

BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF:

Hearing # 06-009

SUPERIOR CHEVROLET

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Arkansas Motor Vehicle Commission (hereinafter the “Commission”) held a hearing on September 20, 2006, to determine whether Superior Chevrolet (hereinafter “Superior”) violated the Arkansas Motor Vehicle Commission Act, Ark. Code Ann. § 23-112-101, et seq. and the Advertising Rules promulgated by the Commission pursuant to Ark. Code Ann. § 23-112-204. The charges before the Commission concerned whether an advertisement which appeared in the Arkansas Democrat Gazette on Friday, June 30, 2006, was in violation of the prohibition on false and misleading advertising.

The Respondent, Superior, was represented by Mike Lemons, General Manager for Superior.

After hearing testimony from Commission Investigator Otis Hogan, Mike Lemons, and reviewing documents received in evidence, the Commission makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

F1. Superior advertised in the Arkansas Democrat Gazette on Friday, June 30, 2006, utilizing the phrases “2007 Chevy Avalanche” and “Any LS, LT1, LT2 In Stock.” The MSRP was shown as \$33,105. The sale price was listed as \$24,309 with \$8,796 off MSRP. Additional disclosures in the advertisement included “Conquest Direct Mail Offer of \$1,500” and the advertisement lists “trade assistance (’99 or newer any make or model), military rebate and Superior

discounts.” No limitations for these incentives were disclosed in the advertisement.

- F2. Investigator Otis Hogan arrived on the Superior lot on June 30, 2006. Mr. Hogan was approached by Ms. Jody Henigan, a licensed salesperson for Superior. Mr. Hogan expresses interest in the 2007 Chevy Avalanche stock number #120061 listed in the above referenced advertisement. This vehicle was available.
- F3. During the discussion of the advertised price and discounts for the above listed Avalanche, Ms. Henigan stated to Mr. Hogan that he would not receive the \$1,500 Conquest Mail Offer, the \$1,500 trade assistance, or the \$500 military rebate due to restrictions to the incentives. These restrictions were not disclosed in the advertisement.
- F4. After Mr. Hogan’s credit application was submitted, Ms. Henigan and a Finance Manager named Carol discussed with Mr. Hogan the terms for purchasing the above referenced vehicle.
- F5. After removing the incentives that Mr. Hogan did not qualify for and adding the disclosed documentary fee, the discount for the above referenced vehicle was \$5,096 compared to \$8,796 listed in the advertisement. When this \$5,096 savings was subtracted from the advertised MSRP of \$33,105, the sale price of the vehicle was \$28,009 compared to the advertised sale price of \$24,309.
- F6. Carol and Ms. Henigan informed Mr. Hogan that the above referenced vehicle could be financed with the terms of \$548 per month, for 72 months, at a 10.5% interest rate based on the sale price of \$28,009.

- F7. Mr. Hogan advised Ms. Henigan and Carol that he would prefer to use his bank to obtain a better interest rate. Carol stated that Mr. Hogan qualified for an interest rate of 3.9%, which Superior could offer. However, since Mr. Hogan qualified for the 3.9% interest rate, Carol stated that Superior would have to deduct an additional \$800 in discounts previously offered in order to recoup finance dollars the dealership forfeited due to the lower interest rate.
- F8. Upon further review of the written quote from Carol and Ms. Henigan, it appears the actual discount was lowered by \$1,191. Therefore, the discount for the above referenced vehicle was \$3,905 compared to the advertised discount of \$8,796. As a result, the new terms of the purchase of the above referenced vehicle were based on a sales price of \$29,200 with a monthly payment of \$487 for 72 months at a 3.9% interest rate.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Commission makes the following Conclusions of Law:

- C1. Superior employed false and misleading advertising in violation of the Commission Act and Commission Rule 3 Advertising, Section 2, Paragraph A(4) in connection with the above mentioned newspaper advertisement when the first contact was secured by deception even though the subsequent facts of the discounts and terms of the vehicle were subsequently made known to the buyer.
- C2. Superior employed false and misleading advertising in violation of the Commission Act and Commission Rule 3 Advertising, Section 4, Paragraph D and Commission Rule 3 Advertising, Section 2, Paragraph A(1)(a)

in connection with the above mentioned newspaper advertisement when Superior did not clearly and conspicuously disclose limitations on the discounts and terms adjacent to the advertised vehicle.

- C3. Superior employed false and misleading advertising in violation of the Commission Act and Commission Rule 3 Advertising, Section 2, Paragraph A(2) and A(5)(a) in connection with the above mentioned newspaper advertisement when Superior failed to make a bona fide attempt to sell the advertised vehicle in accordance with the terms of the offer.

ORDER

The Commission finds that the violation of the advertising rule warrants a civil penalty of \$10,000.00 which is to be paid within thirty (30) days of receipt of this Order.

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 _____
F. S. Stroope, Chairman

Date: _____