

07-0057
Advertisement Violation
Signed 02/22/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	ORDER	
)		
Petitioner,)	Appeal No	07-0057
)	Account No.	#####
v.)		
)	Tax Type:	Advertisement Violation
MOTOR VEHICLE ENFORCEMENT)		
DIVISION, UTAH STATE TAX)		
COMMISSION)		
)	Judge:	Jensen
Respondent.)		

Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE
For Respondent: RESPONDENT REPRESENTATIVE 1, Director, Motor Vehicle
Enforcement Division
RESPONDENT REPRESENTATIVE 2, from the Motor Vehicle
Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on February 5, 2007 in accordance with Utah Code Ann. §59-1-502.5.

Petitioner is appealing a \$\$\$\$ fine assessed for publishing an advertisement in violation Utah Code Ann. Section 41-3-210 and Utah Admin. Rule. R877-23V-7(4). The advertisement, which the Petitioner placed on a large sign at its place of business read, "(X)" The Petitioner has had no prior advertising violations. The Division did not allege any intent by the Petitioner to mislead the public.

Petitioner's representative explained that Petitioner had been a wholesale company and only recently began selling retail. The Petitioner immediately removed the sign after notice from the Division,

even though this required renting a lift at a time when the sign company that placed the sign was not available for a service call.

APPLICABLE LAW

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; [or] (c) violate this chapter or the rules made by the administration; . . . (Utah Code Ann. Sec. 41-3-210 (1).)

The word "wholesale" may not be used in retail automobile advertising. (Utah Admin. Rule R877-23V-7(4).)

DECISION AND ORDER

The advertisement at issue is in violation of Utah Admin. Rule R877-23V-7 and Utah Code Ann. 41-3-210. The Commission finds no grounds for waiver. Based on the foregoing the \$\$\$\$ penalty is sustained. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file 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 _____, 2007.

Clinton Jensen
Administrative Law Judge

Appeal No. 07-0057

BY ORDER OF THE UTAH STATE TAX COMMISSION.

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

DATED this ____ day of _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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