

**BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION**

**IN THE MATTER OF:**

**H# 13-001**

**CRAIN BUICK GMC**

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

The Arkansas Motor Vehicle Commission (hereinafter “Commission”) held a hearing on May 15, 2013, to determine whether Crain Buick GMC’s (hereinafter “Crain”) license to sell new motor vehicles should be suspended or revoked, or whether a monetary penalty should be imposed in accordance with the provisions of the Arkansas Motor Vehicle Commission Act, Ark. Code Ann. § 23-112-101 et seq., and Commission Rule 2 regarding hearings and appeals. The charges before the Commission concerned whether Crain violated Commission statutes and the Advertising Rule when the discount offered by the dealership was not used to show the difference between the dealer’s current selling price and the MSRP, and when it utilized false and misleading advertising by including a disclosure that did not add up to the advertised discount.

Jay Myers and Drew Dees appeared as Respondent’s representative. Respondent was not represented by legal counsel.

Having heard testimony from Director Greg Kirkpatrick, Investigator Danny Holmes, Jay Myers, Drew Dees, and having reviewed the exhibits admitted into evidence by the Commission and the Respondent, the Commission makes the following Findings of Fact, Conclusions of Law, and Order:

**FINDINGS OF FACT**

F1. Crain is a licensed new motor vehicle dealer in Conway, Arkansas.

- F2. On December 6, 2012, Investigator Danny Holmes traveled to Crain in response to a complaint to validate a television advertisement that stated “Discounts up to \$15,000 off.” Investigator Holmes was told by a salesperson named Justin Potts that the discount was deducted from the addendum price rather than the Manufacturer’s Suggested Retail Price (hereinafter “MSRP”). And that was in fact what was being offered. Investigator Holmes returned to Crain on December 10, 2012, with Investigator Otis Hogan to document the addendum prices on GMC trucks offered in the advertisement.
- F3. On January 15, 2013, Director Greg Kirkpatrick sent a letter to Crain advising that under Rule 3 on Advertising “specific claims or discount offers must only be used to show the difference between the dealer’s current selling price and the MSRP.”
- F4. On February 6, 2013, Investigator Holmes traveled to Crain in response to a complaint to validate an internet advertisement that stated “Discounts up to \$13,000 off.” Investigator Holmes was told by a salesperson named Jim Madalone that the discount would be deducted from the addendum price rather than the MSRP if the vehicle had an addendum price, and in fact, that is how the discount would be treated. Additionally, the advertised discount included disclosures that only added up to \$12,000.00.
- F5. On April 17, 2013, the Commission issued a Notice of Violation, AP# 13-003, in which the Ad Hoc Committee recommended a fine of two thousand dollars (\$2,000.00). On April 25, 2013, Crain contested the allegations set forth in the Notice of Violation.

## **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact, the Commission makes the following

Conclusions of Law:

- C1. Respondent violated Commission statutes and rules when the discount offered by the dealership was not used to show the difference between the dealer's current selling price and the MSRP in accordance with Ark Code Ann. § 23-112-308 and Rule 3 on Advertising.
- C2. Respondent violated Commission statutes and rules when it utilized false and misleading advertising by including a disclosure that did not add up to the advertised discount in accordance with Ark Code Ann. § 23-112-308 and Rule 3 on Advertising.

## **ORDER**

The Commission finds the violations of Commission statutes and rules by Crain warrant a suspension of Respondent's license for failure to comply with provisions of the Commission Act and Rules promulgated by the Commission as per Ark. Code Ann. § 23-112-308(a)(4).

The Commission finds that in lieu of a suspension of Crain'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 Crain in accordance with Ark. Code Ann. § 23-112-309 in the amount of one thousand dollars (\$1,000.00).

This is a final Order of the Commission and as such is subject to judicial review pursuant to Ark. Code Ann. § 25-15-212.

**ARKANSAS MOTOR VEHICLE COMMISSION**

**By** \_\_\_\_\_  
**Sandy Stroope, Chairman**

**Date:** \_\_\_\_\_