

Truth-In-Advertising Laws/Electric Vehicle Prices

Effective: Immediately

Purpose

The purpose of this memorandum is to remind advertisers about truth-in-advertising laws and warn against advertising a “net price” for the purchase of electric vehicles (EVs).

Warning

The manufacturers of EVs are advertising prices, which are not the manufacturers’ suggested retail price (MSRP) or cash price, but are a “net price” after deducting a potential federal tax credit, California rebate, and other “savings.” These are false advertisements, which mislead consumers and violate truth-in-advertising laws. The Department of Motor Vehicles (DMV) recognizes EVs are relatively new, may have reduced post-purchase operating costs compared with combustion engine vehicles, and that advertisers seek to creatively promote EV sales. Nevertheless, advertising laws must be followed and enforced. For this reason, DMV is now warning and will enforce advertising laws with accusations against manufacturers’ licenses, and with referral of such cases to local, state, and federal prosecutors.

Background

State and federal policies encourage the manufacture, sale, and purchase of EVs to reduce carbon emissions and improve air quality. California consumers may be entitled to incentives for purchasing EVs, including a potential \$7,500 federal tax credit and a potential \$2,500 rebate from the California Vehicle Rebate Program. EVs offer operating cost savings through avoided gasoline purchases and other potential benefits, including use of high occupancy vehicle (HOV) lanes, which can reduce commute times. Educating consumers on the benefits of EV ownership is encouraged to expand the market for EVs. However, manufacturers must advertise the MSRP. Moreover, deducting a value for potential future benefits from a present advertised purchase price is a deceptive act. Consumers cannot purchase the vehicle for an advertised net price and may not later receive contemplated “savings.” This violates:

- **Manufacturer Advertises Price Other Than MSRP**—Title 13, *California Code of Regulations* §262.01 states: “if a manufacturer or distributor advertises the price of a vehicle or class of vehicles, the price quoted shall be the manufacturer’s suggested base price.”
- **Deception in Representing Future Benefit as Lower Purchase Price**—*California Civil Code* §1770(a)(17) defines “deceptive acts” to include “representing that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction.”
- **Make or Disseminate Untrue or Misleading Statement**—*California Vehicle Code* §11713(a), prohibits making any statement that is untrue or misleading that is known, or that by the exercise of reasonable care should be known, to be untrue or misleading.

Background, *continued*

- **False Advertising**—*California Business and Professions Code* §17500, prohibits making any statement which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.
- **Unfair Competition**—*California Business and Professions Code* §17200, prohibits any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising.
- **Regulation Z, Title 12, Code of Federal Regulations §226.24(d)(1)(iii) and Title 12, Code of Federal Regulations §226.24(d)(2)**—Require that if any of the following terms are advertised, all of the terms must be advertised: monthly payment amount, amount of down payment, term of a loan, and annual percentage rate for financing.

Examples of Violations

- 1. Manufacturer Advertises Price Other Than MSRP.** A manufacturer advertises a net price instead of the MSRP. This violates *Title 13, California Code of Regulations §262.01, which states that “if a manufacturer or distributor advertises the price of a vehicle or class of vehicles, the price quoted shall be the manufacturer’s suggested base price.”* If a manufacturer advertises any price or amount, it must be the MSRP. If the manufacturer advertises the MSRP **and** presents a “net price” but more prominently displays the net price, then the ad violates Title 13, *California Code of Regulations §262.01* because the net price is a misleading statement to attract customers even though an accurate purchase price is also disclosed. This violates *California Business and Professions Code §§17500 and 17200, and California Vehicle Code §11713(a).*
- 2. Advertising a Net Price.** A manufacturer or dealer advertises a net-price only. The net price is derived by deducting a potential federal tax credit, California rebate, and/or other savings or benefits not immediately included in the sale at the time of the purchase transaction. This constitutes a deceptive act under *California Civil Code §1770(a)(17), which prohibits “representing that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction.”* EV tax credits and rebates, if received, occur after and not at the time of purchase. If the advertised purchase price is reduced by any value or benefit contingent on an event to occur subsequent to the consummation of the transaction the advertised price is a deceptive act under *California Civil Code §1770(a)(17).* This violates *California Business and Professions Code §§17500 and 17200, and California Vehicle Code §11713(a).*
- 3. Advertising a Net Monthly Cost.** A manufacturer or dealer advertises a monthly “net cost” or “net effective cost.” This is a deceptive act under *California Civil Code §1770(a)(17), which prohibits “representing that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction.”* The advertised “net cost” or “net effective cost” is a deceptive act because it is computed assuming receipt of a benefit that is contingent on an event to occur subsequent to the consummation of the transaction. This violates *California Business and Professions Code §§17500 and 17200, and California Vehicle Code §11713(a).*

