

**BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION**

**IN THE MATTER OF:**

**AP# 16-011**

**SUBARU OF LITTLE ROCK**

**NOTICE OF VIOLATION**

IT HAS BEEN determined by the Arkansas Motor Vehicle Commission (hereinafter "Commission") that Subaru of Little Rock, a licensed dealer, violated the motor vehicle commission statutes 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. Subaru of Little Rock is a licensed new motor vehicle dealer located at 12121 Colonel Glenn Rd, Little Rock, AR.
- F2. On August 25, 2016, Commission investigator Gordon McCoy traveled to Walmart at 17309 I-30 S in Benton, Arkansas, to follow-up on an off-premise used vehicle sales event that was advertised by mailer. Mr. McCoy observed a number of used vehicles for sale. During the two (2) hours he was present at the sale, Mr. McCoy observed several consumers attend the event carrying the mailer to claim their one thousand dollar (\$1,000.00) prize.

- F3. The mailer promoted a vehicle sales event taking place on August 25, 2016 – August 29, 2016. The mailer included the following claims:
- A. MORE CASH – MORE WINNERS;
  - B. 10 - \$1,000.00 WINNERS & 1- \$10,000.00 WINNER! HONDA ATV. 60”  
FLAT SCREEN TV;
  - C. CONFIRMED WINNERS HAVE BEEN MAILED!;
  - D. YOUR CHANCE TO WIN HAS NEVER BEEN BETTER!; and
  - E. IF YOUR NUMBERS MATCH, YOU’VE WON! CALL 866-306-7101  
NOW!
  - F. The four (4) vehicles advertised in the mailer include a disclaimer that states  
“Only one vehicle available at this price.”
  - G. The mailer contained a “Discount Voucher” for \$2,532.00 with the  
disclaimer that states “Applies to purchase of used vehicles priced over  
\$10,000.”
- F4. The mailer also contained a scratch off section with a list of thirteen (13) prizes corresponding to thirteen numbers. Of these thirteen (13) prizes, ten (10) numbers corresponded to a one thousand dollars (\$1,000.00) prize.
- F5. Mr. McCoy obtained a discarded flyer with the five (5) covered numbers scratched off to reveal 4-0-1-7-2. According to the prize list adjacent to the scratch off numbers, the recipient of this flyer won one thousand dollars (\$1,000.00).
- F6. The advertising mailer advised the recipient to call 866-306-7101 to claim the prize.

F7. Mr. McCoy observed that customers did not receive the five dollar (\$5.00) Walmart gift card referenced in the advertising disclaimer, and instead were told to return later.

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

**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 including the failure to have a number of vehicles available to meet reasonably anticipated demand according to Rule 3 Advertising, Section 2 (B)(3)(a).

#### CHARGES

- C1. Subaru of Little Rock 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. Subaru of Little Rock 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. Subaru of Little Rock violated Commission statutes and Rule 3 on Advertising when they had only one (1) vehicle available at the advertised price. 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 L6.

**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 Honda World warrant a suspension of Honda World'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 Honda World'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 Honda World 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: \_\_\_\_\_

  
Greg Kirkpatrick, Director

Date: \_\_\_\_\_

10/3/2016