

BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF:

H# 12-004

ORR PRE-OWNED SUPERCENTER OF HOT SPRINGS

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

the Arkansas Motor Vehicle Commission (hereinafter "Commission") held a hearing on October 17, 2012, to determine whether Orr Pre-Owned Supercenter of Hot Springs (hereinafter "Orr Pre-Owned"), violated the Arkansas 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. The charges before the Commission concerned whether Orr Pre-Owned utilized false and misleading advertising.

The Respondent, Orr Pre-Owned was represented by Tim Bulter.

After hearing testimony from Executive Director Greg Kirkpatrick, Fiscal Officer Jennifer Padgett, Respondent Tim Bulter, and reviewing documents received in to evidence, the Commission makes the following Findings of Fact, Conclusions of Law and Order:

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 May 22, 2012, the Commission received an advertising mailer from Bob Hawthorne of Hot Springs, Arkansas. Mr. Hawthorne stated in the attached May 15, 2012, letter that his friend received the mailer from Orr Pre-Owned for a "Push, Pull, or Drag Your Vehicle to Us!" event occurring on Wednesday, May 9, 2012, to Tuesday, May 15, 2012.

- F3. 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 May 23, 2012, outlining the following violations:
1. Used vehicles reflected discount offers;
 2. The advertisement included disclaimers that are deceptive, misleading, and significantly altered the message of the advertisement;
 3. The vehicles were not clearly identified by year, make or model;
 4. A statement offering a specific trade-in allowance was used; and,
 5. The advertisement listed federal truth in lending triggering terms that require further disclosures.
- F4. The Commission notified Orr Pre-Owned on April 26, 2012, in a letter from Ms. Padgett detailing violations related to an April 6, 2012 advertising mailer. This mailer resulted in a Notice of Violation issued on May 24, 2012, to Orr Pre-Owned for utilizing false and misleading advertisements and a fine of two thousand five hundred dollars (\$2,500.00). Orr Pre-Owned paid this fine on May 30, 2012.
- F5. On July 20, 2012, the Commission issued a Notice of Violation, AP# 12-002, in which the Ad Hoc Committee recommended a fine of two thousand five hundred dollars (\$2,500.00). On July 25, 2012, Orr Pre-Owned contested the allegations set forth in the Notice of Violation.

CONCLUSIONS OF LAW

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

- C1. Orr Pre-Owned violated Commission statutes and Rule 3 on Advertising when utilized false and misleading advertisement.
- C2. Orr Pre-Owned violated Commission statutes and Rule 3 on Advertising when it discounted used vehicles and failing to provide the full cash price in an advertising mailer.
- C3. Orr Pre-Owned violated Commission statutes and Rule 3 on Advertising when it utilized deceptive and misleading disclaimers in an advertising mailer.
- C4. Orr Pre-Owned violated Commission statutes and Rule 3 on Advertising when it failed to identify the vehicles in an advertising mailer with make, model, and year information.
- C5. Orr Pre-Owned violated Commission statutes and Rule 3 on Advertising when it utilized a statement that offered a specific trade-in allowance in and advertising mailer.
- C6. Orr Pre-Owned violated Commission statutes and Rule 3 on Advertising when it failed to list the federally required truth in lending terms in an advertising mailer.

ORDER

The Commission finds the violations of Commission statutes and Rule 3 on Advertising by Orr Pre-Owned warrants a suspension of Orr Pre-Owned's license for failure to comply with provisions of the Commission Act or any Rule promulgated by the Commission as per Ark. Code Ann. § 23-112-308(a)(4). The Commission finds that in lieu of a suspension of Orr Pre-Owned's license, a monetary penalty should be issued in accordance with Ark. Code Ann. § 23-112-309.

The monetary penalty is waived in this matter and no amount is due.

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 _____
Sandy Stroope, Chairman

Date: _____