Examples of Violations, *continued*

4. Regulation Z Compliance Required. A manufacturer or dealer advertises only a monthly amount, without other payment terms, in a style, location, and manner where consumers would usually see a monthly financed payment amount. This violates *Regulation Z, Title 12, Code of Federal Regulations §226.24(d)(1)(iii) and Title 12, California Code of Regulations §226.24(d)(2), which require that if any of the following terms are advertised, all of the terms must be advertised: monthly payment amount, amount of down payment, the term of a loan, and annual percentage rate for financing.* Even if the manufacturer intends the advertised amount to be a “net price” or “effective monthly cost” and not a payment amount, compliance with Regulation Z is required to avoid consumers being misled into understanding the amount as a monthly payment. Regulation Z disclosures must be made in a clear and conspicuous manner, which means immediately next to the advertised amount. *Title 13, California Code of Regulations §262.09 requires that qualifying statements be designed to be “comprehended by an average reader or viewer.” A violation of Regulation Z is a violation of California Vehicle Code §11713.16(d).*

Legal Ramifications

- Failure to advertise the MSRP violates Title 13, *California Civil Code* §262.01, which constitutes cause for license discipline under *California Vehicle Code* §11705(a)(10), and may violate *California Vehicle Code* §11713(a).
- A violation of *California Civil Code* §1770(a)(17) is a “deceptive act,” which violates *California Business and Professions Code* §§17500 and 17200, and may be referred to prosecutors. The penalty for violating *California Business and Professions Code* §§17500 and 17200 is a fine of up to \$2,500 per person exposed to the false advertisement.
- A violation of *California Business and Professions Code* §17500 inherently violates *California Vehicle Code* §11713(a), which constitutes cause for license discipline under *California Vehicle Code* §11705(a)(10).
- A violation of Regulation Z violates *California Vehicle Code* §11713.16(d), which constitute cause for license discipline under *California Vehicle Code* §11705(a)(10).
- A violation of *California Vehicle Code* §§11713(a) and 11713.16(d) are misdemeanor criminal offenses pursuant to *California Vehicle Code* §40000.11(a), and may be referred to prosecutors.
- A violation of *California Business and Professions Code* §§17500 and 17200; *California Vehicle Code* §§11713(a) and 11713.16(d); may all cause consumers to suffer loss or damage by reason of fraud or deceit, which would constitute cause for license discipline under *California Vehicle Code* §11705(a)(14).

Enforcement

Effective immediately, DMV will enforce advertising laws with accusations against manufacturers’ licenses, and with referral of such cases to local, state, and federal prosecutors.

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Distribution

Notification that this memo is available online at www.dmv.ca.gov/portal/dmv/detail/pubs/olin/olin was made via California DMV's Automated E-mail Alert System October 2015 to the following:

- Manufacturers
- Dealers

Contact

Questions regarding this memorandum may be directed to Occupational Licensing Compliance Unit at (916) 229-3154.

A handwritten signature in black ink, appearing to read "Timothy M. Corcoran". The signature is fluid and cursive, with a long horizontal stroke at the end.

TIMOTHY CORCORAN, Chief
Occupational Licensing