

137-020-0050

Motor Vehicle Advertising

(1) For purposes of this rule, the definitions specified in OAR 137-020-0020 shall apply.

(2) Violations: It is unfair or deceptive in trade or commerce for any person to advertise motor vehicles if:

(a) Trade-in Value - The advertisement represents that motor vehicles or other property to be received in trade in conjunction with the purchase of a motor vehicle:

(A) Will be valued at a specific amount, range of amounts or guaranteed minimum amount; or

(B) Uses a multiple, such as “double,” or other type of increased trade-in allowance;

OFFICIAL COMMENTARY: It is a violation of this rule to guarantee any monetary amount or other value on any vehicle or property used as a trade-in on a motor vehicle transaction. This includes any reference to any trade publication valuation, for example, it would be unlawful to state that a trade-in would be valued at “Kelley Blue Book” or like publication.

(b) Dealer Rebates - The advertisement represents that purchasers of vehicles will receive a cash rebate, discount certificate, coupon, cash card for products or services or other similar promotion unless it is offered by a manufacturer or another party, independent of the dealer and without dealer participation;

OFFICIAL COMMENTARY: Rebates controlled by the dealer may be illusory because the dealer may simply increase the offering price or limit the dealer’s negotiated price by the same amount as the ostensible value of the rebate. The rule eliminates this possibility by prohibiting such rebates. Therefore, no monetary or similar form of remuneration to a consumer is allowed in the offering of a motor vehicle, unless it is a promotion paid for by a party wholly independent of the dealer and that third party is not paid by the dealer for offering the promotion.

(c) Clarification of sale or lease - The advertisement includes lease and sale offers in the same advertisement without making a clear and conspicuous distinction as to which terms apply to the sale and which apply to the lease;

(d) Invoice advertising - The advertisement represents that motor vehicles are offered for sale at a price that is compared in any manner to the dealer’s “cost” or terms of essentially identical import unless the advertisement:

(A) Exclusively uses the term “invoice” or “invoice price”; and

(B) Complies with the following:

- (i) The invoice price shall be the final price listed on the manufacturer's invoice after subtracting any amount identified on the invoice as being held back for the dealer's account, and after subtracting any advertising fees or manufacturer to dealer rebates or incentives;
- (ii) Purchasers shall be able to purchase any vehicle described by the advertisement at the offering price;
- (iii) The invoice shall be readily available for inspection by prospective customers;
- (iv) The advertisement clearly and conspicuously states that the invoice price for the sale of the vehicle is the dealer's actual cost after subtracting all holdbacks, incentives, manufacturer to dealer rebates, advertising incentives, promotional fees or any other consideration which will be paid by the manufacturer to the dealer;
- (v) A manufacturer to consumer rebate is not included in the formula to arrive at the "invoice price." Consumers are entitled to any such rebate in addition to any savings advertised with the "invoice price" offer; and
- (vi) The vehicles being so advertised have not had aftermarket items, including, but not limited to, additional goods, accessories, services, products or insurance added to them at a price higher than the dealer's actual cost.

OFFICIAL COMMENTARY: This rule mandates the use of the word "invoice" or "invoice price" when any advertisement is compared to a dealer's cost. The rule makes it clear that all holdbacks and other funds the dealer will get from the manufacturer must be subtracted from the offering price. The rule does not require the vehicle be sold for the invoice price, but only that the invoice price be the reference price used as a starting point. For example, it is lawful to state a certain model of car is for sale at \$500 over invoice price, as long as the referenced adjusted invoice price is after all of the appropriate subtractions. Also, manufacturer to consumer rebates belong to the consumer and the consumer is entitled to those rebates in addition to the advertised "invoice price." This rule does not require the dealer to subtract promotional and sales incentives that are not known to the dealer at the time of the advertisement or listed on the invoice, such as volume sales incentives or special promotional manufacturer to dealer incentives and incentives that are calculated based upon special criteria. A dealer or broker may not, however, offer a vehicle for sale referenced to the invoice price and simply pack the price of the vehicle by adding aftermarket items not sold at true invoice price. This practice would simply add back profit on the vehicle and the consumer's cost would not be the invoice price. A vehicle advertised at invoice must be sold at invoice.

(e) Buy-Down Rates - The advertisement represents that financing is available for the purchase of motor vehicles at a buy-down rate unless the advertisement includes a clear and conspicuous disclosure that the interest rate is not sponsored by the manufacturer, if

such is the case, the amount of the buy-down is reflected in the Federal Truth in Lending Statement, and the advertisement clearly and conspicuously states that “the cost of the buy-down may increase the price of the vehicle.” If the buy-down will increase the cost of the vehicle, the dealer shall offer the consumer the option of purchasing the vehicle without the buy-down rate at the offering price less the cost of the buy-down. If any specific terms must be met in order to qualify for the advertised buy-down rate, they shall be clearly and conspicuously disclosed. Examples are large down payments, only available to the highest credit ratings, hidden finance charges, unusual terms of the loan or higher selling prices;

(f) Clear and Conspicuous/Complete Offer - The advertisement:

(A) Fails to incorporate a material statement or fails to use any disclosure or disclaimer which is required by law or by these rules, or without which the advertisement would be false, incomplete, inaccurate, deceptive or misleading;

(B) Fails to incorporate a material statement or uses any disclosure or disclaimer which is not presented in a clear and conspicuous manner;

(C) Uses one or more footnotes or asterisks which, alone or in combination, confuse, contradict, materially modify or unreasonably limit the material terms or availability of any advertised statement; or

(D) Uses images, words, phrases, initials, abbreviations or any other items which are not clear and conspicuous.

OFFICIAL COMMENTARY: An advertiser must review any advertisement before publication to ensure it is truthful and “clear and conspicuous.” Advertisers are not allowed to fabricate information or use false, misleading or unsubstantiated representations in advertisements. It is important that advertisers understand that in order for material information to be “clear and conspicuous,” it must be in close proximity to the information it defines or clarifies and not in an obscure location of the advertisement.

When an advertisement is presented in a visual format, disclosures must be large enough to be read by the average person viewing the advertisement. The size and type of media used will dictate the required size of a disclosure. The definition of clear and conspicuous, in OAR 137-020-0020, details the requirements for television, radio, print and internet disclosures. Other visual media, including, but not limited to, billboards, hand-held posters or handbills, must also comply with the same standards as other visual media.

Each advertisement shall be evaluated for its overall impression. The public should not have to weigh each word, hunt for the hidden meaning of each statement, or search for inconspicuous disclaimers. Advertisers shall not advertise by placing important disclosures in small print, inconspicuously buried at the bottom of the advertisement, or speaking so fast or softly that an average person cannot understand what is being said.

An advertisement shall not contain material that is not commonly understood by an average person who is not involved in the motor vehicle industry. An asterisk may be used to give additional or qualifying information about a word or term. Asterisks or other reference symbols, however, may not be used as a means of contradicting, disclaiming or substantially changing the meaning of any advertised statements. Multiple asterisks must be clearly explained and the information for each must be separated from other referenced disclosures. Use of multiple reference symbols which combine all information together in one paragraph at the bottom of an advertisement in small print is not clear and conspicuous.

(g) Bait and Switch Rules - An advertisement offers vehicles for sale or lease, vehicles at a specific or discounted price, or specific interest rates or finance terms when such assertions are deceptive, false, misleading or not sincere good faith offers, including, but not limited to, the following:

(A) Statements or illustrations used in any advertisement which create a false impression of the grade, quality, year of model, size, usability, origin, price, interest rate, down payment, monthly payment, make, value or model of the product offered, or which misrepresent the product, interest rate or terms of sale or lease in such a manner that later, on disclosure of the true facts, the purchaser may be switched from the advertised vehicle to another vehicle or to a higher interest rate or different finance offer (See 16 CFR § 238, FTC Guides Against Bait Advertising);

(B) Except as otherwise allowed by subsection (2)(j) of this rule, advertising a motor vehicle for sale or lease when it is not in the possession of the dealer, willingly shown to the consumer or sold at the advertised price and terms. If already sold or leased, the advertiser shall, upon request of a consumer, show proof of the sale or lease of the motor vehicle which was advertised;

(C) Using a headline or major theme in an advertisement to make an offer of a low or special interest rate, down payment or monthly payment which makes it appear that the special offer applies to all or a majority of vehicles offered in the advertisement when it only applies to a limited number of vehicles;

(D) Using discount or loss leader price advertising, unless the advertisement lists, in close proximity in print type no less than half as large as the offering price, the number of vehicles available at the offering price. The listed number of vehicles must be available on the day the offer is advertised at the offered price;

(E) Using a deceptive, false or misleading offer to secure the first contact or interview, even if the true facts are subsequently made known to the consumer;

(F) Using any act or practice to discourage the purchase of the advertised vehicle as part of a scheme to sell another vehicle;

(G) Using any act or practice as part of a scheme to raise the interest rate, the down payment or the monthly payment to one higher than advertised;

(H) Advertising limited availability of vehicles, such as “only 1 at this price,” in order to induce consumers into a dealership when the dealership has other similar vehicles available for sale at the same price or for the same terms;

(I) Offering finance terms, including, but not limited to, low down payments, low monthly payments or low interest rates or finance terms, which the advertiser cannot provide, does not intend to provide, does not want to provide, or which the advertiser knows or should know are not available or cannot be provided as advertised. The purpose of the offer is to switch borrowers from the advertised finance offer to other finance terms, usually at a higher interest rate or on a basis more advantageous to the person making the offer;

(J) Offering a low monthly lease payment based upon a capitalized cost reduction that is so large the advertiser knows or should have known:

(i) It is not a bona fide offer; or

(ii) It is so much more than an average capitalized cost reduction that most consumers would not be expected to make such a large payment for the advertised vehicle.

OFFICIAL COMMENTARY: Bait advertising is an alluring but insincere offer to sell a product or service that the advertiser in truth does not intend or want to sell. It can also be in the form a finance offer, such as low monthly payments, low down payments or low interest rates when the advertiser knows most consumers will not qualify for the finance terms offered. A bait advertisement may also be an offer that does not apply to the majority of vehicles advertised. The purpose is to switch consumers from buying the advertised vehicle, in order to sell another vehicle, usually at a higher price. It may also be designed to have the consumer agree to finance terms different from the terms advertised on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying a vehicle of the type so advertised or in securing financing at terms that are not available to the market group to which the advertisement is directed.

(h) Limited Offers of Vehicles, Discounts or Financing - The offering price or an offer to lease, a rebate, a discount offer or a special finance offer applies to a specific vehicle, or to a specific or limited number of vehicles of a specific model or type, unless:

(A) The exact number of vehicles available for which the offer is being made and the specific models to which the offer applies are clearly and conspicuously disclosed in type no less than half the size of the type used for the offer;

(B) Each vehicle is clearly and conspicuously identified in the advertisement by its vehicle identification number if there are less than six such vehicles advertised; and

(C) Any advertised vehicle is available for sale on the day it is advertised.

OFFICIAL COMMENTARY: This rule is triggered only when there are a “limited” number of vehicles to which the offer applies. If the offer applies to an unlimited number of vehicles advertised, all the additional identifying information outlined in the rule is not required. If there are a limited number of vehicles to which the offer applies, the advertisement must clearly state any limitations. “Up to” savings claims which fail to disclose the specific number and identification of the vehicles to which the discount applies would violate this rule. This rule should be read in conjunction with the Bait and Switch Rule.

(i) Offer Limited to Only Eligible Consumers - An offer, including, but not limited to, one for special finance or payment terms, rebates or any other special offer made in an advertisement, applies to a specific or limited number of consumers, unless the following information is clearly and conspicuously disclosed:

(A) The exact model vehicles for which the offer is being made; and

(B) All limitations and conditions of eligibility for the offer, including, but not limited to, the minimum credit score upon which the offer is based, are clearly and conspicuously disclosed.

OFFICIAL COMMENTARY: This rule is triggered when there are a “limited” number of consumers to whom an offer applies. If there are a limited number of consumers to whom the offer applies, the advertisement must clearly disclose any limitations. If the offer is only available to consumers with a particular credit score, then the advertisement must clearly and conspicuously disclose the required minimum credit score. It is important to remember that to be clear and conspicuous requires the disclosure be in close proximity to the offer.

(j) Vehicles Not Immediately Available - The advertisement uses terms which state or imply that motor vehicles are in stock or otherwise available for immediate delivery when they are not. If a motor vehicle is not available for immediate delivery, the advertisement must clearly and conspicuously state the vehicle’s availability such as it is in transit, on order, or obtainable only by special order or dealer trade, and that it is not in stock;

(k) Used Vehicle Offers - The advertisement is for a used vehicle, which was manufactured less than four years prior to the date of the advertisement, without designating the vehicle as “used.” Other descriptive terms may be substituted for the term used, but not so as to create ambiguity as to whether the vehicle is new or used. Used vehicles, such as “dealer demos” or late model vehicles, cannot be displayed in an advertisement with new vehicles in such a manner that it is difficult to determine if they are used or new;

OFFICIAL COMMENTARY: Examples of alternative terms include “lease return,” “pre-owned,” “dealer demonstrator” or “rental return.”

(L) Program and Certified Vehicles - The advertisement uses the word “program,” “certified” or terms of essentially similar import, unless the advertisement clearly and conspicuously discloses the nature and benefits of the “program” or “certification” that is offered with the motor vehicle and the origin and prior use of the vehicle. If there is an additional cost to the consumer to obtain the program or certification, that cost must be clearly and conspicuously disclosed in the advertisement and it must be listed on any purchase or lease agreement;

OFFICIAL COMMENTARY: Dealers and advertisers have used the words “program” and “certified” to designate a wide variety of late model used vehicles. This rule prohibits use of the terms unless there is a verifiable benefit which attaches with the program or certification. The only time these words may be used are if the manufacturer or dealer actually has a special program that attaches to the sale of the used vehicle, such as a complete inspection for defects, repair of the defects that are discovered, and/or an additional warranty that is more extensive than the vehicle would otherwise have without the program. If any program or certification is used in an advertisement, the advertisement must clearly and conspicuously disclose the terms and cost, if any, of the program or certification, if that amount is not already included in the advertised offering price.

(m) Non-negotiable Offers - The advertisement offers or the dealer posts on any vehicle or uses any words which imply that the offering price of the vehicle is non-negotiable or that no negotiations are necessary unless in fact the dealer:

(A) Does not negotiate the offering price of the advertised vehicles;

(B) Maintains the same price for all consumers for equivalent vehicles;

(C) Maintains such price unless a general price adjustment is made which is applicable to all consumers;

(D) Posts the non-negotiable price on all such vehicles; and

(E) Does not falsely inflate the value of any trade-in vehicle by such an amount that the claim that it is a non-negotiable transaction is a sham.

OFFICIAL COMMENTARY: Dealers who engage in any advertisement that claims that the offering price is not negotiable, that the advertised price is so low that it is unnecessary to negotiate, or terms of similar import may not negotiate the offering price of the vehicle once the car has been offered at a price with such a claim. The non-negotiable price must be clearly posted on all such vehicles. The dealer may not alter the vehicle price offered in a particular transaction. Altering a vehicle price includes “reappraising” a trade-in vehicle, changing the terms of sale, or changing vehicle features

or options where the effect is to alter the net offered price. The majority of trade-ins today have negative equity. If a dealer does not truthfully list the negative equity on the transaction documents, falsely inflates the trade-in value or adds the negative equity to the purchase price, the dealer will violate not only this rule, but Regulation Z and OAR 137-020-0040.

(n) Limited Offers - The advertisement offers any vehicle without disclosing material limitations of the terms listed in the offer, including, but not limited to, the length of time that the offering price is in effect. Advertisements which do not list any effective dates will be presumed to offer advertised vehicles at the “advertised price” until such time as the vehicles are subsequently advertised at different terms or for a period of 30 days, whichever comes sooner;

(o) Identification as a dealer - The advertisement, including, but not limited to, those on the internet, offers any vehicle for sale and does not prominently identify the dealer or broker by the complete business name that the dealer or broker uses in the normal course of its business. When the advertisement is a classified line advertisement, the dealer or broker may use the word “dealer” or abbreviation “DLR.” The dealer or broker must also display its business name prominently at any off-site sale location. In the case of an internet advertisement, the advertisement must state the full name of the dealer, the dealer’s address, telephone number and Oregon dealer license number. If the internet advertisement is an online auction or small classified line advertisement with limited space, a hyperlink or web address which leads to all dealer information may be used. This rule does not apply to dealers providing vehicles for display purposes only under ORS 822.040(4), but only if the dealer complies with ORS 822.040(4) and all rules promulgated pursuant to that statute;

OFFICIAL COMMENTARY: In any advertisement, the complete business name of the dealer or broker must be clearly and conspicuously displayed. It should be noted that this rule applies even in the case of special event or off-site sales, such as mall sales or sales conducted using the name of another prominent business at that business’ location. The dealer or broker must always display its commonly used business name prominently in any advertisement or at any off-site sale. Creation and use of an assumed business name that is not used in the normal course of business is misleading as to what entity is actually offering the vehicles.

Some dealers have used their corporate business name or the name of a mall or large retail store in order to make consumers believe that some different company is conducting the sale. Other dealers have published advertisements that list the name of their advertising agent so that it appears the agent and not the dealer is conducting the sales event; for example: “For 3 days only XYZ Event Promotions will be in Salem to sell these 200 vehicles.” Purchasers have an absolute right to know the dealership with which they are doing business and who is actually conducting the sale. If more than one dealership is involved, all dealerships participating in the event must be named. If an advertisement is by a new vehicle regional dealer group, only the name of the regional group need be identified, not the individual names of all the dealers in the group.

