


# California Auto Dealer Advertising Law Manual

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## IMPORTANT NOTICE

**Not legal advice.** This publication is not intended, nor should it be received, as legal advice or a substitute for legal advice. It is intended as a source of guidance to California dealers and as an aid in recognizing and dealing with legal issues. The law is subject to constant change and there may have been developments since this manual was published or revised, or since materials referred to in the manual were last published. The publication should not under any circumstances be considered as a substitute for consultation with your attorney. Neither the authors nor California New Car Dealers Association make any express or implied warranty about the use of this publication. The reader and his or her attorney must depend upon their own knowledge of the law and expertise in the use of this publication.

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# Introduction to This Manual

**Purpose of manual.** This California Auto Dealer Advertising Law Manual has been authored by Manning, Leaver, Bruder & Berberich, Attorneys, Los Angeles, California, for use by the California New Car Dealers Association and its members. Its purpose is to assist California vehicle dealers with legal compliance in dealership advertising. The laws are numerous and sometimes complex and difficult to apply in individual situations. Although this manual is written by attorneys experienced in automobile dealer advertising law, it should not be considered as legal advice or a substitution for legal counsel. It should rather be taken as a guide to the recognition of legal issues and the general rules of applicable law.

## About the Authors

Manning, Leaver, Bruder & Berberich, LLP is a general commercial and civil litigation law firm that was founded in 1922 and has provided legal services to the automobile dealer-related industry for nearly 100 years. The firm represents various dealer associations and dealer advertising associations in California, including the California New Car Dealers Association, which is the statewide association of new motor vehicle dealers in California, and the Greater Los Angeles New Car Dealers Association for dealers in Los Angeles County. In addition to their advertising law expertise, the firm regularly practices in the areas of automobile dealer franchise law, buying and selling of automobile dealerships, real property purchase and lease transactions, dealer buy-ins, New Motor Vehicle Board proceedings, licensing issues, formation of business entities, new motor vehicle dealership operations and compliance, and consumer and commercial litigation. See the firm's website at www.manningleaver.com.

## Sources of Dealer Advertising Law

Advertising law comes from laws, regulations, court decisions, and administrative agency guidelines and interpretations.

**Laws.** Laws consist of the various statutes enacted by the U.S. Congress and state legislatures. In California, there are specific laws that govern automobile dealer advertising. These laws are quoted throughout this manual and are specifically identified by reference to the relevant code sections.

**Regulations.** Regulations add more detail to the statutes. Regulations are promulgated by various governmental agencies by legislative authority given to a particular agency. The Department of Motor Vehicles has promulgated specific regulations dealing with automobile dealer advertising.

**Court Decisions.** Court decisions determine how laws and regulations are applied to specific cases. These appellate court cases are normally binding on lower courts. Consequently, the rules that come out of these cases must generally be followed. Various rules set forth in this manual come from court cases.

## How to Use this Manual

**Table of Contents.** The various topics discussed in this manual are all listed in the chapters shown in the table of contents.

**Searching.** The California New Car Dealers Association ("CNCDA") has a search feature in its online version of this manual in the CNCDA Comply section at www.cncda.org.

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**Cross-references.** At the end of each chapter, there are cross-references to other related content in this manual.

**Examples.** There are examples of good and problem advertising in the examples section of this manual, with annotations on the examples explaining what is good and what is problem advertising.

**Statutes and regulations.** The text of various statutes and regulations is quoted throughout the manual. The manual also has website addresses to many statutes, regulations, and other information.

## How to find the law when using this manual.

Throughout the manual, there are references to California statutes (code sections), California regulations, federal statutes (code sections), and federal regulations. If you want to read the text of any of these, they can be found by the URL internet addresses below, or by using the short URL Bitly internet addresses (the Bitly addresses are case sensitive).

**California Code (statutes):** An example of a reference to a California statute would be California Vehicle Code § 11713. Go to www.leginfo.legislature.ca.gov, or to bit.ly/CAcodes. Click on the "California Law" tab. Then either use the drop-down option to the right to select the code and enter the section number or click the code and navigate to the applicable part and chapter. You may also search by keywords under the "Text Search" section.

**California Code of Regulations:** An example of a reference to a California regulation would be: 13 CCR § 272.00. Go to http://government.westlaw.com, or to bit.ly/CALregulations. Select California Code of Regulations. Click on the "Search" button then enter the title of the Code and the section number. In the example, the title is 13 and the section number is 272.00. Then click on the number in front of the code section to see the text of the code section.

**Federal Code (statutes):** An example of a reference to a federal statute would be 15 U.S.C. § 6809. Go to http://uscode.house.gov/, or to bit.ly/FedCode. Enter the title of the Code and section number; then click "Go." You can also find code sections by browsing the various code titles.

**Federal regulations:** An example of a reference to a federal regulation would be: 16 CFR § 682.1. Go to https://www.ecfr.gov/, or to bit.ly/RegsFederal. Then enter a title and section number, or browse the titles to find a section.

Throughout the manual, there are also other Bitly internet addresses for useful material, such as FTC guides.


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# Part A
# Dealership advertising overview




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# Chapter 1 - Advertising Law Basics

## Basic rule

All advertising must be true and not misleading in any way. California statutes and regulations governing dealer advertising are quoted below. Ignorance of the untruthfulness of an advertisement, or its capacity to mislead, is no excuse for misleading advertising. The law will hold an advertiser to the standard of exercising reasonable care to ensure that an advertisement is not false or misleading.

### FTC consumer protection

**The basic consumer protection statute enforced by the Federal Trade Commission is Section 5 (a) of the FTC Act, which provides that "unfair or deceptive acts or practices in or affecting commerce are declared unlawful."**

## Definition of advertising

**13 California Code of Regulations § 255.00: Advertising Defined.**

(a) In the broad context of Vehicle Code Section 11713(a) (see below), any statement advertised refers to any statement, representation, act or announcement intentionally communicated to any member of the public by any means whatever, whether orally, in writing or otherwise.

(b) As used elsewhere in the Vehicle Code and in this article, the terms "advertising," "advertisement," or "advertise" refer to a statement, representation, act or announcement intentionally communicated to the public generally for the purpose of arousing a desire to buy or patronize.

Note: In the California Supreme Court case of Ford Dealers v. Department of Motor Vehicles (1982) 32 Cal.3d 347 the court upheld the validity of Regulation 255.00 (a) which states that the words "any statement advertised" in Vehicle Code § 11713 (a), quoted below, includes oral statements made on a one-to-one basis. This ruling implies that statements by salespersons can subject a dealer to all of the penalties which can result from unlawful advertising, including licensing accusations. For a further discussion of this regulation see Chapter 3, Oral Statements as Advertising.

## General principles

The following are some of the general principles of advertising law which appear in various court decisions, or in statutes and regulations:

**Likely to be deceptive**

An advertisement is misleading if members of the public are likely to be deceived.

**Tendency to mislead**

An advertisement is misleading if it has a tendency or capacity to mislead the public.


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**Intent of the advertiser not relevant**

The advertiser's intent is not relevant. If the ad is deceptive, an advertiser has liability regardless of whether there was an intent to deceive. An advertiser has a duty to investigate the accuracy of statements made in advertising.

**Puffery**

A certain amount of exaggeration or "puffery" is allowed. For example, "This is the best vehicle you will ever own," would be considered "puffing" and thus be permissible.

Note: If the claim appears to be based on facts, then the rules in Chapter 44, Comparison and Factual Claims Advertising, may apply.

