

SUBJECT: CONSUMER PROTECTION – AUTOMOBILE ADVERTISING
ATTORNEY GENERAL – PUBLIC PROTECTION UNIT
ADOPTED PURSUANT TO 9 V.S.A. SECTION 2453(c)

RULE CP 118
Effective Date: 12/10/98

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CP 118.01 Definitions

(a) "ADVERTISEMENT," "ADVERTISING" or "AD," unless otherwise noted, means any oral, written or graphic statement made by, for, or in the name of a car dealer that is in any manner connected with the solicitation of business. The term includes statements made in newspapers or other publications or on radio or television, or contained in any sign, motor vehicle window sticker, circular, brochure, letter, or other writing.

(b) "DEALER" means a person or company that is regularly and principally engaged in the business of selling or leasing motor vehicles, or that solicits the sale or lease of such vehicles, to individuals for their own use.

(c) "MONRONEY STICKER" means the window sticker required by the federal Automobile Information Disclosure Act, 15 U.S.C. §1231 et seq.

(d) "MOTOR VEHICLE" or "VEHICLE" means any self-propelled passenger motor vehicle.

(e) "NEW MOTOR VEHICLE" means a passenger motor vehicle which has been sold to a new motor vehicle dealer by a manufacturer or distributor and which has not been used for other than demonstration or driver education purposes and on which the original title has not been issued from the new motor vehicle dealer.

(f) "USED MOTOR VEHICLE" means any vehicle other than a new motor vehicle.

CP 118.02 General Provisions

(a) ENFORCEMENT NOT LIMITED: The fact that a particular advertising practice is not expressly referred to in this rule does not limit the Attorney General's authority to take legal action with respect to that practice under the Consumer Protection Act. Dealers are also responsible for complying with other laws and regulations affecting advertising (for example, federal Truth-in-Lending, Truth-in-Leasing, and regulations of the Federal Trade Commission).

(b) **GENERAL PROHIBITION AGAINST UNFAIR AND DECEPTIVE ADVERTISING:** All automobile advertising by dealers, whether printed or broadcast, shall be in plain language, clear and conspicuous and non-deceptive. By way of example and not of limitation, the following shall be considered deceptive:

- (1) direct statements or reasonable inferences that have the tendency to mislead consumers;
- (2) advertising whose overall impression has the tendency to mislead consumers;
- (3) disclaimers that contradict, confuse or unreasonably limit or significantly alter a principal message of an advertisement;
- (4) the failure to disclose any limitations, disclaimers, qualifications, conditions, exclusions or restrictions;
- (5) statements susceptible to both a misleading and a truthful interpretation;
- (6) statements for which the dealer does not have reasonable substantiation; and
- (7) a first contact with a consumer secured by deception, even though the true facts are subsequently made known to the consumer.

(c) **COMPLAINTS NOT NECESSARY:** An advertisement may be deceptive even though no consumer has complained about it.

(d) **DISCLOSURES:** All disclosures in advertising shall be clear and conspicuous and in close proximity to the terms they modify.

(e) **SELLING IN ACCORDANCE WITH THE TERMS:** A dealer shall not refuse to sell a motor vehicle in accordance with any terms or conditions which the dealer has advertised; except that it shall not be considered a violation of this subsection where either:

- (1) the dealer can document that the advertised term was the result of an error on the part of the advertising medium or an outside advertising agent, or
- (2) the error was made in good faith by the dealer and was clearly and conspicuously a mistake (e.g., a vehicle advertised at "\$1,000" rather than "\$10,000"), and
- (3) the dealer corrected the error as soon as he or she knew or reasonably should have known of it.

(f) **RESPONSIBILITY FOR ADVERTISING:** The dealer is responsible for knowing the law as it applies to advertising and is ultimately responsible for his or her advertising product. This does not preclude a finding that parties other than the dealer are also liable for a deceptive ad.

CP 118.03 Advertising Layout

The following constitute unfair and deceptive acts or practices:

- (a) **FOOTNOTES AND ASTERISKS:** Using footnotes or asterisks which, alone or in combination, contradict, confuse, significantly alter or unreasonably limit the principal message of the ad.
- (b) **PRINT SIZE:** Using any type size so small that it is not easily readable if it alters a principal message of the ad.
- (c) **COLOR CONTRASTS:** Using color contrasts which render the text difficult to read if it alters a principal message of the ad.
- (d) **PHOTOS AND ILLUSTRATIONS:** Using inaccurate photographs or illustrations when describing specific automobiles.
- (e) **ABBREVIATIONS AND TECHNICAL JARGON:** Using any unexplained abbreviations or technical jargon which is unfamiliar to the general public, with respect to any aspect of the advertisement on which consumers could reasonably be expected to rely, if it would significantly alter the ad.