(p) Reference Pricing - The advertisement claims, implies or could cause a reasonable consumer to believe that:

(A) A vehicle is reduced in price from the dealer's former price, or that the price is a percentage or dollar amount of savings from the dealer's former price, or words to that effect, unless the dealer actually advertised or has records to substantiate that the vehicle has been offered for sale at the former price, for no less than 10 days in the prior 30 days; and

(i) For new vehicles, the advertisement lists the MSRP; or

(ii) For used vehicles, the advertisement lists the Kelley Blue Book or NADA Used Car Guide based upon the year, mileage, condition and accessories of the vehicle advertised. The advertisement must specify if it is referencing a retail or wholesale guide; or

(B) A dealer is conducting a sales promotion or marketing event at which prices have been reduced, when in fact prices have not been reduced.

OFFICIAL COMMENTARY: Unlawful reference price advertising is a variation on "bait" advertising, using a multitude of supposed reductions or special offers for a unique sales event or implying special price reductions, when in fact the vehicles are offered at prices that are not reduced from normal sale prices.

(q) Used Car Reference to New MSRP - A used vehicle advertisement references the original MSRP of the vehicle when it was new in comparison to its present sales price;

OFFICIAL COMMENTARY: An average motor vehicle depreciates in value from the day it is purchased. Its fair market value is based upon many factors: wear and tear, mileage, availability of like vehicles and other market conditions. The MSRP is a term of art specifically authorized for use in the sale of new cars. There are too many variables in used vehicles that make any comparison to its original MSRP meaningless and deceptive. A reference may be made to any of the professional used car pricing guides, but then only if the advertisement clearly and conspicuously discloses if the guide is a "retail" or "wholesale" guide. If an offering price is advertised using a guide, it must be calculated based upon all applicable additions and subtractions listed in the guide. This rule does not make it unlawful to give a consumer access to original MSRP information about a vehicle, such as using a hyperlink on an internet advertisement. It is meant to stop reference pricing the sale price to the MSRP as a comparison to show savings.

(r) Comparison Price Advertising - The advertisement explicitly or implicitly claims that the dealer's offering price is lower than another dealer or dealers', unless the dealer can clearly show, through verifiable statistical analysis of other prices in the target market and records of the dealership, that such is the case;

(s) Adjustable Interest - The advertisement offers an interest rate that is adjustable without clearly and conspicuously disclosing that the interest rate is adjustable;

(t) Price Reduction Advertising - The advertisement states the offering price of a new vehicle as discounted or in any way reduced by a specified amount below the MSRP or the dealer's sale price unless the MSRP, the amount of any discount, rebate, or other price reduction and the final offering price are clearly and conspicuously displayed in figures. Each figure shall be labeled with a clear and conspicuous description;

OFFICIAL COMMENTARY: The clearest way to comply with this rule is to post this information in the form of a mathematical type equation.

(u) Range of Prices Advertising - The advertisement states that any vehicles are available for sale at a range of prices, a range of percentage or fractional discounts, a specific down payment or a specific monthly payment using the words "as low as" or "starting at" or words to that effect, unless:

(A) The advertisement clearly and conspicuously states the number of vehicles available at the lowest offered term in type no less than half the size of the type used for the offer;

(B) Each vehicle, to which the offer is applicable, is clearly and conspicuously identified in the advertisement by make, model, year of manufacture and its vehicle identification number, if less than 25% of the vehicles advertised are eligible for the lowest offer. This subsection is not applicable to advertisements published by a motor vehicle manufacturer;

(C) The highest price or lowest discount in the range is clearly and conspicuously disclosed in the advertisement in the same type size;

(D) The offer is not a major theme or headline in the advertisement, except for when a majority of the vehicles advertised are eligible for the offer; and

(E) The financing criteria are clearly and conspicuously disclosed, if a consumer must meet certain minimum credit criteria to qualify for the offer.

(v) Limited Rebate Offers - An advertised offering price includes any rebates or reductions, unless such rebates and reductions are available to every purchaser or member of the general public without exception. Rebates or reductions which are not available to every purchaser or member of the general public, such as "commercial rebate," "college graduate rebate," "loyalty rebate," "financing company rebate," or "first time buyer's rebate," may be listed in the advertisement, but may not be subtracted from the price so as to reduce the offering price. The offering price, which is available to every purchaser or member of the general public, must be prominently displayed in type which is greater than any other reduced offering price listed in the advertisement that is not available to the general public;

OFFICIAL COMMENTARY: Manufacturers and financial organizations offer discounts or rebates to limited groups of purchasers for a variety of reasons. The rule prohibits the subtraction of those amounts from the offering price of the vehicle, unless every person in the public is eligible for the discount or rebate. The advertisement can list an offering price with these special reductions, but only in addition to and in smaller print type than the offering price that is available to everyone.

(w) Factory Sales - The advertisement uses the terms “factory or manufacturer authorized sale,” “factory discount outlet,” or similar terms indicating that the dealer has been granted special pricing or distribution privileges by a motor vehicle manufacturer, unless the dealer is specifically authorized to do so by the motor vehicle manufacturer. The dealer using such an offer must have written substantiation before publishing such an advertisement;

(x) Misleading Reasons for Sale - An advertised sale is one being conducted in a dealer or broker’s normal course of business and a person uses terms or illustrations in the advertisement which are false or have the capacity or tendency to deceive or mislead consumers as to the nature of or reason for the sale, including, but not limited to, using:

(A) The terms “liquidator,” “auction sale,” “liquidation sale,” “urgent,” “disposal sale,” “total inventory reduction sale,” “close out,” “final clearance,” “bank asset sale,” “repossession sale,” “disposal sale,” “reprocessed vehicle sale,” “authorized distribution center,” “factory authorized sale” or any similar terms;

(B) The term “public notice” or similar terms when used in such a manner that it appears to be a publication of any type of legal notice, court notice or government notice; or

(C) Any terms which imply the sale is an event of urgent status or the vehicles have unique qualities or benefits or were specially obtained inventory.

