

TRANSPORTATION CABINET
Motor Vehicle Commission
(New Administrative Regulation)

605 KAR 1:191. Motor vehicle advertising.

RELATES TO: KRS 190.010-190.990

STATUTORY AUTHORITY: KRS 190.015, 190.020, 190.030, 190.040, 190.058, 190.073

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.040(1)(i) requires that a motor vehicle dealer shall not engage in "false or misleading advertising." KRS 190.073 authorizes the Motor Vehicle Commission to "promulgate administrative regulations for the purpose of carrying out the provisions of KRS Chapter 190. This administrative regulation establishes examples of what constitutes "false or misleading advertising."

Section 1. Definitions.

- (1) "Advertising" means any oral, written or graphic statement, whether physical or electronic, which offers vehicles for sale or lease or that indicates the availability of vehicles, including any statements or representation made in a newspaper, pamphlet, circular, other publication, in radio or television, social media, on the internet or contained in any notice, handbill, sign, billboard poster, bill catalog, letter, or business card.
- (2) "Bait advertising" means:
 - (a) An alluring but insincere offer to sell or lease a product, to obtain leads to persons interested in buying merchandise of the type advertised and to switch consumers from the advertised product to another product for a higher price or on a basis more advantageous to the dealer; or
 - (b) Advertising a new motor vehicle at a price that does not include all equipment listed as standard equipment by the manufacturer without disclosing that fact, or failing to disclose any of that equipment for the purpose of advertising a low price and "baiting" the customer into charges above the advertised price.
- (3) "Clear and conspicuous" means a statement, representation or term differing from other statements, representations, or terms being made so as to be readily noticeable to the person to whom it is being disclosed either by its size, sound, length of time, color, placement in the ad, or other features.
- (4) "Demonstrator" means a vehicle of the current or preceding model year that has never been the subject of a retail sale, and that has been used by dealership personnel for demonstrating performance ability.
- (5) "Executive vehicle" and "official vehicle" mean, if so advertised, a vehicle that has been used exclusively by an executive or executives of the dealer franchisee.

Section 2. A licensee shall not use misleading or bait advertising. A practice shall not be pursued by an advertiser if the practice will discourage the sale of the advertised product with the intent and purpose of selling other merchandise instead.

Section 3.

- (1) An advertisement for the sale or lease of new and used vehicles placed by or on behalf of a licensee shall clearly and conspicuously identify the dealership by including in the text of the advertisement the business name as it appears on the dealer's license. In a classified newspaper or similar on-line advertisements, the licensee may, as an alternative, use the word "dealer" in the text of the advertisement.
- (2) The advertisement of any dealership inventory on a non-company social media account shall be considered an advertisement placed on behalf of the dealership subject to

these regulations and the provisions of KRS Chapter 190.

(3) A new or used motor vehicle dealer advertising the sale or lease of new or used motor vehicles at more than one (1) licensed location shall use in the text of the advertisement the business name for each advertised location as the name appears on the dealer's license for the locations where the advertised vehicles are located.

(4) A new motor vehicle dealer advertising the sale or lease of new motor vehicles at more than one (1) licensed location shall specifically identify the makes of vehicles available at each advertised location.

Section 4.

(1) Except as established in subsection (2) of this section, if a specific new motor vehicle is advertised by a dealer as being for sale, that vehicle shall be:

- (a) In the possession of the dealer;
- (b) Shown; and
- (c) Sold as advertised, illustrated, or described at the advertised price and terms, at the advertised address.

(2) The advertisement for the sale or lease of a specific new motor vehicle that is not in stock on the date of the advertisement shall:

- (a) State:
 - 1. "Not in stock";
 - 2. "Order yours now"; or
 - 3. Other phrases of similar import that clearly indicate the vehicle is not available for immediate delivery; and
- (b) Disclose a reasonable estimate of the period of time in which delivery will be made.

(3) If an advertisement pertains to one (1) specific vehicle only, this fact shall be disclosed in the advertisement. Listing a stock number shall be adequate disclosure.

Section 5. The following statements shall not be used in advertising by a dealer, unless the statements are absolutely true with no qualifications:

(1) Statements such as:

- (a) "Write your own deal";
- (b) "Name your own price";
- (c) "Name your own monthly payments";
- (d) "Appraise your own car"; or
- (e) Statements with similar meaning;

(2) Statements such as:

- (a) "Everybody financed";
- (b) "No credit rejected";
- (c) "We finance anyone"; or
- (d) Other statements representing or implying that no prospective credit purchaser will be rejected because of his inability to qualify for credit;

(3) Statements representing that no other dealer grants greater allowances for trade-ins, however stated; and

(4) Statements implying that because of its large sales volume, a new vehicle dealer is able to purchase vehicles for less than another dealer selling the same make of vehicles.

