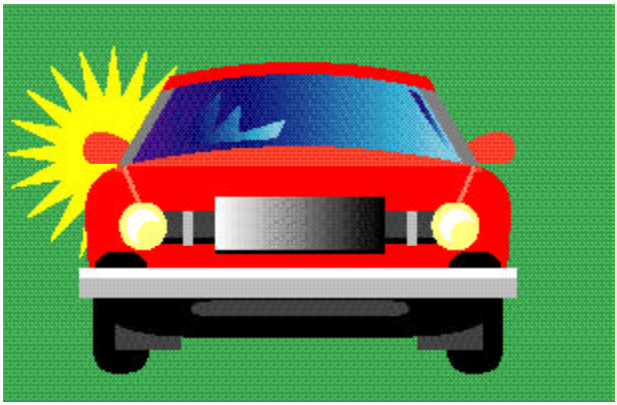

Incentive Advertising: A Reference Guide For Motor Vehicle Dealers

A service of the Division of Motor Vehicles,
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Incredible rebates through the end of the year!

No payments until June of 2004!

Now with the purchase of a new car,
get a pair of matching floormats FREE!

The sale of automobiles is a competitive industry. With an ever-increasing range of models, options and prices, motor vehicle dealers must look at innovative means of not only getting the customer through the door, but getting them to drive off the lot in a new or used vehicle. One of the best means of accomplishing this is through the use of incentive advertising.

This pamphlet explains the South Dakota laws and administrative rules (SDCL 32-6B-63 and 61:24:07:01-11) pertaining to incentive advertising.

Straightforward Advertising: the Do's and Don'ts (61:24:07:06)

South Dakota regulations clearly state the requirements for truthful advertising on the sale of new or used vehicles. An advertisement or sales presentation may not be used if it does any of the following:

- Obscures or makes misleading any material fact by using a different type size, style, location, sound, lighting, or color;

- Misrepresents in any way the size, inventory, or nature of the business of the advertiser or seller; the expertise of the advertiser or seller or their agents or employees; or the ability or capacity of the advertiser or seller to offer price reductions;

- Is part of a bait and switch plan (described in greater detail later in this pamphlet);

- Advertises the immediate availability of a new motor vehicle or related goods or services with the intent not to supply reasonably expected public demand unless the advertisement discloses the specific quantity available (such as "Choose from three new models in stock");

- Advertises a specific motor vehicle for sale that the advertiser does not have in stock on the date the advertisement is placed unless the advertisement states "not in stock", "order yours now", or uses a similar phrase which clearly indicates that the vehicle is not available for immediate delivery and indicates the period of time in which delivery will be made;

- Makes any representation or statement of fact that the advertiser or salesperson knows or should know is false and misleading, or if the advertiser or salesperson does not have sufficient information upon which a reasonable belief in the truth of the representation could be based;

- Advertises the sale, repair, or maintenance service of any motor vehicle without disclosing the business name and address of the advertiser or dealer;

- Advertises for sale a motor vehicle for which the year, make and model are not clearly disclosed;

- Advertises a motor vehicle for sale at a price or price comparison which represents less than the total price to be paid by a retail purchaser unless the advertisement clearly states that the price is offered with reference to a trade-in, set-off, discount, or other method of price reduction and discloses the amount of the allowance; and

- Advertises a specific price or range of prices that a dealer will pay for trade-in vehicles unless the advertisement meets the following requirements:

a) The advertisement specifies the criteria the dealer will use to determine the trade-in value of a particular vehicle;

b) The advertised price applies to all trade-in vehicles, regardless of condition or age; and

c) The advertisement discloses any conditions trade-in vehicles must meet before the advertised price is paid.

In addition, used motor vehicles may not be advertised by a dealer in any manner that would lead a customer to believe that they are new (61:24:07:09).

FREE…With Some Strings Attached (61:24:07:02)

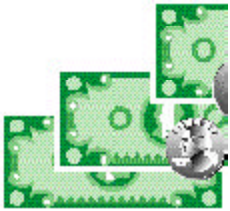
One of the most powerful means of motivating consumers to enter your business is to offer them something free. In the world of advertising, few things are ever truly "free"; that is, given to the customer without any commitment from them to purchase an additional item. Therefore, it is important for a business to take certain precautions when advertising something as "free".

Under federal (FTC) regulations adopted for use by South Dakota, a motor vehicle dealer cannot use the word "free" in advertising unless certain provisions are met. If a product or service usually is sold at a price arrived at through bargaining or negotiation rather than at a regular price, it is improper to represent that another product or service is being offered "free" with the sale. The same representation is also improper where there may be a regular price, but where other material factors such as quantity, quality or size are arrived at through bargaining. When a consumer sees or hears the word "free" (such as "Buy a used car this Saturday only and we'll throw in the air conditioning FREE"), it indicates that they are paying nothing for that article, or at least no more than the regular price for the other. That customer has a right to believe that the dealer will not directly and immediately recover all or part of the cost of the free merchandise or service by marking up the price of the article which must be purchased or by the substitution of inferior merchandise or service.

Simply put, if the used car is priced at $2,500 and the installation of the air conditioning and the air conditioner itself costs $100, the dealer cannot increase the price of the car to $2,600 to recover the cost of the air conditioner and still say the customer is getting it "free".

Since the use of the word "free" may seem too restrictive, you as a dealer may be tempted to substitute terms like "gift", "given without charge", or "bonus". If those terms can still be construed by consumers to mean "free", the same provisions apply.

Show Me the Money:
Motor Vehicle Price Disclosure (61:24:07:04)



In a perfect world, a consumer could buy any vehicle they want without considering the cost of the vehicle. Realistically, price is a determining factor for most consumers, and it is the responsibility of the motor vehicle dealer to make sure that the price is accurately advertised.

To maintain accuracy in disclosing prices, follow these guidelines:

- Advertisements stating an offering price for a motor vehicle offered for sale must state the effective period of the advertisement (for example "Get a new Ford Escort for $15,000 if you buy before December 31st");

- A motor vehicle offered for sale bearing a Monroney sticker or a label stating a manufacturer's suggested retail price must have a supplemental sticker affixed stating the offering price of the vehicle if the offering price is greater than the Monroney sticker price or the stated manufacturer's suggested retail price;

- Any price stated in an advertisement or in a written or oral price quotation given to a prospective buyer is considered an offering price or, if the context so indicates, is considered the offering price plus taxes, license fees, documentary fees, and registration costs;

- If an offering price applies to single or to a limited number of new or used vehicles (as in "Get one of three new Chevy Blazers for only $21,000"), any advertisement stating the offering price must disclose the limitation.

Cut Out the Middleman:
Factory Sales- Wholesale Prices (61:24:07:11)

It's a common assumption that if a person is buying a product direct from the factory or at wholesale prices, the price is better because it eliminates the mark-up added on by the dealer or retailer. In South Dakota, dealers are prohibited from advertising the sale of motor vehicles in such a way that the public believes the vehicles are being offered for sale by the manufacturer or distributor of the vehicles.

Advertisements by dealers may not contain the terms "factory sale", "wholesale price", or any other similar terms which indicate sales other than retail sales. In addition, a dealer may not use the terms "dealer cost", "inventory price", "factory invoice", "invoice", "wholesale" and "factory billing" in advertising. (61:24:07:08)

Your Chance to Save: Rebates and Financing Rates (61:24:07:10)

Rebates and low financing rates are common features in motor vehicle dealer advertisements. In South Dakota, a dealer cannot advertise an offer of a manufacturer's or distributor's rebate, refund, discount, or other financial inducement or incentive of any type unless the ad clearly discloses the contribution of the dealer to the manufacturer's or distributor's rebate, refund, discount, or other financial inducement or incentive. The ad should also state that the dealer's contribution might affect the final negotiated price of the vehicle.

If the advertisement offers an interest rate or finance charge incentive to purchasers of motor vehicles sold by the dealer which is paid for or financed by the dealer rather than the manufacturer, distributor, or financial institutions, it must be clearly stated that the dealer pays for or finances the interest charge reduction and that such an arrangement may affect the final negotiated price of the motor vehicle.

Checking the Sticker Price: Supplemental Stickers (61:24:07:05)

Supplemental stickers are labels other than the Monroney sticker that are affixed to new motor vehicles and display the offering price of that vehicle. A supplemental sticker may show only the offering price or the offering price and itemized charges added to the Monroney sticker price or the manufacturer's suggested retail price to reach the offering price. No charge may be added for goods or services not actually provided on the vehicle.