OFFICIAL COMMENTARY: Emergency or distress sales, including, but not limited to, bankruptcy, inventory reduction, liquidation and going out of business sales, or any other specific reason for a sale shall not be advertised unless the stated or implied reason is true. “Selling out,” “closing out sale,” and similar terms shall not be used unless the business publishing the advertisement is actually going out of business. The term “liquidation sale” means that the advertiser’s business or inventory is in the process of being liquidated prior to actual closing. Using a business name or advertising agent that incorporates the term “liquidator,” or term of similar import, in its business name in conjunction with the sale of motor vehicles has the tendency to mislead consumers as to the nature of the sale and is deceptive, unless the dealer is actually going out of business.

When a dealer purchases a vehicle for its inventory, the source of its purchase does not superimpose any special benefit or pricing status upon the vehicle. The fact that the vehicle was previously a lease or rental return, sold at auction or repossessed by a lender does not allow the dealer to falsely imply that the consumer will get a better price on the vehicle because of its prior stature. It is simply a vehicle being sold in the dealer’s normal

course of business. A new motor vehicle dealer may use the terms such as “close-out” or “final clearance” for the sale of inventory that is no longer being manufactured or for year-end vehicles that are not going to be restocked by the manufacturer. Words may not be used that have the tendency to deceive or confuse a consumer as to the exact nature of the sale of the vehicles.

This rule does not prohibit offers of special sales events held in conjunction with a specific financial organization, such as a local credit union.

(y) Misrepresenting Down Payment - Any down payment required for the vehicle transaction is referred to in an advertisement as a “transfer fee,” “reassignment fee,” “assumption fee” or any other words of similar import that do not clearly specify that the amount referenced is in fact a down payment; or the monthly payment is referred to by any other term that is not commonly used to describe a monthly payment;

OFFICIAL COMMENTARY: The terms “down payment” and “monthly payment” are normal terms understood by the average consumer. Advertisements which refer to these terms by use of a term that is not commonly understood to mean the same can confuse and deceive the average consumer as to the actual nature of the payment and the type of offer. It is deceptive to use alternate terms which imply the consumer is assuming a pre-existing loan or “taking over payments” from some other obligee.

(z) Deceptive Format or Layout - The advertisement uses any format, layout, headline, assertion, illustration or type size which has a tendency to mislead or deceive its intended audience regarding the prices, finance terms, availability or applicability of any offer made in the advertisement;

OFFICIAL COMMENTARY: Some advertisements incorporate large amounts of information that, if taken individually, might communicate valid information regarding the offering of a vehicle. When combined, however, the combination of inconsistent information makes it difficult to determine what information is applicable to any other information or vehicles. Some advertisements create a false sense of urgency or simply confuse the viewer. Other advertisements contain multiple offers that are not available in combination or are inconsistent with each other.

The composition and layout of advertisements should minimize the possibility of misunderstanding by the reader. Prices, illustrations, or descriptions should be displayed in an advertisement in such a manner that it is clear to which vehicles they apply. It is misleading to use a prominent theme or headline in an advertisement when that offer applies to only one or a limited number of vehicles and the offer is not applicable to the majority of the vehicles included in the sale.

This rule follows the Federal Trade Commission’s policy statement on deception which was succinctly stated by the Third Circuit. “The tendency of the advertising to deceive must be judged by viewing it as a whole, without emphasizing isolated words or phrases apart from their context.” Beneficial Corp. v. FTC, 542 F2d 611, 617 (3d Cir 1976), cert

denied, 430 US 983 (1977). “Depending on the circumstances, accurate information in the text may not remedy a false headline because reasonable consumers may glance only at the headline. Written disclosures or fine print may be insufficient to correct a misleading representation. Other practices of the company may direct consumers’ attention away from the qualifying disclosures. Oral statements, label disclosures or point-of-sale material will not necessarily correct a deceptive representation or omission. Thus, when the first contact between a seller and a buyer occurs through a deceptive practice, the law may be violated even if the truth is subsequently made known to the purchaser. Pro forma statements or disclaimers may not cure otherwise deceptive messages or practices.” FTC Policy Statement on Deception, appended to Cliffdale Associates, Inc., 103 FTC 110, 174 (1984).

(aa) False or Misleading Statements - The advertiser or advertising agent makes any representation or statement of fact in an advertisement if the advertiser or advertising agent knows or should know that the representation or statement is false, confusing or misleading or the advertiser or advertising agent does not have sufficient information upon which to base a reasonable belief in the truth of the representation;

OFFICIAL COMMENTARY: Statements made in an advertisement must be true and specifically applicable to the sale or offer being made in the advertisement. An example of a violation of this rule is an advertisement that stated, “National Rental Car Company Files Bankruptcy – Liquidation Companies Across the County Move to Eliminate Inventory.” While some rental car company may once have filed bankruptcy, the dealerships and advertising agent which published this advertisement had no vehicles from the rental car company to sell. Further, no liquidation companies were liquidating vehicles from a rental car company and none were in any dealers’ inventories.

An advertisement may not be false, manipulate the truth or use language that does not correctly describe the nature of the sale, or the source of ownership of the vehicles for sale.

Superlative advertising claims are objective (factual) or subjective (puffery):

Objective claims relate to tangible qualities and performance values of a product or service which can be measured against accepted standards or tests. As statements of fact, such claims can be proved or disproved and the advertiser should possess substantiation; and

Subjective claims are expressions of opinion or personal evaluation of the intangible qualities of a product or service. Individual opinions, statements of corporate pride and promises may sometimes be considered puffery and not subject to a test of their truth and accuracy. Subjective superlatives which tend to mislead should be avoided and can be violations of this rule.

Particular care is needed with superlative claims. Measurable criteria, e.g., “the cheapest,” must be confirmed. As particular factual claims, superlatives must be placed

directly alongside the area where supremacy is claimed and proven. General superiority claims like “the best” may only be used in clear puffery, and not on the basis of selective comparisons.

