

BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF:

AP# 12-001

ORR PRE-OWNED SUPERCENTER OF HOT SPRINGS

NOTICE OF VIOLATION

IT HAS BEEN determined by the Arkansas Motor Vehicle Commission (hereinafter "Commission") that Orr Pre-Owned Supercenter of Hot Springs (hereinafter "Orr Pre-Owned"), a licensed dealer, utilized false and misleading advertising. This 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, and Commission Rule 3. If the Commission determines that a firm or individual has violated the Commission Act or Rules, the Commission may revoke or suspend the license, or impose a civil penalty in lieu of revocation or suspension.

FACTUAL BACKGROUND

- F1. Orr Pre-Owned is a licensed dealer by the Commission as a branch location for Orr Cadillac Toyota in Hot Springs, Arkansas.
- F2. On April 11, 2012, the Commission received a copy of a complaint sent by Bob Hawthorne to the Arkansas Attorney General's office. The complaint was in regards to an advertising flyer Mr. Hawthorne received via U.S. Postal Mail from Orr Pre-Owned for a "Nationwide Sell Off" event occurring on April 9, 2012, to April 14, 2012. Mr. Hawthorne submitted a complaint to the Commission on April 23, 2012.
- F3. Mr. Hawthorne states on April 9, 2012, he visited Orr Pre-Owned to collect his winning prize from the scratch off portion of the advertisement, but was advised

he did not win. He was informed by a salesman named Tex Holmes that 30% of people coming in thought they had won some money and were confused by the advertisement.

- F4. The “Scratch and Win!” instructions on back of the Orr Pre-Owned advertisement states the following: “Scratch off all circles on cards. If you match 3 amounts in a row (horizontal, vertical, or diagonal) YOU WIN! There are 3 cards. 3 Chances to Win. Play all 3.” Mr. Hawthorne’s third scratch card shows 500, 3 times in a horizontal row.
- F5. The second to the last page of the Orr Pre-Owned advertisement lists the following four possible winning prizes: \$25,000 Cash, a 2012 Toyota Camry, Up to 500 Golden Coins, or \$100 Cash. Each prize has either one or two asterisks with a disclaimer statement at the bottom of the page in small font.
- F6. Jennifer Padgett, the Commission’s Fiscal Manager and advertisement compliance officer reviewed the flyer for advertising violations, and sent a letter to Orr Pre-Owned on April 26, 2012, outlining the following violations:
1. The prices for each vehicle did not reflect the full cash price for the vehicles, and must include the service and handling fee;
 2. Used vehicles reflected discount offers;
 3. The advertisement included disclaimers that are deceptive, misleading, and significantly altered the message of the advertisement;
 4. The vehicles were not clearly identified by year, make or model; and,
 5. The advertisement listed federal truth in lending triggering terms that require further disclosures.

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. Rule 3 Advertising Sections 1, 2 and 5.

CONCLUSIONS OF LAW

- C1. Orr Pre-Owned violated Commission statutes and rules when utilizing a false and misleading advertisement.
- C2. Orr Pre-Owned violated Commission statutes and rules when discounting used vehicles and failing to provide the full cash price.
- C3. Orr Pre-Owned violated Commission statutes and rules when utilizing deceptive and misleading disclaimers.
- C4. Orr Pre-Owned violated Commission statutes and rules when failing to identify the vehicles in the advertisement with make, model, and year information.
- C5. Orr Pre-Owned violated Commission statutes and rules when failing to list the federally required truth in lending terms.

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). 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, Executive Director

Date: _____

Case: AP #12-001
ORR PRE-OWNED SUPERCENTER OF HOT SPRINGS

ACKNOWLEDGEMENT

I, _____, owner or a representative of Orr Pre-Owned Supercenter of Hot Springs, acknowledge that I received and read the foregoing Notice of Violation.

I admit that I violated the Arkansas Motor Vehicle Act and/or Rules as alleged in the attached Notice of Violation, and agree to pay a civil penalty in the amount of two thousand five hundred dollars (\$2,500.00). My remittance in that amount is enclosed

I desire to contest the allegations set forth in the attached Notice of Violation and the proposed civil penalty.

Signature

Date