

Advertising Guidelines

By ADR Staff

It is ultimately the dealership's responsibility to ensure their advertising complies with the law. Do not rely on the agency preparing the ad to ensure compliance. Both in spirit and in fact, your advertising should be truthful and non-deceptive; you should have evidence to back up any claims; and your advertisements should not be unfair. When preparing your advertising material for correctness, look at the ad from the point of view of the "reasonable consumer" – the typical person looking at the ad. Rather than focusing on certain words, look at the ad in context – words, phrases, and pictures – to determine what it conveys to consumers.

General Advertising

An ad may be considered deceptive if it contains a statement – OR if it **OMITS A STATEMENT** – that:

- is likely to mislead consumers acting reasonably under the circumstances; and
- is "material" – that is, important to a consumer's decision to buy or use the product.

For example, an advertisement might read "2007 Chevy, only \$75 per month." Whether this is a bargain depends upon information missing from the advertisement, such as the downpayment and the number of payments. The ad also omits the annual percentage rate and does not state whether the transaction is a credit sale or a lease. The ad needs to tell the whole story.

Under the law, advertisers must have proof to back up both "express" and "implied" claims that consumers take from an ad. An "express" claim is literally made in the ad. For example, "We finance anyone" is an express claim that any consumer can obtain financing through your dealership. An implied claim is one made indirectly or by inference. "No money – no problem" contains an implied claim that anyone, regardless of financial position, can obtain financing for a vehicle purchase.

"Bait and Switch" advertising is a violation of the law. It is illegal to advertise a product if you have no intention of selling that item, but instead plan to sell a consumer another product, usually at a higher price.

Rebate offers may be particularly scrutinized. Ads that include rebate promotions should prominently state the before-rebate cost, as well as the amount of the rebate. Only then will consumers know their actual out-of-pocket cost and have the information they need to comparison shop. Rebate promotions also should clearly disclose any additional terms and conditions that consumers need to know, including the key terms of any purchase requirements, additional fees, and when consumers can expect to receive their rebate.

If an ad mentions that a product comes with a guarantee or warranty, the ad should clearly disclose how consumers can get the details. Any conditions or limits on the guarantee or warranty (such as a time limit or a requirement that the consumer return the product) also must be clearly disclosed in the ad. Finally, the law requires companies to make copies of any warranties available to consumers before the sale.

Pricing is another area of advertising that can receive scrutiny from regulators. One common practice is to offer a reduction from a former price. If the former price is the actual, bona fide price at which the vehicle was offered for sale for a reasonably substantial period of time, it provides a legitimate basis for the advertising of a price comparison. The "former" price should not be an artificial, inflated price established for the purpose of advertising a bargain "reduced" price. If the former price is not set

forth in the ad, as when the ad merely states “Sale”, the amount of the reduction must not be so insignificant as to be meaningless. For instance, a claim that a vehicle has been “Reduced to \$9,999”, when the former price was \$10,000, is misleading the consumer.

Advertising Credit and Leases

Certain rules apply only to creditors and lessors. Keep the following principles in mind when you design or review an ad promoting consumer credit or consumer leases.

All advertising disclosures must be printed “clearly and conspicuously.” This means that disclosures must be legible and reasonably understandable.

You may advertise only credit or lease terms that are actually available to the consumer. “Bait and switch” credit or lease promotions are not allowed. For example, no advertisement may state that a specific installment payment or a specific downpayment can be arranged unless the creditor is prepared to make those arrangements. However, you may advertise terms that will be offered only for a limited time or terms that will become available at a known future date. You need not, of course, promote every credit or lease plan that you offer.

The main requirements governing advertising of closed-end credit concern “triggering terms” and “finance rates.” These requirements may apply to a single ad. If you advertise closed-end credit with a “triggering term,” you also must disclose other major terms, including the annual percentage rate. This rule is intended to ensure that all important terms of a credit plan, not just the most attractive ones, appear in an ad.

The triggering terms for closed-end credit are:

- (1) ***The amount of the downpayment*** (expressed as either a percentage or dollar amount), in a “credit sale” transaction.

Examples:

“10% down”
“\$1000 down”
“90% financing”
“trade-in with \$1000 appraised value required”

- (2) ***The amount of any payment*** (expressed as either a percentage or dollar amount).

Examples:

“Monthly payments less than \$250 on all our loan plans”
“Pay \$23.44 per \$1000 amount borrowed”
“\$210.95 per month”

- (3) ***The number of payments or the period of repayment.***

Examples:

“Up to four years to pay”
“48 months to pay”
“30-year mortgages available”

- (4) ***The amount of any finance charge.***

Examples:

- “Financing costs less than \$300 per year”
- “Less than \$1200 interest”
- “\$2.00 monthly carrying charge.”

Some statements about credit terms are too general to trigger additional disclosures. Examples of terms that do not trigger the required disclosures are:

- “No downpayment”
- “Easy monthly payments”
- “Loans available at 5% below our standard APR”
- “Low downpayment accepted”
- “Pay weekly”
- “Terms to fit your budget”
- “Financing available”.

General statements, such as “take years to pay” or “no closing costs,” do not trigger further disclosures because they do not state or suggest the period of repayment or downpayment cost. In contrast, the statement “drive it home for \$199,” which implies that the required cash downpayment is no more than \$199, does trigger full disclosure. Similarly, a statement such as “up to 48 months to pay” lists the period of repayment and triggers disclosure. In general, the more specific the statement, the more likely it is to trigger additional disclosures.

If your ad for closed-end credit uses a triggering term, it also must include the following information:

- (1) The amount or percentage of the downpayment;
- (2) The terms of repayment; and
- (3) The “annual percentage rate,” using that term or the abbreviation “APR”. If the annual percentage rate may be increased after consummation of the credit transaction, that fact also must be stated.

The amount or percentage of the “downpayment” need not be shown directly, as long as it can be determined from the ad. For example, “10% cash required from buyer” or “credit terms require minimum \$1000 trade-in” would satisfy the disclosure requirement.

The “terms of repayment” may be expressed in a variety of ways, as long as they convey the required information. For example, an automobile finance company might use unit cost to disclose repayment terms: “48 monthly payments of \$23.44 for each \$1000 borrowed.” Similarly, the length of the loan can be expressed as the number of payment or the time period of the loan.

Sample Disclosure: The following disclosure of car financing offered by the dealer would comply with the law if printed clearly and conspicuously:

“Special close-out sale this weekend. Any in-stock Chevy Citation, only 5% down, 5.9% APR (on approved credit). Example: 48 monthly payments of \$224.95”

The second basic requirement for advertising closed-end credit is this: if your ad shows the finance charge as a rate, that rate must be stated as an “annual percentage rate,” using that term or the abbreviation “APR.” Your ad must state the annual percentage rate, even if it is the same as the simple

interest rate. So, if you are a car dealer who wants to advertise low-rate financing made available by the manufacturer, your advertisement would read, for example, “5.9% annual percentage rate” or “5.9% APR.” If you want to show only a rate, the APR is stated in the ad, no other credit information need be included: the “triggering term” requirement does not apply because the rate and APR are not triggering terms.

Your advertisements will be noticed and will undoubtedly draw a response from someone. Fair and truthful ads will be appreciated by consumers and will typically result in a positive response. Deceptive and misleading ads, however, will be noticed by the Used Motor Vehicle and Parts Commission and could result in a very negative response for your dealership. More in-depth guidance on preparing compliant advertising pieces is available on the Federal Trade Commission website, www.ftc.gov.

NOTE: OIADA Staff are not attorneys. This article is provided for informational purpose only. It is not legal advice. For its application to you and your situation, consult an attorney.