



COLORADO

Department of Revenue

Enforcement Division - Auto Industry

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DEALER BOARD MEMORANDUM --- 2015-01

ATTN: ALL MOTOR VEHICLE & POWERSPORTS DEALER LICENSEES

FROM: COLORADO MOTOR VEHICLE DEALER BOARD

RE: ADVERTISING ISSUES – RULES 5 and 13 – DEALER HANDLING FEES (D&H)

The Colorado Motor Vehicle Dealer Board is issuing this memorandum due to concerns that were raised at our February 17, 2015, Board meeting. We believe this memorandum is necessary, to make the Board's position clear, related to our advertising regulations. This memorandum is specific to Rules 5 and 13, within the advertising regulations. The Board is aware of continuous violations of these rules, specifically related to the addition of D&H fees after the advertised price is displayed. Our expectation is for absolute compliance with Rules 5 & 13. We are concerned and dismayed at the inability of many of our licensees to comply with these rules. The Regulations and Rules are as follows:

REGULATION 12-6-118(3)(k) & REGULATION 12-6-520(3)(i)
(Motor Vehicle) (Powersports)

Advertising shall be construed to be misleading or inaccurate in the following particulars:

Rule 5. Advertising in such a manner which utilizes an asterisk or other reference symbols to contradict or materially change the meaning of any advertising statements.

Rule 13. Advertising the price of a vehicle without including all costs to the purchaser at the time of delivery, except sales tax, finance charges, cost of emissions test, other governmental fees or taxes, and transportation costs, incurred after sale, to deliver the vehicle to the purchaser at the purchaser's request.

Rule 13 does not allow the addition of D&H to the advertised price.

Attempting to add a D&H fee by disclosing it in some manner at the bottom of the advertisement is a violation of Rule 5.

Adding any fee to the advertised price, other than as allowed by the regulation, is prohibited. This includes D&H or fees by some other name, i.e. "compliance fee"..."dealer document fees"..."acquisition fees", etc.

If a dealer wants to charge D&H, it must be included in the advertised price. It is allowable to charge the fee in an "A + B = C" concept, where "A" is the vehicle's price before Dealer and Handling charges are added, "B" is Dealer and Handling charges, and "C" is the advertised price, provided that "C" is always displayed at least as prominently as "A" and "B" are displayed.

Dealers are ultimately responsible for all advertisements where their name appears. This includes, but is not limited to, advertising created by in-house staff, advertising created by a marketing company employed by the dealership, or a third party "consolidator" of information supplied by the dealer.

The Board feels compelled to note that the Auto Industry Division recently impaneled a focus group to study areas of advertising directly related to the electronic age we live in. The group was named the "Electronic Media & Technologies Focus Group" (EMTFG). This group studied a variety of "internet" based advertising matters related to our industry. They released their comprehensive report in April of 2014. The Board encourages each of our licensees to read this report. The report can be found at www.colorado.gov/enforcement/aid under the "What's New" section on the lower left hand corner of the main page.

In addition to the report, two main objectives came out of the EMTFG's work. They were:

- 1) For the Board to update their advertising regulations as they had not been modernized in a number of years.
 - The Board and the Division began a comprehensive rulemaking process. That process culminated with the Board promulgating updated advertising rules that became effective on December 31, 2014. It should be noted that Rule 13 changed very little and with no impact to the D&H issue that has remained constant for many years.
- 2) For the industry associations to attempt to put together a "best practices" guideline document to help licensees understand and comply with advertising issues. Several states, including NADA, have engaged in this type of endeavor.
 - The Board supports this concept as an educational component to the Board's overall mission. The Board is encouraged that one or more of the industry associations are committed to this endeavor and look forward to seeing and, if appropriate, endorsing their final work product. The Board believes "industry self-regulation" on matters directly related to advertising are attainable and paramount to the overall health of the industry.

The Board remains committed to consumer protection through education, compliance and enforcement. The enforcement of our regulations must remain balanced, but must be effective. Continued violations of advertising Rule 13 will not, and cannot be tolerated. We are committed to providing a "level playing field" to our licensees no matter the size of their business operations. Dealers that allow their advertising to stray outside the regulations create consumer harm/mistrust and a competitive disadvantage to the dealers that are in compliance. Continuous violations of Rules 5 and 13 compromise the integrity of our industry and the integrity of the Board. To assure compliance, this Board will apply severe disciplinary sanctions, including significant fines and/or suspensions for any violations related to the D&H advertising issues.

Colorado Motor Vehicle Dealer Board
Signed and dated this 17th day of March, 2015

Jason Wagner, President
Public Member



Stan Martin
Used Motor Vehicle Dealer Member



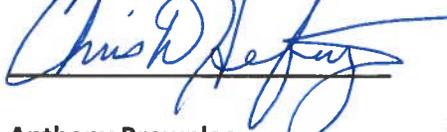
Robert Endter
Public Member



Joe Gebhardt, 1st Vice President
New Motor Vehicle Dealer Member



Chris Hefty
Public Member



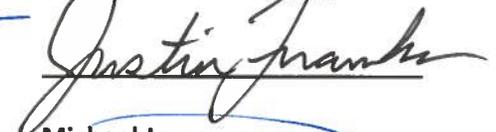
Anthony Brownlee
New Motor Vehicle Dealer Member



Deborah Thompson, 2nd Vice President
Used Motor Vehicle Dealer Member



Justin Franks
Used Motor Vehicle Dealer Member



Michael Jorgensen
New Motor Vehicle Dealer Member