**Damage not necessary**

Actual damage resulting from false advertising is not necessary to prove a violation of the law. Liability may be imposed on the advertiser even when there has been no damage to the public or to a consumer.

**Reliance by buyer irrelevant**

Whether a buyer relied on an advertisement or not is irrelevant and may not be considered in establishing whether the law was violated.

**Industry practices**

Just because particular advertising methods are commonly used in the industry, or by other dealers, does not mean that the advertisement can be used. The advertisement must be truthful and not misleading, regardless of what others are doing, and all laws and regulations regarding advertising must be followed.

**Relying on agency**

Dealers should not rely on what their advertising agencies do or how the agency advises dealers. Relying on an agency, or on media company suggestions, does not absolve a dealer from liability. The dealer has primary responsibility for whatever is advertised in the dealer's name. For an example of how a dealership group and their marketing company got into trouble with the Federal Trade Commission (FTC), type this URL address in your browser: bit.ly/ftctoyota. The dealership was penalized by the FTC for blindly following its marketing company's suggestions.

**Failure to disclose**

A failure to disclose a material fact can be misleading. Material facts are facts that are important to the buyer in making a decision.

**Various interpretations**

When various interpretations of an advertisement are possible, and one or more interpretations are misleading while others are not, the advertisement will be interpreted against the advertiser and be considered deceptive.

**Advertising must be directed at ordinary people**

When various interpretations of an advertisement are possible, and one or more interpretations are misleading while others are not, the advertisement will be interpreted against the advertiser and be considered deceptive.

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**Qualifiers**

Qualifiers and disclaimers must be clearly communicated to the public. If not, the statement that they qualify may be considered misleading. For more information, see Chapter 12, Qualifiers, Disclosures, and Disclaimers.

**Oral statements**

Oral statements are considered to be advertising. For more information, see Chapter 3, Oral Statements as Advertising.

# Text of the law

## California law

### *Business and Professions Code prohibition against false or misleading statements*

**California Business and Professions Code § 17500:** False or misleading statements. It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning such real or personal property or services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, 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, or for any such person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell such personal property or services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that imprisonment and fine.

### *Vehicle code prohibition against untrue or misleading statements; failure to sell at advertised price*

**California Vehicle Code § 11713 (a):** It is unlawful for a dealer to make or disseminate, or cause to be made or disseminated, before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, 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; or to so make or disseminate, or cause to be so disseminated, any statement as part of a plan or scheme with the intent not to sell any vehicle or service so advertised at the price stated therein, or as so advertised.

### *Regulation definition of advertising*

**13 California Code of Regulations § 255.00:**

(a) In the broad context of Vehicle Code Section 11713(a), any statement advertised refers to any statement, representation, act or announcement intentionally communicated to any member of the public by any means whatever, whether orally, in writing or otherwise.


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(b) As used elsewhere in the Vehicle Code and in this article, the terms "advertising," "advertisement," or "advertise" refer to a statement, representation, act or announcement intentionally communicated to the public generally for the purpose of arousing a desire to buy or patronize.

### *Advertised statements must be based on facts*

**13 California Code of Regulations § 260.00:** Any advertised statements, representations, or offers made in connection with the sale or attempted sale of any vehicle(s) shall be clearly set forth, and based on facts and shall be subject to these regulations and the Vehicle Code.

### *Actual or constructive fraud*

**California Civil Code § 1571:** Fraud is either actual or constructive.

### *Meaning of actual fraud*

**California Civil Code § 1572:** Actual fraud, within the meaning of this Chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
3. The suppression of that which is true, by one having knowledge or belief of the fact;
4. A promise made without any intention of performing it; or,
5. Any other act fitted to deceive.

### *Meaning of constructive fraud*

**California Civil Code § 1573:** Constructive fraud consists:

1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or anyone claiming under him, by misleading another to his prejudice, or to the prejudice of anyone claiming under him; or,
2. In any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.

### *Deceit under the Civil Code*

California Civil Code § 1709: Fraudulent deceit. One who willfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers.

### *Civil Code definition of deceit*

**California Civil Code § 1710:** A deceit, within the meaning of the last section, is either:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;

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3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or,
4. A promise, made without any intention of performing it.

### *Deceit upon the public*

**California Civil Code § 1711:** Deceit upon the public, etc. One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit.

### *Clear and conspicuous requirement for disclosing qualifying terms in advertisement*

**California Vehicle Code § 11713.16(i):** It is unlawful for a dealer to fail to clearly and conspicuously disclose in an advertisement for the sale of a vehicle any disclosure required by this code or any qualifying term used in conjunction with advertised credit terms. Unless otherwise provided by statute, the specific size of disclosures or qualifying terms is not prescribed.

## Federal law

### *FTC Act declaring unfair methods of competition, and unfair or deceptive acts, as unlawful*

**Section 5 of FTC Act is in 15 United States Code § 45 which in pertinent part reads as follows:**

(a) Declaration of unlawfulness; power to prohibit unfair practices; inapplicability to foreign trade

(1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

(2) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

(B) All remedies available to the Commission with respect to unfair and deceptive acts or practices shall be available for acts and practices described in this paragraph, including restitution to domestic or foreign victims.

# Discussion

Under the law, all representations made in connection with the sale or lease of goods or services can be considered "advertising." In making such representations, whether in print, on TV, in radio, on the internet, on billboards, in direct mail, in point-of-sale materials, or in one-to-one conversations, all of the principles stated above must be followed. Failure to do so can subject one to liability under the law.

# Cross-references

Chapter 2: Bait and Switch

Chapter 6: Consumers Legal Remedies Act

Chapter 4: Penalties for Unlawful Advertising


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Chapter 5: Persons Liable for Unlawful Advertising

Chapter 3: Oral Statements as Advertising

Chapter 12: Qualifiers, Disclosures, and Disclaimers

## Examples

See Example 5, Example 8, and Example 11.

## Additional resources

FTC publication, Advertising FAQ's: A Guide for Small Business (to see, type this in browser: bit.ly/ftcadguide)

FTC Policy Statement Regarding Advertising Substantiation (to see, type this in browser: bit.ly/advertisingsubstantiation)

FTC Policy Statement on Deception (to see, type this in browser: bit.ly/ftcdeception)

FTC Enforcement Policy Statement on Deceptively Formatted Advertisements (to see, type this in browser: bit.ly/deceptiveformat)

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# Chapter 2 - Bait and Switch

## Basic rule

California and federal law make it unlawful for a dealer to engage in "bait and switch" advertising. Bait advertising is advertising that attracts a customer to purchase a product the seller does not really want or intend to sell. The intention of the seller is to switch the customer to purchase something else.

## Text of the law

**California Vehicle Code § 11713.1(o):** It is unlawful for a dealer to violate any law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in part 238 (commencing with Section 238) of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

The Federal Trade Commission Guide at 16 Code of Federal Regulations 238, and following, give the rules on bait advertising. The Guide defines bait advertising as an alluring but insincere offer to sell a product or service that the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised merchandise, in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying merchandise of the type so advertised.

For more information: See full text of the Bait and Switch FTC Guide by typing this in your browser: bit.ly/switchad.

## Discussion

There should be no advertisement that is not a bona fide effort to sell the advertised product. No customer should be discouraged from purchasing advertised merchandise as part of a bait scheme, nor should there be any acts to "unsell" the customer who has committed to purchasing an advertised product.

## Reason for the law

Bait and switch is inherently unfair to the consumer because it is a deception and is an insincere offer to sell.