The repeated insistence of superlatives within a script might in itself amount to a claim of supremacy which would need to be verified. Qualitative claims of superiority (e.g., “we simply sell for less”) which are open to challenge and/or which are impossible to measure conclusively should be avoided, except for appropriate mentions in a way which allows that rival brands may also make the same claim (e.g., “we simply try to sell for less”).

(bb) Zero Down Advertisements - The advertisement uses the phrase “zero down (\$0 down),” “no money down,” “a penny down” or words of similar meaning, when a down payment of any kind is, in fact, required, including, but not limited to:

(A) The consumer must use the vehicle’s rebate as the down payment;

(B) The consumer must use the equity from the consumer’s trade-in as a down payment;
or

(C) The consumer must pay a security deposit, first month’s payment, acquisition fee or any other amount, other than taxes, license and registration costs or a Dealer Title and Registration Document Preparation Service Fee which are clearly and conspicuously disclosed in the advertisement, at the inception of the transaction.

OFFICIAL COMMENTARY: If a down payment or fee of any amount is required at the time of the transaction it is not a “no money down” offer. This is especially a problem in lease advertising where it is common to require the first month’s payment, a security deposit, and an acquisition fee at lease inception. If any government fees are required to be paid at the time of sale or lease, including, but not limited to, title or registration fees, this information must be clearly and conspicuously disclosed in the advertisement.

(cc) Rebate Offers - The advertisement offers the availability of a manufacturer’s, lender’s or other third party’s rebate unless such advertisement clearly and conspicuously discloses:

(A) The amount of any applicable rebate;

(B) Any conditions, restrictions or limitations placed on the rebate; and

(C) To which model the rebate applies.

If multiple rebates are applicable in the same advertisement, the models that each respective rebate applies to must be identified;

(dd) Withdrawal of Advertisement - An advertisement for the sale or lease of a specific motor vehicle is not withdrawn or the words “sold” superimposed over the advertisement

as fast as technologically and reasonably possible, based upon the media used for the advertisement and the frequency of publication, after the motor vehicle is sold or is no longer available for sale or lease to the general public;

OFFICIAL COMMENTARY: Dealers, advertisers and advertising agents have the responsibility to monitor their advertisements and ensure that after a vehicle is sold or leased, or otherwise no longer available to the public, any advertisement for the vehicle is removed from the media in which it is published, including, but not limited to, television, radio, newspapers or the internet. This has become a particularly egregious problem on the internet because of the transmission of advertisements to different websites through a central internet advertising distributor. This rule makes it clear that the obligation to ensure timely removal of advertisements for vehicles which are sold or no longer available is upon all parties involved with its publication. If an internet vehicle advertising company, an advertising agent or any other publisher has received notice from a dealer that a vehicle is sold or no longer available, it must remove the advertisement or superimpose the words “sold” over the advertisement as fast as possible based upon the type of media in which the advertisement is placed and the frequency of its publication.

(ee) Sale Offer May Not be Reduced by Down Payment - The advertised offering price or monthly payment for the sale of a motor vehicle is calculated by reducing the offering price by the amount of a down payment, minimum trade-in amount, deposit or other payment to be made by the purchaser;

OFFICIAL COMMENTARY: A monthly payment or offering price displayed in an advertisement for the sale of a motor vehicle cannot be calculated using a formula that includes any reduction that the purchaser must pay towards the offering price of the vehicle in order to arrive at some lower monthly payment or offering price. This deceptive practice is used in sales advertisements to make it appear that a vehicle has an extremely low monthly payment or an offering price that is less than the true price of the vehicle. The actual terms of the offer are usually in fine print, which disclose that a down payment or minimum trade-in value is required. For example, a headline of “\$79 a month” as an enticement in an advertisement for a \$10,000 car, which was calculated by using a required down payment of \$5,000 is deceptive and a classic unlawful “bait” technique. Any amount of manufacturer’s rebates that are deducted to arrive at the offering price shall not be considered as “made by the purchaser” for the purpose of this rule. This rule does not prohibit the listing of a minimum down payment that may be required by a financial organization to accept a finance offer or for any other valid purpose; however, it is unlawful to prominently display a monthly payment that was calculated using a down payment reduction so as to make the monthly payment appear lower than if calculated based upon the full offering price. It is also unlawful to display an offering price based upon the subtraction of a down payment. This rule should be read in conjunction with OAR 137-020-0020(2)(v) and (3)(c) regarding what fees are allowed to be excluded from any offering price.

(ff) Price Matching Offers - The advertisement uses terms “we will meet your best offer” or “we won't be undersold,” or terms of similar import which suggest that a dealer will beat or match a competitor's price unless:

(A) The advertisement clearly and conspicuously discloses the price matching policy and any limitations; and

(B) Such policy does not require the presentation of any evidence which places an unreasonable burden on the consumer.

OFFICIAL COMMENTARY: Dealers may not encourage consumers to make and break contracts in an attempt to offer them a price lower than the price which they already negotiated with another dealer. A dealer may always offer to beat another advertised price, but to require a written quote from another dealer puts a consumer in the position of entering and breaking a valid contract in order to get a lower price. Requiring a consumer to present a purchase order, sales documents or other written proof of an offer from another dealer is an unreasonable burden on the consumer.

(gg) False Credit Advertisements - The advertisement makes a false or misleading offer of credit or makes any false or misleading statement in connection with an offer of credit, including, but not limited to:

(A) Failing to clearly and conspicuously disclose all material limitations or conditions of the offer of credit;

(B) Stating that “no credit application is refused,” “no credit application rejected,” “all credit applications are accepted,” “we finance anyone,” or words of similar import, unless the offeror can substantiate that all credit applications received by the offeror have been approved for credit; or

(C) Stating that a consumer is “approved” or “pre-approved” for an offer of credit, or words of similar import, if:

(i) The offer of credit is qualified by conditions other than the specific criteria used in making a firm offer of credit pursuant to the Fair Credit Reporting Act [FCRA] or otherwise allowed by FCRA;

(ii) The offer is not a “firm offer of credit” made pursuant to FCRA; or

(iii) The offer made is false.