(5)

- (a) Claims such as "first", "largest", "biggest", shall not be used unless they are valid at the time such claims are made.
- (b) If such claims are qualified with regard to area, location, time, or other limitations, upon the direction of the commission, the dealer shall incorporate within the advertisement the terms of such qualification.

Section 6. Retail advertising shall not state or imply that the dealer:

- (1) Is selling vehicles in a manner other than through normal retail channels, including use of terms including such as "wholesale", "factory sale", "factory discount"; or
- (2) Has a special relationship or connection to the manufacturer that other dealers do not have, including use of terms such as "factory outlet", "factory branch", and similar terms used in connection with the manufacturer's name.

Section 7. It shall be false or misleading advertising to advertise the sale of a vehicle having only a Kentucky salvage title unless the advertisement conspicuously discloses that the vehicle has a salvage title and that the vehicle cannot be registered and operated on the roadways in Kentucky unless the vehicle is repaired and issued a rebuilt title.

Section 8. Since the amount of trade-in allowance will vary depending on the condition, model, and age of a buyer's vehicle, no specific trade-in amount or range of amounts shall be used in advertising.

Section 9.

- (1) An asterisk (*) may be used to give additional information about a word or term.
- (2) Use of one (1) or more footnotes or asterisks which, alone or in combination, contradict, confuse, materially modify, or unreasonably limit a principal message of the advertisement shall not be used.

Section 10.

- (1) Any disclosure appearing in advertisements shall clearly and conspicuously feature all necessary information in a manner that can be read and understood or that can be heard and understood.
- (2) The minimum duration of printed language in a television advertisement shall be five (5) seconds for every three (3) lines.

Section 11. If an advertisement contains an offer of a discount on a new vehicle, the amount of the discount shall be stated by reference to the actual dollar figure of the manufacturer's suggested retail price of the vehicle plus the retail price of dealer-added options.

Section 12. The words "free", "gift", or words of similar import may be used in advertising only if the advertiser is offering an unconditional gift.

Section 13. The manufacturer's suggested retail price (MSRP) dollar figure of a new motor vehicle if advertised in local media by a manufacturer, distributor, or regional advertisement council or association shall include all costs and charges for the vehicle advertised including destination charges if those charges are uniform regardless of destination throughout the state; destination charges subject to variance within the state and dealer preparation charges may be excluded from the price, if the advertisement conspicuously states that the costs and charges are excluded.

- (1) If the price of a vehicle is advertised in local media by a licensee, the vehicle shall be fully identified as to year, make, model, and if new or used.
- (2) The stated price shall include all charges that the customer is required to pay for the vehicle, including "freight" or "destination charges", "dealer preparation", "dealer handling", "additional dealer profit", "additional dealer margin", and "undercoating or rustproofing" if the vehicle is already so equipped.
- (3) The advertised price at which the dealer is advertising a particular motor vehicle shall be the price before consideration for a down-payment, a trade-in allowance, or other similar allowances.

Section 14. If the words "list" or "sticker" or words of similar import are used in a new motor vehicle advertisement, the words shall only refer to the actual dollar figure of the manufacturer's suggested retail price (MSRP) plus the retail price of dealer-added options.

Section 15. If any advertisement relates to a lease, the advertisement shall clearly and conspicuously disclose that the advertisement is for the lease of a vehicle.

Section 16. A dealer offering to sell a demonstrator, program, official, or executive vehicle shall clearly and conspicuously identify former use.

(1) A demonstrator shall be offered for sale as such only by a dealer who holds a valid sales agreement or franchise for the sale of the same line make of motor vehicle.

(2) A vehicle advertised as official or executive vehicles shall not have been sold or leased to a retail customer prior to the appearance of the advertisement.

Section 17. Motor vehicle financing shall not be advertised at a reduced interest rate if the cost thereof would be directly or indirectly borne by the buyer unless the advertisement discloses that rate shall affect the negotiated price of the vehicle to the buyer.

Section 18. In any action pursuant to this administrative regulation, truth shall be an absolute defense.

DOUG DOTSON, Chairman

APPROVED BY AGENCY: September 15, 2021

FILED WITH LRC: September 20, 2021 at 12:06 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2021 at 9 a.m. local time at the Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601. In the event that in-person meetings are not available, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link: <https://us02web.zoom.us/j/82520305441>, or by telephone at 19292056099, your meeting I.D. to join in is 825 2030 5441. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on December 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below:

CONTACT PERSON: Suzanne Baskett, Executive Staff Advisor, Kentucky Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 227-8082, email Suzanne.Baskett@ky.gov.