The following charges are also prohibited: charges itemized and described for services required by the manufacturer or distributor to be performed by a dealer prior to the delivery of a motor vehicle to a retail buyer; overhead expenses such as warehousing, floor planning, advertising, and clerical costs, except documentary fees; and transportation costs charged by the manufacturer or distributor to the dealer and included in the Monroney sticker price or the manufacturer's suggested retail price. The dealer may list a charge for inland freight if the charge listed is the dealer's actual cost for freight from the port of entry to the dealership, and it is not included in the Monroney sticker price or the manufacturer's suggested retail price.

The portion of the difference between the offering price and the Monroney sticker price or the manufacturer's suggested retail price not representing additional goods or services can be described as "additional dealer profits", "additional mark-up" or a similar term.

In order for the supplemental sticker to be truthful, a dealer cannot falsely represent the nature or amounts of charges listed on the sticker by listing charges for providing additional goods or services that are substantially higher than the charges used by the dealer for the sale of the same or substantially similar goods or services to other buyers.

Satisfaction Guaranteed: Warranty Advertising (61:24:07:03)

If an ad is used to offer a warranty or guarantee, it must include any limitation of the warranty or guarantee such as its duration, the inclusion or exclusion of service or labor charges, and the characteristics or properties of the motor vehicle or any part included or excluded. It should also disclose whether the warranty or guarantee will be performed by repair, replacement, refund, or any other means, and whether the manner of performance is at the option of the advertiser.

The Scam: Bait and Switch Plans (61:24:07:07)

The members of any industry would like to believe that their counterparts are conducting business in a professional and honest manner. However, that may not always be the case. If a motor vehicle dealer performs any of the following acts, it can be construed as prima facie evidence of a bait and switch plan or scheme:

Refusing to show, display, sell, or otherwise provide the goods or services advertised in accordance with the terms of the advertisement;

Disparaging by act or word the advertised goods or services; the warranty; the credit terms; the availability of service, repairs, or parts; or anything which in any other respect is a material fact connected with the sale of the advertised goods and services;

Refusing to take orders for advertised goods and services or taking orders at a price greater than the advertised price;

Showing, demonstrating, or delivering any advertised goods and services or taking orders at a price greater than the advertised price;

Accepting a deposit for any advertised goods or services, then switching the purchaser to higher priced goods or services; or

Failing to deliver the advertised goods and services within the promised delivery period unless the failure is caused by reasons beyond the control of the dealer.

Definitions

Bait and Switch: an alluring but insincere offer to sell a product, the primary purpose of which is to obtain leads to persons interested in buying the advertised product in order to sell the person some other product at a higher price or on a basis more advantageous to the advertiser.

Clear and Conspicuous: presentation of a statement, representation, or term in a manner that is readily apparent and understood by the person to whom it is being addressed, considering such factors as size, color, contrast, length, and time needed to read the advertisement.

Monroney sticker: the label required by § 3 of the Automobile Information Disclosure Act, 15 U.S.C.S. § 1232 (1982).

Offering price: the full price at which a dealer will sell a motor vehicle, including any rebates but not including taxes, license fees, documentary fees, and registration costs.

Rebate: the payment of money by the manufacturer or dealer to a consumer or to a third party on behalf of a consumer on the condition that the consumer purchase or lease a motor vehicle.

Supplemental sticker: a label other than the Monroney sticker affixed to a new motor vehicle displaying the offering price of the motor vehicle.

Taxes, license fees, and registration costs: the taxes, charges, and fees payable to or collected on behalf of governmental agencies which are necessary for the transfer of an interest in a motor vehicle or for the use of a motor vehicle.

Warranty advertisement: any advertisement in which a warranty or guarantee of a motor vehicle or any of its parts is offered in connection with the sale of the motor vehicle.

State (SDCL 20-13) and federal (Title VI of the Civil Rights Act of 1964, the Rehabilitation Act of 1973 as amended, and the Americans with Disabilities Act of 1990) laws require that the Department of Revenue provide services to all persons without regard to race, color, creed, religion, sex, disability, ancestry or national origin.

Incentive Advertising: A Reference Guide for Motor Vehicle Dealers is written and designed to provide motor vehicle dealers and the general public with information regarding the guidelines for incentive advertising.