OFFICIAL COMMENTARY: An advertisement for an offer of credit must be truthful and state all facts accurately. This rule is not intended to limit, reduce, modify or effect the FCRA, but to identify unfair or deceptive acts or practices under the Oregon Unlawful Trade Practices Act. FCRA permits a financial organization to obtain a consumer's confidential credit information from a credit reporting agency for the purpose

of making a firm offer of credit. The offer may be qualified by the consumer's present credit status after the offer is made to a consumer and several other exemptions listed in FCRA (See 15 USC § 1681a). Some examples of violations of this rule include, but are not limited to, the following:

1. A false offer which appears bona fide, but in fact is a subterfuge to get consumers into a dealership. This would be the case if financing was not actually offered or available by the stated lender listed in the advertisement or the dealership or advertising agent never intended to use the stated lender to finance any of the vehicle transactions during the advertised promotion. It is not only a clear violation of FCRA to obtain consumer information from a credit reporting company to get names for a mailing list without making a valid "firm offer of credit," but could also be a violation of this rule if it was a false offer of credit by a dealer or advertising agent;
2. A false offer that states consumers are qualified for a loan of \$30,000 when in fact the offeror knew the credit scores used to obtain the names of consumers would only qualify for loans of a lesser amount. When a valid "firm offer of credit" is made to a varied group of consumers with different credit scores, the offeror should separate its mailers and only list the amount available to the consumer receiving the offer;
3. An offer of credit is made, but a large list of conditions which allow the withdrawal of the offer are buried at the bottom or back of the advertisement in small or illegible print;
4. An offer of credit is made claiming that consumers are approved or pre-approved for credit when the offeror did not obtain credit scores or the offeror has no basis upon which to claim a consumer will be approved for credit; and
5. A false advertisement that uses language implying all consumers are able to receive credit when not all will be approved.

(hh) Alternative Offer Limitations - An advertisement offers the sale or lease of a motor vehicle with either a special finance rate or a manufacturer's rebate and fails to clearly and conspicuously disclose that the consumer is only entitled to receive one or the other and not both;

OFFICIAL COMMENTARY: It is common for a manufacturer to offer a special low finance rate or a rebate on a vehicle at the same time; however, the consumer must make a choice of one or the other. Advertisements must clearly and conspicuously state, when such a situation exists, that the consumer may only receive one or the other.

(ii) Misleading Use of Illustrations - An advertisement uses inaccurate photographs, descriptions or illustrations when describing specific automobiles. However, an advertiser may use stock illustrations or photos which are substantially similar when an exact match is not available;

OFFICIAL COMMENTARY: Examples of improper advertisements include advertising a fully-loaded motor vehicle when the advertisement actually refers to a minimally-equipped motor vehicle in the text and a photograph of a four door pickup truck when the advertisement refers to an extended cab truck. Use of a deceptive illustration is not legitimized by stating in the advertisement “photo for illustration purposes only” or similar language.

(jj) False Advertising - The advertisement is a false advertisement;

(kk) Misleading Initial Term Offers - The advertisement offers adjustable terms of payment with no payments or low payments in the beginning of a loan or lease, which then increase after a term of months unless:

(A) The offer is by a manufacturer or financial organization as part of a specific loan or lease offer and no rebates, incentives or other funds that the consumer is entitled to receive are used to fund the reduction; or

(B) The offer is made by any person using rebates, incentives or other funds that the consumer is entitled to receive to fund the reduction and the advertisement clearly and conspicuously discloses that the offer is available only by using rebates, incentives or other funds that the consumer is entitled to receive and the use of the rebates, incentives or other funds as a down payment may be more financially beneficial to the consumer over the term of the loan or lease.

OFFICIAL COMMENTARY: It is deceptive and misleading for an advertisement to make it appear that a consumer is getting special low payments or no payments for the beginning term of a loan or lease without disclosing to the consumer how that reduction is accomplished, when in fact the person simply applied a manufacturer’s rebate or incentive, which the consumer is entitled to receive, to achieve the lower payments. The consumer is actually making or reducing the payments for the initial period with his/her own funds, which could have been used to reduce the balance owed, thereby reducing the total cost of the loan to the consumer over its term, or simply taken by the consumer as cash. If the rebate was used to reduce the principal balance, the total amount paid for the vehicle over the course of the loan could be thousands of dollars less.

(LL) Broker Fiduciary Obligation - Any person advertises as, holds themselves out as, or engages in the conduct of a broker and fails to act in a fiduciary capacity for the consumer;

OFFICIAL COMMENTARY: Some consumers do not want to personally be involved in negotiating and arranging the purchase or lease of their own of motor vehicle and employ the services of a motor vehicle broker to perform this function for them. In other instances, a dealer, who does not have a particular vehicle sought by a consumer, becomes a broker by negotiating the purchase or lease of a vehicle for a consumer from another dealer.

Oregon law allows a fee to the broker for its services and requires that a broker act only as an agent for the consumer; ORS 822.047. The Oregon Unlawful Trade Practices Act makes it unlawful for a person to make false or misleading representations of fact concerning: the offering price of, or the consumer's cost for the person's services, ORS 646.608(1)(s); the nature of the transaction, ORS 646.608(1)(k); or the status of their relationship, ORS 646.608(1)(e). A dealer or other person cannot act as or cause a consumer to believe it is a broker, directly or by failing to clarify the relationship, and then act in its own self interest. (See also Official Commentary, OAR 137-020-0020, "Broker.")

(mm) Use of Abbreviations - An advertisement uses any abbreviation which is deceptive, misleading or not commonly understood by the general public or approved by federal law or state law;

OFFICIAL COMMENTARY: Examples of abbreviations commonly understood: AC, AM/FM, AUTO, AIR, 2DR, CYL, MSRP, DOC, DOC. PREP. FEE, or TITLE/REG. PROCESS FEE; abbreviations not commonly understood: WAC, OAC, PEG.