## Cross-references

Chapter 28: Price Leaders Disclosure


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# Chapter 3 - Oral Statements as Advertising

## Basic rule

Oral statements made to customers, or prospective customers, in the sale and leasing of vehicles are considered to be advertising within the context of Vehicle Code § 11713 (a) which prohibits untrue and misleading statements.

## Text of the law

### Untrue and misleading statements

**California Vehicle Code § 11713 (a):** It is unlawful for a dealer to make or disseminate, or cause to be made or disseminated, before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, 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; or to so make or disseminate, or cause to be so disseminated, any statement as part of a plan or scheme with the intent not to sell any vehicle or service so advertised at the price stated therein, or as so advertised.

### Advertising Defined

**13 California Code of Regulations § 255.00: Advertising Defined.**

(a) In the broad context of Vehicle Code Section 11713(a), any statement advertised refers to any statement, representation, act or announcement intentionally communicated to any member of the public by any means whatever, whether orally, in writing or otherwise.

(b) As used elsewhere in the Vehicle Code and in this article, the terms "advertising," "advertisement," or "advertise" refer to a statement, representation, act or announcement intentionally communicated to the public generally for the purpose of arousing a desire to buy or patronize.

## Discussion

### California Supreme Court says oral statements are advertising

In the California Supreme Court Case of Ford Dealers v. Department of Motor Vehicles (1982) 32 Cal.3d 347 the Supreme Court upheld the validity of Regulation 255.00 (a) which states that the words "any statement advertised" in Vehicle Code § 11713(a) quoted above, includes oral statements made on a one-to-one basis. The implication of this ruling is that statements by salespersons can subject a dealer to all of the penalties which can result from unlawful advertising, including licensing accusations.

The court specifically stated that Vehicle Code § 11713 (a) authorizes the DMV to penalize dealers for the statements of their employees. Dealers are also liable for such statements under the statutes in the Business and Professions Code regulating unfair business practices and misleading statements. One-on-one

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statements of a salesperson to a customer, however, are not advertisements to the public generally in the context of Regulation 255, quoted above, and do not trigger advertising requirements found in this manual that apply when dealers are advertising to the public generally.

### *Importance of zero-tolerance policies*

The court, however, did temper its decision with the following language in a footnote to the court opinion: However, where a dealer is able to demonstrate unusual circumstances that negate the presumption of control, it might be unfair to hold that dealer liable for the misrepresentation of salespeople. A mere lack of knowledge would not suffice where a dealer has tolerated misleading statements in the past or created a climate where such misstatements were likely to occur.

Important: A dealer might be able to defend against an action under section 11713, subdivision (a) by demonstrating that it made every effort to discourage misrepresentations; had no knowledge of salespeople's misleading statements; and, when so informed, refused to accept the benefits of any sales based upon misrepresentations and took action to prevent a reoccurrence.

## Cross-references

Chapter 4: Penalties for Unlawful Advertising

Chapter 5: Persons Liable for Unlawful Advertising

Chapter 1: Advertising Basics


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# Chapter 4 - Penalties for Unlawful Advertising

## Basic rule

Each of the laws and regulations set forth in the various topics of this manual contain penalties, and in some cases remedial provisions which may be imposed upon violators through actions commenced by the State Attorney General, the United States Attorney, County District Attorney, City Attorney, the DMV, and other governmental agencies. Most of the laws provide for criminal as well as civil penalties. Criminal penalties may include imprisonment, probation, fines, and/or restraining and restitution orders. Civil penalties may be in the form of money damages and/or restraining and restitution orders. In most cases, the penalties are cumulative, i.e., one penalty does not exclude the other.

Depending upon the circumstances, separate actions seeking civil and/or criminal penalties, based upon the same alleged violation(s), may be brought concurrently by different agencies. For example, the DMV may proceed to suspend or revoke the dealer's license concurrently with the District Attorney's prosecution of a separate legal action for penalties based upon the same alleged violation(s).

Additionally, in many instances, private individuals alleging injury based upon a violation of the advertising laws may have an independent right to institute a civil action seeking damages, restitution, and/or injunctive relief.

## Text of the law and discussion

For the text of the laws discussed in this chapter, see the various statutes below.

### Business and Professions Code civil penalties

Law enforcement authorities may seek an injunction by the court to restrain an advertiser from unlawful advertising. Once an injunction is issued, the advertiser will be liable for a penalty of $6,000 each time the injunction is violated. See California Business and Professions Code § 17207.

Under Business and Professions Code §§ 17206 and 17536, law enforcement authorities may seek civil penalties up to $2,500 for each instance of false or misleading advertising. It appears that a separate penalty under each section may be alleged, so the penalty could be $5,000 for each violation under these code sections. Under these code sections, in assessing the amount of the penalty, the court is to consider all of the relevant circumstances, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth. Additionally, these code sections allow for the seeking of injunctive relief, restitution, and other equitable relief. The court can order disgorgement of all profits deriving from an unfair business practice, even when victims cannot be found.

#### *Note that a single publication may constitute numerous violations.*

Is an unlawful advertisement, for example in a newspaper, one violation? In the court decision of People v. Superior Court (1979) 96 Cal.App.3d 181 the court held that a single publication in a newspaper constitutes

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a minimum of one violation, with as many additional violations as there are persons who read the advertisement, or who respond to the advertisement by purchasing or inquiring about the advertised product or service. The court reasoned that only in this way would the penalty be reasonably related to the offense of untruthful or deceptive advertising. See also People v. JTH Tax, Inc. (2013) 212 Cal.App.4th 1219 for a good discussion of this subject.

This court decision somewhat limited this sweeping interpretation of §§ 17206 and 17536 by stating that the trial court, in imposing such a penalty, must act reasonably in light of all pertinent factors, including the kind of misrepresentations or deceptions involved, whether they were intentionally made or the result of negligence, the circulation of the newspaper, the nature and extent of the public inquiries, and the size and wealth of the advertising enterprise. Nevertheless, the decision does illustrate how large a civil penalty might be in a false advertising action brought by the state. Note also that Business and Professions Code §17206.1 provides for an additional $2,500 civil penalty for each violation against one or more senior citizens or disabled persons.

### *Cumulative penalties*

The penalties under the Business and Professions Code are cumulative with each other and with the penalties available under all other laws in California. Thus, the fact that the Attorney General has imposed civil penalties on a dealer for false and misleading advertising in no way affects the right of the DMV to pursue a dealer for false and misleading advertising under the Vehicle Code by bringing an action to revoke or suspend the dealer's license.

### *Private attorney general actions*

In the mid 1990's and early 2000's California automobile dealers and many other industries were being bombarded with frivolous lawsuits filed by unscrupulous attorneys seeking to make their fortunes by discovering minor mistakes made by businesses. Under California law, these attorneys could file what were known as Private Attorney General actions because a private person, not the State Attorney General, was the one filing the action. The Private Attorney General could sue on behalf of the public, obtain an injunction against the violations, and the attorneys filing the action would be rewarded with attorney fees, either by the court or sometimes by pressuring small businesses to agree to settlements rather than face expensive court proceedings. Because the business community was unable to persuade the Legislature to change the Private Attorney General law, an Initiative was filed taking the question to the voters in the November 2004 elections as Proposition 64. By an overwhelming vote, the electorate approved Proposition 64 which repealed the Private Attorney General law.

## Business and Professions Code criminal penalties

Any violation of Business and Professions Code § 17500, which prohibits the dissemination of false or misleading advertising, is a misdemeanor punishable by imprisonment in the county jail for a period not exceeding 6 months, or by a fine not exceeding $2,500, or by both for each such violation.

