

12-381
AD VIOLATION
SIGNED: 02-29-2012
COMMISSIONERS: R. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: M. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER D.B.A PETITIONER,

Petitioner,

v.

MOTOR VEHICLE ENFORCEMENT
DIVISION OF THE UTAH STATE
TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 12-381

Tax Type: Advertisement Violations

Judge: Phan

Presiding:

Jane Phan, Administrative Judge

Appearances:

For Petitioner: PETITIONER, Owner, PETITIONER,

For Respondent: RESPONDENT REP., Assistant Director, Motor Vehicle Enforcement Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing in accordance with Utah Code §59-1-502.5, on February 21, 2012. Petitioner (“Dealership”) is appealing a \$\$\$\$ penalty imposed by Respondent (Division) for a violation under Utah Code §41-3-210 and Utah Admin. Rule R877-23V-7.

APPLICABLE LAW

Utah Code §41-3-210 prohibits a motor vehicle dealer from conducting certain acts, as follows:

- (1)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, or furnished by a licensee...
 - (c) violate this chapter or the rules made by the administrator...

The Commission has issued further guidance on misleading advertisements in Administrative Rule R877-23V-7, as follows:

(2) Violation of any of the following standards of practice for the advertising and selling of motor vehicles is a violation of Section 41-3-210...

(bb) An advertisement must disclose a salvage or branded title as prominently as the description of the advertised vehicle.

Utah Code §41-3-702 provides civil penalties for violations:

(1) The following are civil violations under this chapter and are in addition to criminal violations under this chapter: (c) Level III: . . . (viii) Advertisement 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.

DISCUSSION

The Division imposed the \$\$\$\$ penalty against the Dealership for an advertisement violation under Utah Code §41-3-210 and Utah Admin. Rule R877-23V-7, for failing to disclose prominently that vehicles offered for sale had a salvage or branded title. The Dealership had advertised five vehicles for sale on WEBSITE, which had branded or salvage titles. It was the Division's position that the advertisements did not disclose the branded title as prominently as the description of the advertised vehicle, a requirement of Utah Admin. Rule R877-23V-7(2)(bb).

At the hearing, the representative for the Division provided printed copies of the advertisements. He explained that the WEBSITE displays a thumbnail add with photo of the vehicle, price, contact information and some description. If the thumbnail is clicked then more information is provided, including line by line "Specifications." The Dealership did have listed under "Specifications," on the line that should have included the VIN Number, that this car had a "branded title." However, it was the Division's contention that this was not prominent enough, as customers did not always click on the thumbnail to look at the complete advertisement. The Division also pointed out that stating "branded title" instead of the VIN number was an additional problem for prospective purchasers.

The representative for the Dealership explained that he had been selling these branded title vehicles for only one year. He explained that he knew he was required to disclose in advertisements that the vehicle had a branded title. He states that by putting this information on a separate line, he was actually trying to place it somewhere that would be better noticed by perspective buyers. He said that his vehicles were priced significantly less than a vehicle with a clean title, so if this was not disclosed it would result in numerous phone calls from prospective buyers who would not be interested after finding out the vehicle had a branded title. He said if it was clear in the advertising that this was a branded title vehicle, he would only get calls from people who might actually purchase the vehicle. He also explained that he thought the advertisement complied with

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the law and did not know that what he had done was a violation.

Based on the information presented at the hearing, it does appear that the Dealership did attempt to disclose the vehicle had a branded title in its on-line advertisements and there is no indication that the Dealership knew its advertisement would be a violation of the law. However, Utah Code §41-3-210 prohibits misleading information in advertisements. Utah Admin. Rule R877-23V-7 states that an “advertisement must disclose a salvage or branded title as prominently as the description of the advertised vehicle” and failing to do so is “a violation of Section 41-3-210.” Failure to meet the requirements of the rule is a violation regardless of the intent of the dealership. The penalties are structured in such a manner that the first time penalty is significantly lower than a second or third violation. From this it appears that the statutes take into account that a first time offender might not have understood his or her action to be a violation. The penalty in this matter should be upheld.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the forgoing, the Dealership’s appeal in this matter is denied. 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 _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D’Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner