



# The State of South Carolina Department of Consumer Affairs

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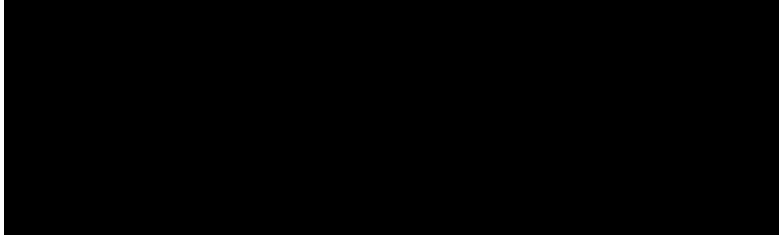
Carri Grube Lybarker  
Administrator/  
Consumer Advocate

*Celebrating Over 40 Years of Public Service*

May 24, 2016

Administrative Interpretation 2.308-1602

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RE: Motor Vehicle Dealer's Advertised Price

Dear

You have requested an opinion regarding whether a motor vehicle dealer is required to sell a vehicle for the price advertised on the internet if the consumer does not mention he or she saw the advertisement. The Department concludes that motor vehicle dealers must sell a vehicle for the advertised price, regardless of whether a consumer mentions the price representation in the advertisement, unless a limited exception applies. This conclusion applies to advertisements in any medium including, but not limited to, radio, television, internet, or direct mailer.

Section 37-2-308(c) of the South Carolina Code of Laws states, "A motor vehicle dealer may not advertise in a manner that is false, deceptive, or misleading, or that misrepresents a vehicle offered for sale." South Carolina courts have neither interpreted this statute nor ruled on the specific question you have asked. Thus, the Department looked to several other states' statutes and case law to help interpret the relevant South Carolina statute. Illinois, California, Ohio, and several other states consider the act of selling a vehicle for a price above the advertised price to be an unfair or deceptive act, even if the consumer does not mention the advertised price. See Ill. Rev. Stat. 1991, ch. 121 1/2, par. 262; Cal. VEH § 11713.1(e); Cal. Code Regs., tit. 13, § 260.04(b); Ohio Adm. Code § 109:4-3-16(B); Conn. Reg. § 42-110b-28(b)(1). Failure to disclose a vehicle's advertised price displays an intent to not sell the vehicle as advertised, which constitutes deceptive conduct. See Affrunti v. Village Ford Sales, Inc., 232 Ill. App. 3d 704, 707, 597 N.E.2d 1242, 1244 (1992); Castro v. Union Nissan, Inc., 2002 WL 1466810, (N.D. Ill. 2002). The Department agrees that the failure to disclose a vehicle's advertised price constitutes deceptive conduct and as such violates Section 37-2-308(c). Thus, motor vehicle dealers must honor the advertised price of a vehicle, even when consumers do not mention the advertisement.

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There are a few narrow exceptions to the general rule that a motor vehicle dealer must sell a vehicle for the advertised price even if a consumer does not mention seeing the advertisement. The first exception applies when a motor vehicle dealer clearly and conspicuously conditions the obtaining of a vehicle at the advertised price upon the presentation or mention of the advertisement. For instance, to fall within this exception, an advertisement asserting the price of a vehicle would need to include language stating, "Mention this advertisement to the dealer to receive the advertised price." The motor vehicle dealer must give the consumers who mention the advertisement the advertised price. On the other hand, a consumer who neglects to mention the advertisement to the dealer does not have to be given the advertised price.

The second exception applies when the motor vehicle dealer posts a coupon that must be presented to receive a discounted purchase price. For example, the motor vehicle dealer may post a coupon on its website or in the newspaper that states, "Bring this coupon into the dealership and receive \$500 off the purchase of a vehicle!" In this instance, the motor vehicle dealer must reduce the price of a vehicle by \$500 for any consumer who brings in the coupon, but is not required to do so for consumers who fail to present the coupon to the dealer.

The third and final exception applies when the advertisement states that the advertised price and terms are good only for a specific period of time and such time has elapsed. As an example, an advertisement states, "Come in and receive the low price of just \$25,000 for a 2012 Toyota 4Runner! Offer good March 1, 2016 through May 1, 2016." The motor vehicle dealer must honor the \$25,000 advertised price for any consumer purchasing a 2012 Toyota 4Runner during the dates specified in the advertisement, regardless of whether the consumer mentions the advertisement. However, the dealer is not required to honor the advertised price any time before or after the specified dates.

I hope this fully answers your question. If you have any further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Kelly H. Rainsford".

Kelly H. Rainsford

Deputy of Regulatory Enforcement