

BEFORE THE ARKANSAS MOTOR VEHICLE COMMISSION

IN THE MATTER OF:

H # 08-023

MOUNTAINEER POWERSPORTS

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Arkansas Motor Vehicle Commission (hereinafter the “Commission”) held a hearing on October 15, 2008, to determine whether Mountaineer Powersports (hereinafter “Mountaineer”) violated the Arkansas Motor Vehicle Commission Act, Ark. Code Ann. § 23-112-101 et seq. The charges before the Commission concerned whether Mountaineer violated Commission statutes when it sold vehicles at a lower actual price to one dealer compared to other dealers.

The Respondent, Mountaineer, was represented by Bryan Hunt and Legal Counsel Ken Shemin.

After hearing testimony from Danny Holmes, Otis Hogan, Bryan Hunt, and reviewing documents received in evidence, the Commission makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

- F1. On February 12, 2008, the Commission received a notarized complaint from Harvey’s Motorsports and More in Brookland, Arkansas, alleging that a car dealer in their thirty (30) mile area was selling Mountaineer products for less than Harvey’s cost.
- F2. Harvey’s alleged the units were purchased on the internet from Rogers Cycle (Roger’s Outdoors). Harvey’s stated its contract with Mountaineer prohibits internet sales.

- F3. Responding to a telephone complaint, Investigator Danny Holmes traveled to Manila, Arkansas, on January 30, 2008, to investigate whether a used vehicle dealer was selling new motor vehicles. The telephone complaint was followed-up by Harvey's Motorsports and More with a notarized complaint.
- F4. Investigator Holmes observed three (3) Mountaineer ATV's on display and for sale at Towell and Sons Auto Sales in Manila.
- F5. Monte Towell stated the Mountaineer units were new and would be sold on a certificate of origin. Additionally, Mr. Towell stated they were purchased online during a Manheim auto auction from Roger's Outdoors in Rogers, Arkansas, on December 7, 2007. Rogers Outdoors is a licensed dealer for Mountaineer products.
- F6. Investigator Holmes obtained a list of vehicles sold at the Manheim auction by Rogers Outdoors on December 7, 2007, and discovered that sixty ATV's were sold to six buyers. Four of these buyers were used car dealers with H & B Auto Sales of Farmington buying thirty-seven (37) units, North West Motorsports buying nine (9) units, Towell and Sons Auto Sales buying seven (7) units, and Kidd's Auto Sales in Lincoln buying two (2) units. Investigator Holmes traveled to each of these dealerships to confirm the purchases.
- F7. On February 22, 2008, Investigator Otis Hogan traveled to Springdale, Arkansas, to serve Mountaineer with a subpoena for all documents related to new vehicles sold to Rogers Outdoors between December 2007 and February 2008.

- F8. On February 26, 2008, Investigator Hogan received invoices, an accounts receivable aging report, and bills of lading which indicate the vehicles purchased and the price paid by Rogers Outdoors.
- F9. These documents showed Rogers Outdoors purchased a number of units listed with freight-damaged discounts and additional cash discounts of varying amounts.
- F10. Investigator Hogan contacted other Mountaineer dealers to obtain the dealers price list from Mountaineer and to inquire if they were offered the freight damage units and the cash discount provided to Rogers Outdoors.
- F11. Investigator Hogan discovered the Mountaineer dealers contacted were not offered the freight damaged vehicles or the cash discounts. Mr. Hunt offered into evidence that Discount Muffler purchased two units categorized at a scratch and dent price. Discount Muffler was one of nine (9) dealers contacted by Investigator Hogan. Additionally, there were a number of price list discrepancies among the dealers.
- F12. In comparing the price lists of Mountaineer products available to dealers with the invoices for products purchased by Rogers Outdoors, it appears Rogers Outdoors purchased a number of ATV's at discounted prices.

CONCLUSION OF LAW

Based on the foregoing Findings of Fact, the Commission makes the following

Conclusion of Law:

- C1. Mountaineer violated Commission statutes when it sold vehicles at a lower actual price to one dealer compared to other dealers.

ORDER

The Commission finds that the violations of Commission statutes by Mountaineer warrants a total civil penalty of five thousand dollars (\$5,000.00) which is to be paid within thirty (30) days of receipt of this Order.

This is a final Order of the Commission and as such is subject to judicial review pursuant to Ark. Code Ann. § 25-15-212.

ARKANSAS MOTOR VEHICLE COMMISSION

By _____
F. S. Stroope, Chairman

Date: _____