## Department of Motor Vehicles enforcement

Under California Vehicle Code § 11806 the DMV, after notice and hearing, may suspend or revoke a dealer's license for any violation of the Vehicle Code provisions regulating dealer advertising. The DMV also has the right, pending a hearing, to seek a temporary suspension of the dealer's license, for a period not to exceed 30 days, if the Director finds such action is required for the public interest.


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The DMV Director may, following the filing of an accusation against a licensee, but before any formal action, exercise an option to settle the action by imposing and requiring the payment of monetary penalties instead of suspension or revocation of the dealer's license. This type of settlement usually involves the issuance of a probationary license to the dealer and provides for a monetary payment as one of the terms of the settlement.

### *Private recovery against the dealer's bond*

An individual has a possible right of recovery from a dealer's $50,000 bond which is required to be filed by dealers with the DMV. An individual will have a right of action against the dealer, his or her salespersons, and the insurance company on the bond, for any of the reasons set forth in Vehicle Code § 11711.

### *Injured dealer's recovery of damages and injunctive relief*

A dealer suffering pecuniary loss because of any willful failure by any other licensed dealer to comply with the Vehicle Code or Code of Regulations may recover damages and reasonable attorney's fees from the dealer in violation. Any such dealer licensee is also entitled to appropriate injunctive relief by the court. See Vehicle Code § 11726.

### *Vehicle Code criminal penalties*

Any violation of the advertising provisions of the Vehicle Code constitutes a misdemeanor punishable by a fine not exceeding $500, or imprisonment in the county jail for a period not exceeding 6 months, or both. See Vehicle Code §42002.

## Federal Trade Commission action

The FTC enforces consumer protection laws and its guidelines regarding advertising. The FTC may issue cease and desist orders, file adjudicative actions, and enter into consent decrees. Large civil penalties of up to $40,000 for each violation may be alleged. See FTC publication Advertising FAQ's: A Guide for Small Business (to see, type this in browser: bit.ly/ftcadguide) for a discussion of FTC enforcement of deceptive advertising practices. The Commission files a complaint when it has "reason to believe" that the law has been or is being violated and it appears to the Commission that a proceeding is in the public interest.

### *Operation ruse control*

In 2015 the FTC commenced Operation Ruse Control–a coast-to-coast and cross-border sweep by the FTC and state, federal, and international law enforcers aimed at driving out deception in automobile ads, add-ons, financing, and auto loan modification services. See the FTC publication Operation Ruse Control: 6 tips if cars are up your alley, which describes the enforcement sweep (to see, type this in browser: bit.ly/rusecontrol).

Below are the names of various enforcement actions brought against automobile dealers in great part arising out of Operation Ruse Control and its FTC predecessor, Operation Steer Clear. By typing bit.ly/ftcenforcement in your browser, you can search any of the names below and see the detail of the complaints brought against the dealers with copies of the advertisements about which the FTC was concerned. By reading the press releases for each case you will get a good idea of what each case was about.

### *FTC enforcement actions*

April 1, 2022 Napleton Automotive Group

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| | |
|---|---|
| May 27, 2021 | Bronx Honda |
| December 6, 2018 | Universal City Nissan |
| October 10, 2018 | Passport Imports, Inc. (Passport Toyota) |
| January 24, 2018 | Cowboy AG LLC, In the Matter of |
| November 13, 2017 | Norm Reeves Honda |
| March 31, 2017 | CarMax, Inc., In the Matter of |
| March 22, 2017 | Universal City Nissan, Inc., et al. |
| March 31, 2017 | West-Herr Automotive Group, Inc., In the Matter of |
| March 31, 2017 | Asbury Automotive Group, Inc., In the Matter of |
| December 16, 2016 | General Motors LLC, In the Matter of |
| December 16, 2016 | Lithia Motors, Inc., In the Matter of |
| December 16, 2016 | Jim Koons Management Company, In the Matter of |
| August 22, 2016 | New World Auto Imports, Inc., d/b/a Southwest Kia, et al |
| July 14, 2016 | Progressive Chevrolet Company and Progressive Motors, Inc. |
| October 20, 2015 | TC Dealership, L.P., (Planet Hyundai), In the Matter of |
| September 18, 2015 | Ramey Motors, Inc., et al. |
| July 7, 2015 | JS Autoworld, Inc. (Planet Nissan), In the Matter of |
| April 1, 2015 | Jim Burke Automotive, Inc., In the Matter of (Jim Burke Nissan) |
| April 1, 2015 | City Nissan Inc., In the Matter of (Ross Nissan of El Monte) |
| March 21, 2014 | Courtesy Auto Group, Inc., In the Matter of |
| February 11, 2014 | Ganley Ford West, Inc., In the Matter of |
| January 21. 2014 | Bill Robertson & Sons, Inc., d/b/a Honda of Hollywood |
| January 21, 2014 | Infiniti of Clarendon Hills, Inc., In the Matter of |
| January 21, 2014 | Nissan of South Atlanta, LLC, d/b/a Nissan South, In the Matter of |
| January 21, 2014 | Norm Reeves, Inc., d/b/a Norm Reeves Honda Superstore |
| January 21, 2014 | Mohammad Sabha, d/b/a Rainbow Auto Sales, In the Matter of |
| January 21, 2014 | Paramount Kia of Hickory, LLC, In the Matter of |
| January 21, 2014 | Luis Alfonso Sierra, d/b/a Casino Auto Sales, In the Matter of |
| January 21, 2014 | Fowlerville Ford, Inc., In the Matter of |
| May 11, 2012 | Key Hyundai of Manchester, LLC, and Hyundai of Milford, LLC |
| May 11, 2012 | Ramey Motors, Inc., In the Matter of |


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### Private remedies for fraudulent sale practices

A defrauded purchaser may seek private relief for fraud or concealment. In certain instances, the private party may be entitled to rescind (unwind) the contract. The Consumers Legal Remedies Act also provides for various penalties a private individual may seek. See Chapter 6, Consumers Legal Remedies Act.

## Discussion

As seen from the penalties noted above, the sanctions for violation of the advertising rules applicable to dealers can be quite severe. Because of the many facets and implications of these laws, any dealer faced with a complaint by a governmental agency should immediately consult with the dealer's legal counsel.

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# Chapter 5 - Persons Liable for Unlawful Advertising

## Basic rule

Those who may be liable for unlawful advertising are the dealership business entity, the dealer operator, managers, and salespersons.

## Discussion

### Liability of dealership entity

In various court decisions in California, it is clear that the dealership business entity may be held liable for unlawful advertising by the dealership employees and thus be subject to all of the penalties that arise from such advertising. In Ford Dealers v. Department of Motor Vehicles (1982) 32 Cal.3d 347, the court made these observations:

- Licensees are responsible for the acts of their employees.
- By virtue of the ownership of a license, the owner has a responsibility to see that it is not used in violation of the law.
- When a licensed dealer places salespeople in a position to work with customers, the dealer is responsible for the actions of those employees.

### Oral statements

As noted in Chapter 46: Oral Statements as Advertising, statements made by a salesperson on a one-to-one basis can subject the dealership to liability for unlawful advertising.