(nn) Misleading Business Names - Any words are used in a company name or advertisement which would mislead the public either directly or by implication regarding the nature or affiliation of a dealer or broker's business. Use of the term "wholesale" or "wholesaler" shall not be used in a company name affiliated with motor vehicle sales or leases after the effective date of this rule unless the person actually owns and operates a motor vehicle business that only sells vehicles wholesale.

Any Oregon dealer or broker that used the term "wholesale" or "wholesaler" in its business name prior to the effective date of this rule may continue to use that word, except it must clearly and conspicuously state in any advertisement or display of its name at its business location words that convey to the public that it is a retail, not wholesale, motor vehicle business.

Use of the term "liquidator" shall not be used in a company name to sell or advertise motor vehicles, unless the company is solely in the business of liquidating assets of persons going out of business and in fact the sale is a going out of business sale;

OFFICIAL COMMENTARY: This rule ensures that words are not incorporated into a business name that would tend to mislead a consumer as to the affiliation or nature of a business, the source of its goods or the type of business being conducted. Examples, other than wholesale, include: "factory" or "manufacturer," which should not be used in a company name, unless the advertiser actually owns and operates or directly and absolutely controls the manufacturing facility that produces the advertised products.

Incorporating in the dealer's name any term or designation which has a tendency to mislead others as to the true nature of the business, such as the use of "wholesale," when a dealer's business is substantially retail, or "discount" when the price and policy of a dealer does not provide substantial discounts;

(mm) Negative Equity Trade-in Disclosure - The advertisement offers to “pay off” any motor vehicle taken in trade, or words of similar import, unless the advertiser will actually pay off the outstanding debt, without including the cost as negative equity as part of the new transaction. If the advertisement makes any statements regarding accepting any vehicle in trade for the purchase or lease of another vehicle, the following disclaimer must be used:

“NOTICE: Trading in a vehicle will not eliminate your debt. Negative equity will be added to any purchase or lease.”

OFFICIAL COMMENTARY: If a consumer owes \$2,000 on his/her car, but its actual cash trade-in value is only \$1,500, that person has \$500 of negative equity that will be added to the purchase price or capitalized cost of a lease agreement. An advertisement that offers to “pay off” the balance on a trade-in can easily mislead a consumer to believe that the dealer is going to “pay off” the negative equity as well.

(3) Lease Advertisements: It is unfair or deceptive in trade or commerce for a person to advertise the lease of any motor vehicle unless the following information is clearly and conspicuously disclosed:

(a) Except for the name and model of the vehicle advertised, the following information shall be displayed most prominently and in the largest type in the advertisement for the lease:

(A) The monthly lease payment and the amount due at inception by the consumer (not including any rebate used to reduce the capitalized cost) in the same size font; and

(B) The term of the lease and that the offer is for a “lease,” displayed, with the amounts listed in paragraph (3)(a)(A) above, in a font no less than half the size of those amounts or the minimum size described to be clear and conspicuous based on the media, as outlined in OAR 137-020-0020(j), whichever is larger.

(b) The MSRP and the capitalized cost if different than the MSRP;

(c) The capitalized cost reduction (either by cash down payment or trade equity), acquisition fee, initial payment, security deposit, Dealer Title and Registration Document Preparation Service Fee, any rebates which reduce the capitalized cost and any other additional costs due at the time of delivery, and the total of those amounts (also known as “amount due at inception”);

(d) The total lease charge, which includes:

(A) The total of the monthly payments;

(B) Any lease acquisition fees;

- (C) The total of the amounts listed in (3)(c); and
- (D) Any required lease disposition or termination fee.
- (e) The residual value of the vehicle at the end of the lease term;
- (f) Any lease return fee which a consumer must pay if the consumer chooses not to purchase the vehicle at the end of the lease; and
- (g) If the advertised monthly lease payment requires the consumer to pay a cash amount or have a trade equity at the inception of the lease of more than 10% (ten percent) of the MSRP, the monthly payment without the deduction of the cash or trade equity and it shall be included in the information which is disclosed under paragraph (3)(a)(A) above.

OFFICIAL COMMENTARY: This rule gives the consumer the basic information (s)he needs to accurately compare the benefits of an offered lease, or to evaluate the benefits between a lease and sale of the same vehicle. It also addresses misleading monthly payment advertisements, which have been calculated using higher than normal consumer down payments or required equity on trade-ins in order to make the monthly payments appear lower.

4. Used Vehicle Rule: It is unfair or deceptive in trade or commerce to advertise or otherwise represent, sell or lease a vehicle as new if:

- (a) The vehicle has been previously spot delivered to a buyer or lessee;
- (b) The vehicle has been previously titled or registered;
- (c) The vehicle was previously used by any person for its discretionary use; or
- (d) The vehicle is a used vehicle.

OFFICIAL COMMENTARY: This section makes it clear that a used vehicle may not be advertised as new. It does not prohibit a dealer or broker from titling a vehicle as a new vehicle that has been previously spot delivered, but not previously titled or registered; or providing new vehicle financing or warranty coverage for a used vehicle, such as a dealer demo, if the vehicle is otherwise still eligible for new vehicle financing or warranty coverage. The consumer must be informed, however, that (s)he is buying or leasing a used vehicle. Also, if a vehicle was erroneously titled or registered by an honest clerical error, the vehicle is still considered a new vehicle.

5. The Advertised Price Must be the Sales Price: It is unfair or deceptive in trade or commerce for a dealer to sell a vehicle to a consumer for more than an advertised price or fail to disclose the sale price of a vehicle as advertised in any media or advertisement.

OFFICIAL COMMENTARY: In addition to this rule, OAR 137-020-0020(3)(a) requires the use of an extension sticker on any vehicle offered for sale or lease in an advertisement stating the offering price of the motor vehicle listed in the advertisement. A dealer must post any advertised sale price on the window or use a “hang tag” stating the advertised price.

Stat. Auth.: ORS 646.608(4)

Stats. Implemented: ORS 646.608(1)(u)