

ADVERTISING & MARKETING BULLETIN

May 2006

THE WAY OF THE ROAD - STEERING THROUGH CANADA'S CAR AD LAWS

An automobile is one of the most expensive purchases an individual consumer will make in his/her lifetime. Given the financial significance of automobile purchases to individual consumers, both the federal Competition Bureau and provincial government consumer affairs ministries scrutinize advertising and marketing practices in the automotive industry. Automotive manufacturers, dealerships and creative agencies must therefore carefully design ad campaigns to comply with federal and provincial legislation and regulations. This bulletin briefly highlights a sample of the major issues to be aware of when you develop car ad concepts.

CONSUMER PROTECTION REGULATIONS

The Annual Percentage Rate ("APR") should be featured as prominently as any other interest rate in the advertisement. The APR needs to be featured as prominently as other rates in any ads that make "cost of credit" representations. The APR calculation includes foregone cash incentives, administration fees, and other payments that will be payable by individuals who are financing their purchase and not by cash customers.

Use "APR" instead of "ALR". The Annual Lease Rate ("ALR") is simply the percentage rate that is being charged as interest, whereas the APR reflects the more detailed calculation required under consumer protection laws in Ontario. There is no prohibition against disclosing the ALR as long as the APR is disclosed with equal prominence.

Be careful with making 0% APR representations. The APR calculation incorporates all costs of credit, including foregone cash incentives. When advertising a "0% APR", it must mean that the cost of borrowing is actually zero.

Purchase Financing Disclosure. When purchase financing is offered for a single car, the ad must include the cash price of the car and the cost of borrowing. When several models are advertised, the ad must disclose a representative credit agreement representing the cost of borrowing for one model.

Lease Financing Disclosure. For automobile lease advertisements, the ad must provide the following details: the amount of payments to be made before and during the term of the lease, the length of the lease term, the APR and the excess kilometre charge for automobile leases with an allowance of less than 20,000 kilometres per year. When several models are advertised, a single model must be used as an example of a representative lease.

Dealer Participation. Include a qualification that the promotion is only available at participating dealers. Furthermore, a representation in the disclaimer should be included that provides "dealers may sell for less".

COMPETITION LAW CONCERNS

Ordinary Price Claims. The Competition Bureau's position is that "savings" claims, representing discounts off MSRP, are misleading if the MSRP was not the "ordinary selling price". A "special price" offer must amount to an actual saving over the "usual" selling price of the car. There have been a few misleading advertising convictions where the advertisement listed a "Was" price, being the MSRP, for the advertised vehicles. Since no cars were actually sold at the MSRP, the consumer could not necessarily make a better bargain during the "sale".

To avoid potential liability under the ordinary price claim laws, do not refer to a "regular price" in an ad unless either a substantial volume of the product has been sold at its regular price, or a higher price, within a reasonable period of time before making the representation (the "volume test") or the product has been offered for sale, in good faith, at the regular price, or a higher price, for a substantial period of time recently before or immediately after the

making of the representation (the "time test")¹. Steer clear of the practice of artificially inflating the regular price of the product in order to make the sales price appear to be more attractive. Finally, don't run a sale for extended periods of time in which case the Competition Bureau might consider the "sale price" to be the "regular price".

Misleading Advertising - Generally. Advertising must be targeted to the average purchaser of an automobile. The general impression of the ad will determine if it is false or misleading. Deception may result from direct statements in the advertisement or from reasonable inferences that may be drawn from an ad or from disclosures that contradict, confuse, unreasonably limit or materially modify a principal message of the advertisement. The following are specific examples of features of auto advertisements that might be considered misleading:

- display the price of the cheapest model of the car next to a photo of the high-end luxury model with all the "extras" included. If a luxury model is displayed prominently, you should indicate that it is a luxury model next to the photo;
- use of footnotes which contradict, confuse, significantly modify or limit a principal message of the ad;
- using print disclaimers in television commercials that cannot be read and comprehended in one normal viewing;
- use of any print in type size so small as to be not easily readable without having to resort to unusual means (e.g., a magnifying glass);
- use of unexplained abbreviations or jargon which is not readily understood by the general public (e.g., O.A.C. for "on approved credit"); or
- the offer is not valid for a reasonable period of time after the ad is published.

It is prudent to have concepts for car ads approved by legal counsel during the initial creative planning stage of the ad to avoid a situation where the core message of the ad is diluted at the last minute because of a legal compliance risk. However, due to the nature of the business, car ads often need to be reviewed at the last minute before they are sent to the printers or are run on the air. Whatever stage of the advertisement creation process you are at when you realize that legal review is required, care should be taken to ensure compliance with applicable Canadian car ad laws. Otherwise, your creative may be in for a rough ride.

Written by Les Chaiet and Bill Hearn.

¹ For more information on the topic of ordinary price claims, please see our Client Bulletin, "Misleading Discounts Can Cost You", available online at: http://www.mcmbm.com/Upload/Publication/Misleading_1003.pdf (October 2003) and a paper presented to the Canadian Institute's 12th Annual Advertising & Marketing Law Conference "Making Sure Your Price Claims Are Legal", available online at the link below:

http://www.mcmbm.com/Upload/Publication/BHearn_JHood_MLow_MakingSureYourPriceClaimsAreLegal.pdf (January 2006).

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

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