### Relief from liability

The California Supreme Court has left open the door for the dealership to escape liability for unlawful advertising by employees when it stated in a footnote in the Ford Dealers case noted above:

"The imputation of liability to the employer is based on the assumption that a licensed dealer is in a position to control the actions of salespeople. Consequently, it is held to be fair to impute to the employer liability for the violations of employees. However, where a dealer is able to demonstrate unusual circumstances that negate the presumption of control, it might be unfair to hold that dealer liable for the misrepresentation of salespeople. Mere lack of knowledge would not suffice, where a dealer appeared to have tolerated misleading statements in the past or created a climate where such misstatements were likely to occur. However, a dealer might be able to defend against an action under section 11713, subdivision (a) by demonstrating that it made every effort to discourage misrepresentations; had no knowledge of salespeople's misleading statements; and, when so informed, refused to accept the benefits of any sales based upon misrepresentations and took action to prevent a reoccurrence."


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### Liability of managerial employees

Managerial employees can also be held personally liable for advertising violations, particularly if the managerial employee participated in or condoned the advertising, or simply looked the other way. California Vehicle Code § 386 defines a managerial employee as "a person who exercises control over a business licensed under this code whether compensated by salary or commission, including, but not limited to, any person who is employed as a general manager, business manager, assistant general manager, finance and insurance manager, advertising manager, or sales manager." Such a managerial employee may also be refused a dealer license if the dealership for whom he or she worked had its license revoked or suspended for cause and the terms of the suspension have not been fulfilled.

### Business and Professions Code penalties against dealer owner

Managerial employees could also face the civil penalties set forth in the Business and Professions Code. In the case of People ex rel. State Air Resources Bd. v. Wilmshurst (1999) 68 Cal.App.4th 1332 the court upheld the validity of Health and Safety Code Section 43156 dealing with the presumption that vehicles imported into the State of California are presumed new under certain circumstances. The court also upheld a judgment assessing a penalty against the dealer individually and the dealer corporation for a violation of the statute, rejecting the argument that this was an unconstitutional double punishment. The court said: "If both may be liable for the violations, then each must suffer the consequences of the violations."

### Salesperson liability

Salespersons may also be personally liable for advertising violations in which they participated. A salesperson's license could be suspended or revoked, and the salesperson could be subject to civil penalties and other damages by law.

## Cross-references

Chapter 4: Penalties for Unlawful Advertising

Chapter 1: Advertising Basics

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# Chapter 6 - Consumer Legal Remedies Act

## Basic rule

All of the acts and practices listed in Civil Code § 1770 are unfair methods of competition and unfair or deceptive when there is a sale or lease of goods or services to a consumer.

## Text of the Law

The following are those sections of Civil Code § 1770 that may particularly apply to auto dealer advertising, sales, leasing, and service of vehicles.

(a) The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or that results in the sale or lease of goods or services to any consumer are unlawful:

(1) Passing off goods or services as those of another.

(2) Misrepresenting the source, sponsorship, approval, or certification of goods or services.

(4) Using deceptive representations or designations of geographic origin in connection with goods or services.

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have.

(6) Representing that goods are original or new if they have deteriorated unreasonably or are altered, reconditioned, reclaimed, used, or secondhand.

(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

(9) Advertising goods or services with intent not to sell them as advertised.

(10) Advertising goods or services with intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.

(13) Making false or misleading statements of fact concerning reasons for, existence of, or amounts of, price reductions.

(14) Representing that a transaction confers or involves rights, remedies, or obligations that it does not have or involve, or that are prohibited by law.

(15) Representing that a part, replacement, or repair service is needed when it is not.

(16) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.

(17) 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.


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(18) Misrepresenting the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction with a consumer.

(19) Inserting an unconscionable provision in the contract.

(21) Selling or leasing goods in violation of Chapter 4 (commencing with Section 1797.8) of Title 1.7. (These are sections of the California Civil Code dealing with Grey Market Goods.)

(22) (A) Disseminating an unsolicited prerecorded message by telephone without an unrecorded, natural voice first informing the person answering the telephone of the name of the caller or the organization being represented, and either the address or the telephone number of the caller, and without obtaining the consent of that person to listen to the prerecorded message.

(B) This subdivision does not apply to a message disseminated to a business associate, customer, or other person having an established relationship with the person or organization making the call, to a call for the purpose of collecting an existing obligation, or to any call generated at the request of the recipient.

(27) Representing that a product is made in California by using a Made in California label created pursuant to Section 12098.10 of the Government Code, unless the product complies with Section 12098.10 of the Government Code.

## Discussion

### Thirty-day notice requirement

The Consumers Legal Remedies Act allows for actual damages, class actions, the enjoining of deceptive practices, restitution of property, punitive damages, and attorney fees. Under Civil Code § 1782, however, there is a requirement that 30 days prior to the commencement of an action for damages under the Act, the consumer is to notify the person who is claimed to have committed the unlawful practice and demand that such person correct, repair, replace or otherwise rectify the goods or services. This notice must be in writing and must be sent by certified or registered mail, return receipt requested, to the place where the transaction occurred.

If an appropriate correction, repair or replacement, or other remedy is given, or agreed to be given within a reasonable period of time, to the consumer within 30 days after the receipt of such notice, then no action for damages or attorney fees may be maintained under the Consumers Legal Remedies Act. Civil Code § 1784 further provides that there can be no award of damages if the violation was not intentional and resulted from a bona fide error notwithstanding the use of reasonable procedures adopted to avoid any such error and an appropriate correction, repair or replacement or other remedy is provided as set forth above. Any person receiving such a notice should contact an attorney for an appropriate response to the 30-day notice.

### Reason for the law

This law, which is not directed specifically at automobile dealers, protects consumers from untruthful or misleading advertisements and deceptive acts in the sale or lease of goods or services to consumers and provides a procedure for resolving such matters.

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# Chapter 7 - Avoiding Advertising Violations

## Basic rule

With careful management techniques, dealers can avoid liability for unlawful advertising.

## Discussion

The following are some recommendations to avoid advertising violations.

### Policy statement

Have a detailed employee policy or code of ethics that each employee involved in advertising or selling vehicles should sign. Such employees should agree never to sell an advertised vehicle for more than the price advertised. They should also agree that if they have any uncertainty concerning the propriety of any type of advertising, they will consult with the dealer or general manager. It should also be agreed that no untrue or misleading statements will be made to any customer, and that all rules and regulations regarding advertising will be followed. This policy can be separately signed, or it can be included in the dealership's employee handbook. Such a policy will help if a dealer is trying to show regulatory authorities that the dealer did everything possible to conduct ethical advertising. See also the internet and social media policy considerations in Chapter 64, Social Media Advertising.

### Educational program

Have some type of educational program whereby employees responsible for advertising will be educated in the rules of advertising. For example, employees could be required to read this manual and sign an acknowledgment that they have read it. The acknowledgment could be kept in the employee's personnel file.

### Tracking system

Have a good system for identifying advertised specials to your sales team so that customers unaware of the ad will still receive the advertised price.

### Records of added accessories

Keep good records of the price of accessories or options added to advertised specials. Customers should sign an acknowledgment of the extra cost and the signed document should be kept in the deal file.

### History disclosure

Have the customer sign an acknowledgment of the disclosure by the dealer of the past history of the vehicle, and keep the acknowledgment in the deal file. For more information, see Chapter 18, History of Vehicles.


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## Return unlawful profits

If a dealer has profited from some type of unlawful advertising, do not retain the benefits obtained. Bring the customer back in, acknowledge the mistake, and give the customer the benefits that would have been obtained if the advertising had been appropriate or the customer had received the advertised price.

## Spotting advertising issues

Use the checklist in Chapter 65, Auto Dealers Advertising Checklist, in this manual which will help in spotting issues. Browse the Table of Contents if you have a question regarding a specific topic in your advertising.

## Withdrawal of sold vehicles

Have a procedure in place for notifying print media when advertised vehicles have been sold and keep a record of these notifications. See Chapter 24, Duty to Sell at Advertised Price and Posting Rules.

## Attorney review; reliance on others

To be on the safe side, have your ads reviewed by a competent attorney familiar with dealer advertising law. Do not rely on your advertising agency, newspaper, website provider, or other vendors for compliance with the advertising rules; this is the dealer's responsibility, not theirs, and they are not qualified to give legal advice. For an example of how a dealership group and their marketing company got into trouble with the Federal Trade Commission (FTC), type this in browser: bit.ly/ftctoyota.

## Qualifiers and disclosures

All qualifiers and disclosures must be clear and conspicuous and be readable and understandable. See Chapter 12, Qualifiers, Disclosures.

## No toleration of misleading statements or unlawful advertising

The California Supreme Court in the case of Ford Dealers v. Department of Motor Vehicles discussed in Chapter 3, Oral Statements as Advertising, went out of its way in a footnote to show how a dealer might not be responsible for misrepresentations of salespersons. A key element in avoiding liability is for a dealer not to tolerate any misleading statements or create or tolerate a climate where such misstatements are likely to occur. If misleading statements are being made, a dealer would be wise to correct the situation by a written memorandum to salespersons with their written acknowledgment of compliance.

Tip: This documentation should be kept in a compliance file for possible later use in convincing regulatory authorities of the efforts the dealer made to comply with the advertising rules.

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# Chapter 8 - Non-Franchised Dealers and Autobrokers

## Basic rule

New vehicles may be advertised or sold only by dealers holding a franchise for the line-make of the vehicle being advertised or sold. Autobrokers may advertise their service of arranging the purchase of a motor vehicle from a franchised new motor vehicle dealer but must follow the rules for such advertising set forth in Vehicle Code § 11713(b) below.

## Text of the law

### When franchise required

**California Vehicle Code § 11713.1(f)**: It is unlawful for a dealer to:

(1) Advertise for sale, sell, or purchase for resale a new vehicle of a line-make for which the dealer does not hold a franchise.

(2) This subdivision does not apply to a transaction involving the following:

(A) A mobilehome.

(B) A commercial coach, as defined in Section 18001.8 of the Health and Safety Code.

(C) An off-highway motor vehicle subject to identification as defined in Section 38012.

(D) A manufactured home.

(E) A new vehicle that will be substantially altered or modified by a converter prior to resale.

(F) A commercial vehicle with a gross vehicle weight rating of more than 10,000 pounds.

(G) A vehicle purchased for export and exported outside the territorial limits of the United States without being registered with the department.

(H) A vehicle acquired in the ordinary course of business as a new vehicle by a dealer franchised to sell that vehicle, if all of the following apply:

(i) The manufacturer or distributor of the vehicle files a bankruptcy petition.

(ii) The franchise agreement of the dealer is terminated, canceled, or rejected by the manufacturer or distributor as part of the bankruptcy proceedings and the termination, cancellation, or rejection is not a result of the revocation by the department of the dealer's license or the dealer's conviction of a crime. (iii) The vehicle is held in the inventory of the dealer on the date the bankruptcy petition is filed.

(iv) The vehicle is sold by the dealer within six months of the date the bankruptcy petition is filed.

(3) Subparagraph (H) of paragraph (2) does not entitle a dealer whose franchise agreement has been terminated, canceled, or rejected to continue to perform warranty service repairs or continue to be eligible to offer or receive consumer or dealer incentives offered by the manufacturer or distributor.


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## Autobroker advertising

**California Vehicle Code § 11713 (b)**: It is unlawful for a dealer to (1)(A) advertise or offer for sale or exchange in any manner, a vehicle not actually for sale at the premises of the dealer or available to the dealer directly from the manufacturer or distributor of the vehicle at the time of the advertisement or offer.

However, a dealer who has been issued an autobroker's endorsement to his or her dealer's license may advertise his or her service of arranging or negotiating the purchase of a new motor vehicle from a franchised new motor vehicle dealer and may specify the line-makes and models of those new vehicles. Autobrokering service advertisements may not advertise the price or payment terms of a vehicle and shall disclose that the advertiser is an autobroker or auto buying service, and shall clearly and conspicuously state the following: "All new cars arranged for sale are subject to price and availability from the selling franchised new car dealer."

(B) As to printed advertisements, the disclosure statement required by subparagraph (A) shall be printed in not less than 10-point bold type size and shall be textually segregated from the other portions of the printed advertisement.

(2) Notwithstanding subparagraph (A), classified advertisements for autobrokering services that measure two column inches or less are exempt from the disclosure statement in subparagraph (A) pertaining to price and availability.

(3) Radio advertisements of a duration of less than 11 seconds that do not reference specific line-makes or models of motor vehicles are exempt from the disclosure statement required in subparagraph (A).

## Vehicle availability rules

**13 California Code of Regulations § 260.04 (a): Vehicle Availability.** (a) No dealer shall advertise a specific vehicle or a class of vehicles for sale, unless such vehicle(s) is in the dealer's possession, or is available to the dealer pursuant to a franchise agreement with the manufacturer or distributor of the vehicle(s). An advertisement of a vehicle not in a dealer's possession must so indicate, and must include a reasonable estimate of the date such vehicle will be available from the franchisor for delivery to a prospective purchaser.

# Discussion

The rules for advertising and selling new vehicles are clearly set forth in the laws quoted above. A dealer may not advertise or sell a new vehicle, except for those vehicles noted above, if the dealer does not have a franchise for the line-make of the vehicles advertised or sold. Autobrokers may advertise their services by complying with the specific rules set forth in the Vehicle Code. Autobrokers may not advertise the price or payment terms of vehicles and must disclose that the advertiser is an autobroker or autobuying service, and provide a clear and conspicuous statement of the following: "All new cars arranged for sale are subject to price and availability of the selling franchised new car dealer."

Note on vehicles that may be sold by all licensed dealers: All licensed dealers may advertise or sell the following vehicles whether or not they are franchised to sell a particular line-make of the vehicle being advertised or sold: a mobilehome; a recreational vehicle; a commercial coach; an off-highway vehicle; a manufactured home; a new vehicle that will be converted; a commercial vehicle with a gross vehicle weight rating of more than 10,000 pounds; and vehicles purchased for export and exported outside the U.S. A listing of these vehicles is stated in Vehicle Code § 11713.1(f)(2) above. See Chapter 16, New and Used, for a discussion of whether such vehicles sold by a dealer not franchised to sell a particular make may be advertised and sold as new.

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## Reason for the law

These laws ensure that new motor vehicles are sold to the public only by franchised new motor vehicle dealers who are uniquely qualified in the offering of service for new vehicles and in explaining the operation of the vehicles. New motor vehicle dealers are also required by their franchisors to have adequate facilities and financial resources to serve the buying public.

## Cross-references

Chapter 21: Display of Vehicles for Sale

Chapter 16: New and Used Vehicles


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# Chapter 9 - Manufacturer Advertising

## Basic rule

Manufacturers may not advertise vehicles unless they are available to dealers. If they are not currently available, the date of their availability must appear in the advertisement.

If a manufacturer advertises a price, the advertised price must be the manufacturer's base price. Pictures of vehicles may not show equipment on the vehicle not included in the price advertised, and pictures must accurately reflect the year and model of the advertised vehicle.