CP 118.04 Specific Advertising Provisions

- (a) **MOTOR VEHICLE DETAILS:** When the price or credit terms of a motor vehicle are advertised in any print media, the ad shall identify the vehicle as to year, make, and model.
- (b) **"FACTORY" AND "EXECUTIVE" VEHICLES:** A motor vehicle shall not be advertised:
 - (1) as a "factory" vehicle if it is not new.
 - (2) as an "executive" vehicle unless it has been used exclusively by factory, manufacturer, or distributor personnel.
 - (3) as "new" if the motor vehicle is a driver education vehicle, unless the vehicle is disclosed as such.
- (c) **"FULLY EQUIPPED," "LOADED," ETC.:** A vehicle shall not be advertised in any print media as "fully equipped" or "loaded," or similar terms unless the following minimum equipment is available in that make or model: air conditioning, power steering, power brakes, AM/FM radio, power windows, and cruise control.
- (d) **PRICE:** An advertised selling price shall represent the actual total purchase price of the vehicle, excluding only tax, registration, and title fees. For example, any freight or destination charges or dealer preparation fees shall be included in the advertised price. Dealer installed options or accessories which are required or routinely installed on every vehicle, or which are

already installed on the advertised vehicle at the time the ad appears, shall also be included in the advertised price. Only options to be installed at the request of the customer shall be omitted from the advertised price.

(e) **SUPPLEMENTAL STICKER PRICES:** When a vehicle is offered for sale for which a Monroney sticker is required by the federal Automobile Information Disclosure Act, the dealer shall not charge more than the manufacturer's suggested retail price as defined in section 118.05(k)(1) unless the dealer's asking price or supplemental price is disclosed on a supplemental sticker adjacent to the window sticker.

(f) **SALES PRICE AVAILABLE TO ALL:** Advertised vehicles shall be sold at or below the advertised price regardless of whether the customer has actually seen the advertised price prior to the sale, unless the ad discloses that a customer must bring the ad to the dealer in order to receive the sale price, and the sale price is not given to anyone who does not do so.

(g) **AVAILABILITY:** During the course of an advertised sale, there shall be a sufficient supply of the advertised vehicles at the advertised price on the dealer's lot to meet reasonably expected public demand, or the ad shall disclose the number of vehicles available on the lot at the advertised price. If a vehicle is not in stock but is available only by order, the ad shall disclose this fact; in that case, the dealership must be able to deliver the car within a reasonable amount of time. "Reasonably expected public demand" shall be determined in relation to a period of time equal to the duration of the ad or five days, whichever is longer. This provision does not require, however, that the total supply necessary to meet reasonably expected public demand for an entire sale need be available on the dealer's lot for the full duration of the sale or on any particular day of the sale.

(h) **DURATION OF ADVERTISEMENT:** An advertised sale or offer shall last for five days after the ad is disseminated, unless otherwise noted, or unless the duration is shortened because the sale or offer was made in error as defined in section 118.02(e) and the dealer has corrected the error with a new ad within the five-day period. If the duration of the advertised sale or offer is for some other, limited amount of time, then this time limitation shall be disclosed in the ad.

CP 118.05 Savings Claims, Rebates, and Trade-ins

The following advertising practices constitute unfair or deceptive acts or practices in commerce:

(a) **VOLUME DEALER:** Using statements about dealership size, sales volume or inventory to represent or imply that the dealer sells motor vehicles at a lower price, as a result of such size, volume or inventory, than do other dealers, unless that fact is true.

(b) **"FACTORY OUTLET":** Using terms such as "factory outlet," "factory authorized sale," or similar terms (which imply that the dealer has a special connection or relationship with the manufacturer that is greater or more direct than that of other dealers), when in fact no such special connection or relationship exists, or when any such special connection or relationship has no discernible effect on vehicle prices.

(c) "LIQUIDATION SALE": Advertising a "liquidation sale," "public notice," "public sale," or similar terms, where the sale is not required by court order, by operation of law, or by impending cessation of the dealer's business.

(d) "FREE": Using the word "free" or similar terms ("bonus," "no charge," etc.) in connection with the purchase of a vehicle whose price is arrived at through bargaining, or if the offer is contingent on purchasing something whose price is marked up to recover all or part of the cost of the "free" merchandise.

(e) "DEALER COST," "DEALER INVOICE," ETC.: Using terms which represent that a vehicle is available for sale at a price below cost, at cost, or slightly above cost, such as "dealer cost," "dealer invoice," "inventory price," "factory invoice," "wholesale," "factory billing," or similar terms when:

(1) the price in fact includes holdbacks or other payments or credits from the manufacturer to the dealer; or

(2) dealer profit will be made up by a decreased trade-in allowance and/or increased finance charges.

