

**BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION**

**IN THE MATTER OF:**

**AP# 16-008**

**GEORGE KELL MOTORS, NEWPORT, ARKANSAS**

**NOTICE OF VIOLATION**

IT HAS BEEN determined by the Arkansas Motor Vehicle Commission (hereinafter "Commission") that George Kell Motors, Newport, AR, (hereinafter "George Kell Motors"), a licensed dealer, violated the motor vehicle commission statute when they utilized franchised logos and/or trademarks in conjunction with vehicle sales at an offsite used motor vehicle dealership. This action is in direct violation of the Arkansas Motor Vehicle Commission Act, Ark Code Ann. §23-112-101, et seq., pursuant to Ark. Code Ann. §23-112-204. If the Commission determines that a firm or individual violated the Commission Act or Rules, they may revoke or suspend the license, or impose a monetary penalty in lieu of revocation or suspension if the public interest would not be impaired thereby and the payment of the penalty will achieve the desired disciplinary results.

**FACTUAL BACKGROUND**

The Commission finds the following facts as true:

- F1. George Kell Motors is a licensed Chevrolet, Buick, and GMC dealership located at 3808 S. Van Dyke Road, Newport, Arkansas, 72112.
- F2. On May 6, 2016, Commission investigator Gordon McCoy, offered a site visit to George Kell Motors in Searcy, AR, located at 608 Eastline Road. This dealership is licensed as a used vehicle dealership through the Arkansas State Police.
- F3. Upon arrival, Mr. McCoy was met by a salesman named Ronnie Burress. Mr. Burress handed Mr. McCoy a business card that identified him as a new and used

salesman, and the card had the Chevrolet, Buick, and GMC logos on it. Mr. Burress is a licensed new vehicle salesperson, license number 37166.

- F4. Mr. McCoy returned to George Kell Motors in Searcy, AR, on May 10, 2016, and observed the following: 1) All vehicles carried the George Kell Motors of Newport, AR, logo on the back; 2) All vehicles displayed a sticker in the window promoting the new location in Newport, AR; and, 3) Approximately 80% of the vehicle included a certified pre-owned plate that read Chevrolet, Buick and GMC.
- F5. The Commission's Ad Hoc committee met on Wednesday, August 17, 2016, and made a recommendation to the full Commission which was approved during a Wednesday, August 17, 2016, Commission meeting to issue a Notice of Violation to George Kell Motors.

#### APPLICABLE LAW

- L1. Motor vehicle dealers are required to conform their conduct to the Motor Vehicle Commission Act, Ark. Code Act § 23-112-101, *et seq.* and the Rules promulgated by the Commission pursuant to Ark. Code Act § 23-112-204.
- L2. Violations of Commission Rules are considered to be a *prima facie* violation of Ark. Code Ann. § 23-112-402(3) which states it is unlawful for a motor vehicle dealer or salesperson to use any false or misleading advertisement.
- L3. Failure to comply with any provision of the AMVC Act or any Rule promulgated by the Commission may lead to revocation or suspension of the license as per Ark. Code Ann. § 23-112-308(a)(4). The Commission may issue a monetary penalty in lieu of revocation or suspension as per Ark. Code Ann. § 23-112-309.

- L4. As stated in Rule 3 Advertising, Section 4, a used vehicle shall not be advertised in a manner that creates the impression it is new. Product nameplates and/or logos of any franchise line-make shall not be used in an advertisement that is a “used only” vehicle advertisement.
- L5. According to Ark. Code Ann. § 23-112-308, the Commission may revoke or suspend a license for the following:
- a. For selling or soliciting sales of a motor vehicle without a license issued by the Commission, and the unlawful sale or solicitation of each motor vehicle shall constitute a separate offense. Ark. Code Ann. § 23-112-308(a)(1)(A) & (B); and,
  - b. For selling, attempting to sell, or advertising for sale vehicles from a location other than that set forth on the license. Ark. Code Ann. § 23-112-308(a)(10); and,
- L6. Commission Rule 7 Off-Premise Displays, Sales and Events.

**CHARGE**

- C1. George Kell Motors violated Commission statutes and rules when it offered vehicles for sale from an unlicensed location. This charge is based on L1, L2, L3, L5, and L6.
- C2. George Kell Motors violated Commission statutes and Rule 3 on Advertising when they utilized George Kell Motors of Newport, AR, and General Motors logos on a used dealership lot. This charge is based on the facts as stated and referenced above, and the provisions of law set out in paragraphs L1, L2, L3, and L4.

**AS A RESULT OF THESE VIOLATIONS**, you are hereby directed to pay a civil penalty in the amount of one thousand five hundred dollars (\$1,500.00).

The Commission finds the violations of Commission statutes and rules by George Kell Motors warrant a suspension of George Kell Motor's license for failure to comply with provisions of the Commission Act and Rules promulgated by the Commission as per the applicable law stated above.

The Commission finds that in lieu of a suspension of George Kell Motor's license the public interest would not be impaired and the payment of a penalty will achieve the desired disciplinary result by issuing a monetary penalty against George Kell Motors in accordance with Ark. Code Ann. § 23-112-309 in the amount of five hundred dollars (\$500.00) per day for three (3) days for an aggregate amount of one thousand five hundred dollars (\$1,500.00).

This amount should be sent to the Commission within seven (7) days of receipt of this Notice of Violation.

IF YOU DESIRE TO CONTEST the alleged violation or the penalty imposed, please indicate this request on the attached form and return to the Commission Office within seven (7) days and this matter will be set for an evidentiary hearing before the Commission.

**ARKANSAS MOTOR VEHICLE COMMISSION**

By:   
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Greg Kirkpatrick, Director

Date: 9/20/2016