

DISTRICT ATTORNEYS ON THE HUNT FOR DEALER ADVERTISING VIOLATIONS

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misleading advertisements, makes each violation a misdemeanor punishable by imprisonment for up to six months in county jail or a \$2,500 fine, or both. The maximum statutory liability under these two laws can be substantial because courts have found that additional violations accrue for every person who is exposed to the advertisement.

Civil plaintiffs cannot avail themselves of the above statutory penalties, although if they have suffered injury in fact they can receive restitution and injunctive relief through a private lawsuit. As we know, private law suits pose a serious threat because advertising violations can be suited as class actions.

Additionally, civil plaintiffs who can prove that they were defrauded can seek punitive damages. In many circumstances they can file suit under the Consumer Legal Remedies Act which allows actual damages of not less than \$1,000, injunctive relief, restitution, punitive damages and attorneys' fees. Elderly or disabled plaintiffs who make a requisite showing may recover an additional \$5,000 statutory penalty.

The Federal Trade Commission is tasked with writing and enforcing numerous federal regulations, including those governing disclosures in credit sales. The FTC can also seek restitution of any amount wrongfully collected by a business and it can ask a court to rescind or rewrite contracts and to order the business to publicly post notice of its deceptive advertising practice. [15 U.S.C. § 57b(b).] In a worst case scenario, the FTC can refer the case to the Department of Justice for prosecution. It has done this to new car dealerships who failed to advertise pursuant to Regulations Z and M. Courts have issued injunctions against dealerships and owners (personally) even though the noncompliant ads may have been the fault of a third party ad agency or newspaper personnel.

Last year, the FTC entered into settlement agreements with four car dealerships that it claimed were engaged in deceptive advertising. The FTC claimed the dealerships advertised that they would pay off the negative equity of trade-in vehicles but in reality would roll the negative equity into the loan package

Dealers in Riverside County recently received a letter from the District Attorneys' office notifying them "that various automobile dealerships are advertising in a manner that is potentially misleading to the public and may constitute violations of Vehicle Code section 11713, subdivision (a), as well as Business and Professions Code sections 17500 and 17200." After describing some types of potentially unlawful advertising, the DA's letter concluded, "[s]hould any of your dealerships advertise in this manner, action by this office may be warranted."

The DA's letter highlighted a few areas of concern:

1. Deceptive pricing through rebate stacking or through the failure to properly state the savings calculation behind the sales price (or net cost);
2. Rebate and discount disclosures made in font 1/6th the size of the font used for the sales price;
3. Advertising rebates and discounts by the use of confusing acronyms;
4. The failure to disclose whether some rebates are only available for certain

groups of customers (i.e. students, military, etc.);

5. Posting rebate and discount disclosures in "miniscule" text that is linked to the actual rebate or discount amount by asterisk.

Obviously, whenever the DA's office gets involved, the stakes are raised. While most Dealers take care to avoid the foregoing five legal pitfalls, slip ups do occur. Regardless of the underlying reason for non-compliance, it is important to be aware of the types of liability that a dealership can face.

The remedies available to public entities and law enforcement are more expansive than those available to private plaintiffs. For example, if the local DA successfully proves that a dealership violated California's Unfair Competition Law, it can collect a statutory penalty of \$2,500 for each violation (\$5,000 if the violation involves a senior citizen or disabled person), it can get an order disgorging any money wrongfully collected by the dealership or it can get an injunction prohibiting the dealership from engaging in certain practices. On the other hand, the False Advertising Law, which broadly prohibits untrue or

for the new deal. Besides prohibiting this, the settlement agreements require the dealerships to abide by the advertising requirements of Regulation Z and Regulation M. The FTC's attorney said that the agency is very focused on auto financing and leasing issues and would like to hear from consumers who believe that they were a victim of an unfair or deceptive advertisement by a dealership.

Finally, the DMV's enforcement options are perhaps the most threatening from the dealership's perspective. Violation of the Vehicle Code can result in suspension or revocation of a Dealer's license. (Veh. Code § 11705.) In lieu of taking action against a Dealer's license, the DMV can require that it pay monetary penalties. The suspension of a Dealer's license, even for a few days, can do considerably more damage than a monetary fine. This article should make it clear why noncompliant advertising is dangerous to your business.

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