(f) UNSUBSTANTIATED PRICING: Advertising "lowest prices," "lower prices than anyone else," "lowest prices of the year," or similar terms, if such claims cannot be substantiated by the dealer.

(g) "AS LOW AS," "FROM," "REBATES UP TO," and STOCK NUMBER ADS: Using the terms "as low as [a certain price or finance charge]," "from [a certain price]," "rebates up to [a certain dollar amount]," or similar terms, or stating a stock number, unless, during the course of the advertised sale, either:

(1) there is on the dealer's lot a sufficient supply of the advertised vehicles at the lowest advertised price or with the highest advertised rebate (as the case may be) to meet reasonably expected public demand, or

(2) the ad discloses the number of vehicles available on the dealer's lot at the lowest advertised price or with the highest advertised rebate (as the case may be). The number of vehicles may be disclosed by stating the stock number or numbers of the vehicles, using the words "stock number" or a recognizable abbreviation of those words. "Reasonably expected public demand" shall be determined in relation to a period of time equal to the duration of the ad or five days, whichever is longer. This provision does not require, however, that the total supply necessary to meet reasonably expected public demand for an entire sale need be available on the dealer's lot for the full duration of the sale or on any particular day of the sale.

(h) REBATE OFFERS: Advertising a "rebate" or similar terms unless the rebate is provided through a manufacturer's rebate program. If the selling price of the advertised vehicle will be increased to offset the rebate in part or in whole, the ad shall disclose this fact.

(i) "MONEY-BACK GUARANTEES" OR "FREE TRIALS": Advertising "satisfaction guaranteed," "money-back guarantee," "risk free trial," or similar terms unless the dealer will readily refund the full purchase price of the vehicle at the buyer's request, and any conditions or limitations are disclosed.

(j) TRADE-INS:

(1) Advertising a minimum or "guaranteed" trade-in, or similar terms, without also disclosing that the selling price of the advertised vehicle is or may be higher than it would have been but for the minimum trade-in, if that is the case.

(2) Advertising that a specific price will be paid for trade-in vehicles unless either the advertised price will be paid for all such vehicles, or the ad discloses any conditions which such vehicles must meet before such price will be paid.

(3) Using terms such as "up to \$x" to describe the range of prices that will be paid for trade-in vehicles unless the ad discloses the factors (such as age, condition or mileage) that will be used to determine the amount to be paid for a particular trade-in vehicle.

(k) COMPARATIVE PRICING: Violating Consumer Protection Rule (CP) 110 (Deceptive Pricing), except that a dealer may advertise a comparison with a manufacturer's suggested retail price (MSRP), as long as:

- 1 . the advertised MSRP is in fact the "bottom line" manufacturer's suggested retail price listed on the Monroney sticker (including all accessories and options physically attached to the vehicle at the time of delivery to the dealer, and any charge to the dealer for transportation to the dealer), after all manufacturer discounts and manufacturer savings listed on the Monroney sticker have been deducted;
 2. the advertised MSRP does not include any charges added by the dealer;
 3. the advertised MSRP is referred to as the "manufacturer's suggested retail price" or "MSRP";
- (4) the advertisement clearly and conspicuously discloses that "the manufacturer's suggested retail price [or MSRP] is a price set by the manufacturer and does not necessarily reflect the price actually paid by consumers," using these or similar words; and
- (5) the advertisement does not otherwise conflict with or detract from these requirements and disclosures.

(i) MANUFACTURER DISCOUNTS: Advertising a discount offered by the manufacturer, including manufacturer rebates and other reductions in prices offered by the manufacturer, without disclosing that the manufacturer is the source of the discount.

CP 118.06 Credit Sales and Lease Advertising

(a) **FINANCING RATES:** If an advertised financing rate will affect the price of a vehicle, that fact shall be disclosed. Where financing is described in terms that do not trigger disclosures under the federal Truth-in-Lending Act (for example, "below market financing"), the ad shall nevertheless disclose all conditions and limitations on the advertised financing other than creditworthiness. For instance, a dealer shall not fail to disclose a required down payment or short term of loan.

(b) **"NO MONEY DOWN":** The statement "no money down" or similar terms means that the dealer will deliver the advertised vehicle, so described, to the purchaser without any initial payment or other initial obligation other than the negotiation of a lien contract for the advertised purchase price.

(c) **"EVERYBODY FINANCED":** A dealer shall not advertise "everybody financed," "no credit rejected," "we finance anyone," or similar terms implying that no prospective credit purchaser will be rejected because of his or her inability to qualify for credit or some other reason unless such statements are in fact true. If as a result of extending credit in these circumstances the dealer will increase the price of the vehicle, the ad shall disclose this fact.