## Text of the law

### Vehicles must be available

**13 California Code of Regulations § 260.04(c):** No manufacturer or distributor shall advertise vehicles for sale unless such vehicles are available to franchised dealers within the meaning of subsection (a) of Vehicle Code Section 11713.2, or, if not so available, the advertisement must include the date such vehicles will be available for purchase from retail dealers in the area in which the advertisement is disseminated.

**California Vehicle Code § 11713.2:** It shall be unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to coerce or attempt to coerce any dealer in this state:

(a) To order or accept delivery of any motor vehicle, part or accessory thereof, appliance, equipment or any other commodity not required by law which shall not have been voluntarily ordered by the dealer.

### Manufacturer price advertising

**13 California Code of Regulations § 262.01:** Manufacturer's or Distributor's Price. If a manufacturer or distributor advertises the price of a vehicle or class or vehicles, the price quoted shall be the manufacturer's suggested base price.

### Pictures of vehicles

**California Vehicle Code § 11713(s):** No holder of any license issued under this article shall do any of the following: (s) Use a picture in connection with an advertisement of the price of a specific vehicle or class of vehicles, unless the picture is of the year, make, and model being offered for sale. The picture shall not depict a vehicle with optional equipment or a design not actually offered at the advertised price.

### Regulations apply to all licensees

**13 California Code of Regulations § 255.04:** Unless otherwise provided, the provisions of Sections 255.00 through 262.09 are intended to govern the advertising of all entities subject to licensure by the Department of Motor Vehicles under Chapters 3.5 and 4 of Division 5 of the Vehicle Code.

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## Discussion

### "Manufacturer's Base Price"

The words "Manufacturer's Suggested Base Price" in Regulation 262.01 are not defined anywhere in the Vehicle Code or Regulations. However, it appears that this means the "Manufacturer's Suggested Retail Price (MSRP)" for the advertised vehicle.

### Regulations apply to manufacturers

In 13 California Code of Regulations § 255.04, it is provided that Regulations 255.00-262.09 apply to all licensees, including manufacturers, unless otherwise indicated. For example, qualifying statements in factory advertising must comply with Regulation 262.09, i.e., be readable and understandable. The FTC "clear and conspicuous" rules also apply to manufacturer advertising.

### Statute applies to manufacturers

California Vehicle Code § 11713 also applies to manufacturers as well as dealers.

## Reason for the law

This law provides for truthful advertising on the part of manufacturers. In various areas they are held to the same standards as dealers.

## Cross-references

Chapter 15: Availability of Vehicles

Chapter 19: Pictures of Vehicles

Chapter 12: Qualifiers, Disclosures, and Disclaimers

Chapter 29: Rebates and Cash Back


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# Chapter 10 - Ad Association Advertising

## Basic rule

The DMV has traditionally taken the position that dealers involved in cooperative advertising through dealer advertising associations must follow the same advertising rules that individual dealers are required to follow. There are no laws or regulations that specifically address the subject of advertising association advertising.

## Discussion

### Advertising manufacturer prices

Ad Associations may advertise a manufacturer's suggested retail price. Similarly, an Ad Association may advertise a financial institution's lease payment based upon MSRP or a percentage of MSRP. In these cases, the Association is merely advertising the manufacturer's suggested price or a manufacturer's or financial institution's lease. However, in order to avoid any claims of antitrust violations in this type of advertising, the advertisement should state that "Dealer prices vary."

### Cannot agree on prices

Dealers in an Ad Association may not agree on prices, nor may they agree to uniform discounts or interest rates. There is federal and state antitrust law dealing with this subject. For more information, see California Business and Professions Code section 16720 which makes the activities discussed above unlawful.

### Other issues

Ad Associations frequently become involved in designing promotions that include contests, incentives, and inducements to visit the dealership. The topics in this manual on those subjects should be reviewed if the Ad Association is involved in any of these types of promotions.

## Cross-references

Chapter 51: Free Goods and Services

Chapter 26: Incentives – Dealer Participation

Chapter 56: Sweepstakes and Contests

Chapter 57: Lotteries

Chapter 58: Incentives to Visit Dealership

Chapter 9: Manufacturer Advertising

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# Chapter 11 - Identity of Dealer

## Basic rule

In advertising dealers and lessor-retailers must show their identity by the name under which they do business, or any other name that identifies them to the public and to the DMV.

## Text of the law

### Identity required

**13 California Code of Regulations § 262.08:** Identity of Dealer or Lessor-Retailer. Advertisements by dealers or lessor-retailers shall identify the dealer or lessor-retailer either by name under which the licensee does business or by such other name as will serve to readily identify the dealer or lessor-retailer both to the public and the department.

## Discussion

Dealers must use the name under which they do business in their advertising. This name is on file with the DMV because dealers are required to notify the DMV of the names under which they do business, which are often different from the dealer's corporate or limited liability company name. Under the regulation dealers may also advertise themselves by any other name which identifies the dealer to the public and to the DMV. There is no exception to this rule for liner ads in the classified section–the dealer's name must still be shown.

## Reason for the law

Any advertiser should be identifiable to the public and to regulatory authorities.

## Example

See Example 6.


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# Chapter 12 - Qualifiers, Disclosures, and Disclaimers

## Basic rule

In vehicle advertising, all disclosures required by law and all qualifying statements must be clear and conspicuous.

## Text of the law

### California Statutory Requirement—Clear and Conspicuous

**California Vehicle Code § 11713.16(i):** It is unlawful for a dealer to fail to clearly and conspicuously disclose in an advertisement for the sale of a vehicle any disclosure required by this code, or any qualifying term used in conjunction with advertised credit terms. Unless otherwise provided by statute, the specific size of disclosures or qualifying terms is not prescribed.

### California Regulation Requirements—Clear and Conspicuous

**13 California Code of Regulations § 262.09:** Qualifying statements used in connection with vehicle advertisements, including the qualifying statements required by this article, shall be large enough and displayed for a sufficient period of time to enable the average reader or viewer to comprehend such statements.

### Regulation Z Installment Sale Requirements—Clear and Conspicuous

**Federal Reserve Board Comment 24 to section 226.24 (a) of Regulation Z:** With regard to advertising the required disclosures under Regulation Z rules of credit terms advertising, the comment states: 1. Clear and conspicuous standard—general. This section is subject to the general "clear and conspicuous" standard for this subpart, see §226.17(a)(1), but prescribes no specific rules for the format of the necessary disclosures, other than the format requirements related to the advertisement of rates and payments as described in comment 24(b)-2 below [dealing with credit secured by a dwelling]. The credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement. For example, a merchandise tag that is an advertisement under the regulation complies with this section if the necessary credit terms are on both sides of the tag, so long as each side is accessible.

### Regulation M Lease Requirements—Clear and Conspicuous

**Federal Reserve Board Comment 7(b) to section 213.7 (b)(1) of Regulation M:** With regard to advertising the required disclosures under the Regulation M rules of lease advertising, the comment states: Standard. The disclosures in an advertisement in any media must be reasonably understandable. For example, very fine print in a television advertisement or detailed and very rapidly stated information in a radio advertisement does not meet the clear and conspicuous standard if consumers cannot see and read or hear, and cannot comprehend, the information required to be disclosed.

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## Discussion

### California law on type size requirements

In the past, there were DMV regulations that required various type sizes in certain types of vehicle advertising. For example, it used to be the law that words such as "on approved credit" had to be 1/3 the size of the advertised credit terms, and there were other type size requirements. Now, with two exceptions, there are no specific type sizes required by California law in advertising the sale of vehicles.

