrate, or sell the motor vehicle in accordance with the terms of the offer. Rule 3 Advertising, Section 2 (B)(3)(a).
- L7. It is false and misleading to use, in any advertising, inaccurate photographs or illustrations when describing specific automobiles. Rule 3 Advertising Section 2 (B)(4).

#### **CHARGES**

- C1. Steve Landers Kia violated Commission statutes and Rule 3 on Advertising when they utilized false and misleading advertising designed to mislead consumers by indicating the consumer won a particular prize. This charge is based on the facts

as stated and referenced above, and the provisions of law set out in paragraphs L1, L2, L3 and L4.

C2. Steve Landers Kia violated Commission statutes and Rule 3 on Advertising when they offered a discount on a used vehicle. This charge is based on the facts as stated and referenced above, and the provisions of law set out in paragraphs L1, L2, L3 and L5.

C3. Steve Landers Kia violated Commission statutes and Rule 3 on Advertising when they failed to include accurate photographs of the advertised vehicles. This charge is based on the facts as stated and referenced above, and the provisions of law set out in paragraphs L1, L2, L3, L6, and L7.

**AS A RESULT OF THESE VIOLATIONS**, you are hereby directed to pay a civil penalty in the amount of five thousand dollars (\$5,000.00).

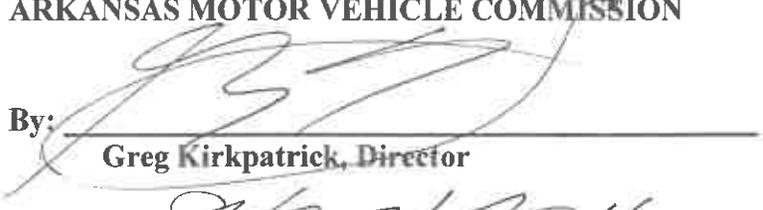
The Commission finds the violations of Commission statutes and rules by Steve Landers Kia warrant a suspension of Steve Landers Kia's license for failure to comply with provisions of the Commission Act and Rules promulgated by the Commission as per the applicable law stated above.

The Commission finds that in lieu of a suspension of Steve Landers Kia'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 Steve Landers Kia in accordance with Ark. Code Ann. § 23-112-309 in the amount of five hundred dollars (\$500.00) per day for ten (10) days for an aggregate amount of five thousand dollars (\$5,000.00).

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 indicate this request 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: 

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**Greg Kirkpatrick, Director**

Date: 9/22/2016