

06-0826
Audit
Signed 12/19/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
)	ORDER	
Petitioner,)		
)	Appeal No.	06-0826
v.)		
)		
MOTOR VEHICLE ENFORCEMENT)	Tax Type:	Advertising Violations
DIVISION, UTAH STATE TAX)		
COMMISSION,)		
)	Judge:	Robinson
Respondent.)		

Presiding:
R. Spencer Robinson, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER REPRESENTATIVE
For Respondent: RESPONDENT REPRESENTATIVE, Motor Vehicle Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on September 19, 2006.

Petitioner is appealing a \$\$\$\$ fine assessed for publishing an advertisement alleged to be in violation of Utah Code Sec. 41-3-210 and Utah Admin. Rule R877-23V-7(29)(b) and (c). The advertisement was published in a direct mail flyer for Petitioner by COMPANY A. Someone faxed the flyer to Respondent on March 29, 2006.

The flyer states, “(QUOTED SENTENCE REMOVED).” It goes on to say that during the special event, persons will save up to \$\$\$\$\$, that the offer is exclusive to PETITIONER, and is only for invited guests. Further on, it states, “(QUOTED SENTENCE REMOVED).”

Petitioner said COMPANY A contacted it regarding the advertisement. Petitioner said COMPANY A vouched for the legality of the advertisement. The manufacturer did not authorize the advertisement.

Respondent argued the advertisement, particularly in the use of the words “only authorized,” conveyed to the public that PETITIONER had special sponsorship from the manufacturer. Respondent said this is prohibited by R877-23V-7(25).

APPLICABLE LAW

Utah Code Ann. §41-3-210 (1) states, in relevant part:

The holder of any license issued under this chapter may not: (a) intentionally publish, display, or circulate any advertising that is misleading or inaccurate in any material fact or that misrepresents any of the products sold, manufactured, remanufactured, handled, furnished by a licensee; . . . (c) violate this chapter or the rules made by the administration; . .

Utah Admin. Rule R877-23V-7(25) states:

Special Status of Dealership. An automotive advertisement may not falsely imply that the dealer has a special sponsorship, approval status, affiliation, or connection with the manufacturer that is greater or more direct than any other like dealer.

Utah Code Ann. §41-3-702 states, in pertinent part,

(1) The following are civil violations under this chapter and are in addition to criminal violations under this chapter:

(c) Level III:

(viii) advertising violation.

(2) (a) The schedule of civil penalties for violations of Subsection (1) is:

(iii) Level III: \$250 for the first offense, \$1,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(b) When determining under this section if an offense is a second or subsequent offense, only prior offenses committed within the 12 months prior to the commission of the current offense may be considered.

DECISION AND ORDER

The advertisement at issue is in violation of Utah Admin. Rule R877-23V-7 (25), in that persons reading the advertisement would infer that Petitioner enjoyed “special sponsorship, approval status, affiliation, or connection with the manufacturer that is greater or more direct than any other like dealer.”

Thus, it violates Utah Code Sec. 41-3-210. It is the first violation within a twelve-month period. Based on the foregoing, the Commission sustains the \$\$\$\$ penalty. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2006.

R. Spencer Robinson
Administrative Law Judge

Appeal No. 06-0826

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2006.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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