

BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF:

AP# 13-002

**RED RIVER CHRYSLER DODGE JEEP RAM
HEBER SPRINGS & MALVERN**

NOTICE OF VIOLATION

IT HAS BEEN determined by the Arkansas Motor Vehicle Commission (hereinafter "Commission") that Red River Dodge Chrysler Jeep Ram of Heber Springs (hereinafter "Red River Heber Springs") and Red River Dodge Chrysler Jeep Ram of Malvern (hereinafter "Red River Malvern"), two licensed dealers, utilized false and misleading advertising. This is in direct violation of the Arkansas Motor Vehicle Commission Act, Ark Code Ann. §23-112-101, et seq., pursuant to Ark. Code Ann. §23-112-204, and Commission Rule 3. If the Commission determines that a firm or individual has violated the Commission Act or Rules, the Commission may revoke or suspend the license, or impose a civil penalty in lieu of revocation or suspension.

FACTUAL BACKGROUND

- F1. Red River Heber Springs and Red River Malvern are licensed new motor vehicle dealers.
- F2. Red River Heber Springs advertised in the November 8, 2012, *Arkansas AutoBuyer*, and did not disclose all required credit terms. The November 8, 2012, advertisement listed the address for Red River Heber Springs, and stated "Now in 2 Locations! Heber Springs and Malvern."
- F3. Jennifer Padgett, the Commission's advertising compliance officer reviewed the *Arkansas AutoBuyer* advertisement for possible violations, and sent a letter to Red River Heber Springs on November 26, 2012, outlining the possible violations.

- F4. Red River Malvern advertised in the November 15, 2012, *Arkansas AutoBuyer*. The November 15, 2012, advertisement listed the address for Red River Malvern in bold print, listed the address for Heber Springs in small print, and stated “Now in 2 Locations! Heber Springs and Malvern.”
- F5. Jennifer Padgett, the Commission’s advertising compliance officer reviewed the *Arkansas AutoBuyer* advertisement for possible violations, and sent a letter to Red River Heber Springs on November 27, 2012, outlining the following possible violations:
1. The advertised price included a limited rebate not available to all consumers;
 2. The used vehicles reflected discount offers; and
 3. The advertisement contained federal truth in lending triggering terms. Thus requiring the advertisement to list, the amount or percentage of the down payment, terms of repayment and the annual percentage rate.
- F6. Red River Malvern advertised in the December 13, 2012, *Arkansas AutoBuyer*. The December 13, 2012, advertisement listed the address for Red River Malvern in bold print, listed the address for Red River Heber Springs in small print, and stated “Now in 2 Locations! Heber Springs and Malvern.”
- F7. Jennifer Padgett, the Commission’s advertising compliance officer reviewed the *Arkansas AutoBuyer* advertisement for possible violations, and sent a letter to Red River Malvern on December 19, 2012, outlining the following possible violations:
1. The used vehicles reflected discount offers; and

2. The advertisement contained federal truth in lending triggering terms.

Thus requiring the advertisement to list, the amount or percentage of the down payment, terms of repayment and the annual percentage rate.

F8. Red River Malvern and Red River Heber Springs advertised in the January 17, 2013, *Drive Arkansas*. The January 17, 2013, advertisement listed the addresses for both Red River locations in equal prominence.

F9. Jennifer Padgett, the Commission's advertising compliance officer reviewed the *Drive Arkansas* advertisement for possible violations, and sent a letter to Red River Heber Springs on January 23, 2013, outlining the possible violation that the advertised price included a limited rebate not available to all consumers.

APPLICABLE LAW

L1. Motor vehicle dealers are required to conform their conduct to the Motor Vehicle Commission Act, Ark. Code Act § 23-112-101, *et seq.* and the Rules promulgated by the Commission pursuant to Ark. Code Act § 23-112-204.

L2. Violations of Commission Rules are considered to be a *prima facie* violation of Ark. Code Ann. § 23-112-402(3) which states it is unlawful for a motor vehicle dealer or salesperson to use any false or misleading advertisement.

L3. Failure to comply with any provision of the AMVC Act or any Rule promulgated by the Commission may lead to revocation or suspension of the license as per Ark. Code Ann. § 23-112-308(a)(4). The Commission may issue a monetary penalty in lieu of revocation or suspension as per Ark. Code Ann. § 23-112-309.

L4. Arkansas Motor Vehicle Commission Rule 3 Advertising, Section 2 and Section 5.

CONCLUSIONS OF LAW

- C1. Red River Malvern violated Commission statutes and rules when they advertised a sale price utilizing limited rebates. This charge is based on L1, L2, L3, and L4.
- C2. Red River Malvern violated Commission statutes and rules when they advertised used vehicles reflected discount offers. This charge is based on L1, L2, L3, and L4.
- C3. Red River Heber Springs and Red River Malvern violated Commission statutes and rules when they did not include all required terms when utilizing federal truth in lending triggering terms. This charge is based on L1, L2, L3, and L4.

AS A RESULT OF THESE VIOLATIONS, you are hereby directed to pay a civil penalty in the amount of two thousand five hundred dollars (\$2,500.00). This amount should be sent to the Commission within seven (7) days of receipt of this Notice of Violation.

IF YOU DESIRE TO CONTEST the alleged violation or the penalty imposed, please so indicate on the attached form and return to the Commission Office within seven (7) days and this matter will be set for an evidentiary hearing before the Commission.

ARKANSAS MOTOR VEHICLE COMMISSION

By: _____
Greg Kirkpatrick, Executive Director

Date: _____

Case: AP #13-002
RED RIVER HEBER SPRINGS AND RED RIVER MALVERN

ACKNOWLEDGEMENT

I, _____, owner or a representative of Red River Heber Springs and Red River Malvern, acknowledges that I received and read the foregoing Notice of Violation.

I admit that I violated the Arkansas Motor Vehicle Act and/or Rules as alleged in the attached Notice of Violation, and agree to pay a civil penalty in the amount of two thousand five hundred dollars (\$2,500.00). My remittance in that amount is enclosed

I desire to contest the allegations set forth in the attached Notice of Violation and the proposed civil penalty.

Signature

Date