The first exception is in California Vehicle Code § 11713.1(i) which requires that in some situations when the price of a limited number of vehicles in a newspaper is advertised, the number of vehicles at the advertised price be shown in a type size not less than ¼ the type size of the advertised price, and in no event less than 8-point type size. See Chapter 28, Price Leaders Disclosure.

The second exception is in California Vehicle Code § 11713(b) which requires autobrokers to state in their print advertising in not less than 10-point type size: "All new cars arranged for sale are subject to price and availability from the selling franchised new car dealer."

For more information: See Chapter 8, Non-Franchised Dealers and Autobrokers. See also Chapter 42, Leases and Regulation M, for type size requirements regarding the Equal Prominence Rule in lease advertising.

### California statutes and regulations on clear and conspicuous requirement

California Vehicle Code § 11713.16(i) requires that all disclosures required in the Vehicle Code and all qualifying terms in conjunction with advertised credit terms be stated clearly and conspicuously. The statute specifically provides that unless otherwise provided by statute, the specific size of disclosures or qualifying terms is not prescribed. In 13 California Code of Regulations § 262.09 quoted above, there is a requirement that all qualifying statements in vehicle advertising "shall be large enough and displayed for a sufficient period of time to enable the average reader or viewer to comprehend such statements." This should be understood as a requirement that all qualifying statements must be clear and conspicuous.

Warning! See People v. JTH Tax, Inc. (2013) 212 Cal.App.4th 1219 which imposed a large civil penalty on an advertiser based on the number of television viewers where the qualifying statements in the advertisement were not clear and conspicuous. There was also a large fine based on the number of persons who saw the advertiser's deceptive ad in print media.

### Disclosures required by the California Vehicle Code

There are various disclosures required by statutes and regulations which must be made clearly and conspicuously. The following are two examples.

When a price is advertised in newspapers, websites, magazines, and direct mail publications, California Vehicle Code section 11713.1(c)(1) provides that a statement must be made that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the California tire fee, the fee charged by the state for the issuance of a certificate of compliance or noncompliance pursuant to a statute, finance charges, a charge to electronically register or transfer the vehicle, and a dealer document processing charge.

Under Vehicle Code section 11713.1(c)(2) the language to be used for the disclosure has been standardized and should be the following with no abbreviations:


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"Plus government fees and taxes, any finance charges, any dealer document processing charge, any electronic filing charge, and any emission testing charge."

(3) For purposes of paragraph (1), "advertisement" means an advertisement in a newspaper, magazine, or direct mail publication that is two or more columns in width or one column in width and more than seven inches in length, or on a Web page of a dealer's Internet Web site that displays the price of a vehicle offered for sale on the Internet, as that term is defined in paragraph (6) of subdivision (f) of Section 17538 of the Business and Professions Code. See Chapter 23, Price Advertising.

When dealers contribute to the cost of factory incentives, the following statement must be made: "Dealer participation may affect consumer cost." See Chapter 26, Incentives – Dealer Participation.

Important: Because California Vehicle Code § 11713.16(i) requires that all disclosures required in the Vehicle Code and all qualifying terms in conjunction with advertised credit terms be stated clearly and conspicuously, use the search feature of this manual, as explained directly below, to discover statutes and regulations discussed in this manual specifically requiring a clear and conspicuous disclosure.

Use of search feature to discover clear and conspicuous statutes and regulations

You can use the search feature of the online version of this manual to discover vehicle advertising rules specifically referring to clear and conspicuous disclosures. Search the word "clear" and the word "conspicuous." The online version of this manual is in the CNCDA Comply section at www.cncda.org.

## Federal disclosures

In addition to the Regulation Z and Regulation M rules above, there are federal regulations requiring various disclosures such as in advertising fuel economy and warranties. These disclosures must be clear and conspicuous.

For more information: See Chapter 47, Fuel Economy Claims; Chapter 46, Environmental and Green Claims; and Chapter 52, Warranty Advertising.

## Qualifying statements with advertised credit terms

Qualifying terms in conjunction with advertised credit terms must be advertised clearly and conspicuously. See Chapter 43, Credit Advertising. The following are some examples:

"On approved Credit."

"Available to those with FICO score over 700."

"Lease rate only applies to J30 Standard Model. Lease payments based on MSRP of $33, 995, to qualified lessees through Infinity Financial Services."

"Must take delivery out of dealer stock by _____."

"Terms good until close of business on _____."

## Other qualifying terms

Qualifying terms are any conditions or limitations to whatever is being advertised. Although California Vehicle Code § 1713.16(i) requires that disclosures required by the Vehicle Code and qualifying terms used in

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conjunction with advertised credit terms be disclosed clearly and conspicuously, dealers should be aware that all qualifying terms in advertising should be disclosed clearly and conspicuously in order to avoid any claim of deceptive advertising. Thus, terms such as “Sales prices do not include leases,” “Factory rebates not applicable to Toyota Leases,” and similar statements should be stated clearly and conspicuously.

## Regulation M (lease) and regulation Z (credit sale) disclosures

The disclosures required by Regulation Z and Regulation M are subject to the clear and conspicuous standard found in the comments to Regulation Z and Regulation M quoted above. California Vehicle Code § 11713.16(d) also requires that dealers comply with the Regulation Z disclosures. The California Leasing Act requires that advertisements of vehicle leases comply with Regulation M disclosures and the additional lease disclosures required by California law. For more information, see Chapter 39, Installment Sales and Regulation Z Trigger Terms, and Chapter 42, Leases and Regulation M.

## The clear and conspicuous standard

As noted above, all disclosures and qualifying terms in advertising should be disclosed clearly and conspicuously. The Federal Trade Commission (FTC), which has the power to bring actions for deceptive and misleading advertising, provides guidance for compliance with the clear and conspicuous standard.

The following are statements made in various FTC publications.

### *FTC guidance*

When the disclosure of qualifying information is necessary to prevent an ad from being deceptive, the information should be presented clearly and conspicuously so that consumers can actually notice and understand it. A fine-print disclosure at the bottom of a print ad, a disclaimer buried in a body of text unrelated to the claim being qualified, a brief video superscript in a television ad, or a disclaimer that is easily missed on a website are not likely to be effective. Nor can advertisers use fine print to contradict other statements in an ad or to clear up misimpressions that the ad would leave otherwise. For example, if an ad for a diet product claims, "Lose 10 pounds in one week without dieting," the fine-print statement "Diet and exercise required" is insufficient to remedy the deceptive claim in the ad. To ensure that disclosures are effective, advertisers should use clear and unambiguous language, place any qualifying information close to the claim being qualified, and avoid using small type or any distracting elements that could undercut the disclosure. Although there is no hard-and-fast rule about the size of type in a print ad or the length of time a disclosure must appear on TV, the FTC often has taken action when a disclaimer or disclosure is too small, flashes across the screen too quickly, is buried in other information, or is otherwise hard for consumers to understand. Most importantly, if you are concerned that a disclaimer or disclosure may be necessary to clarify a claim, evaluate your ad copy and substantiation carefully to ensure that you are not misleading consumers.

Regardless of whether you advertise on TV or radio, in print ads, through direct mail or online, the law is the same: disclaimers and disclosures must be "clear and conspicuous." Dot Com Disclosures offers special guidance for online advertisers regarding Net specific issues such as banner ads, pop-up windows, scrolling, hyperlinks, etc.

Your ads should clearly and conspicuously disclose all the information about an offer that is likely to affect a consumer's purchasing decision. Disclose the most important information - like the terms affecting the cost of the offer - near the advertised price.


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Note: See FTC publication, Advertising FAQs: A Guide for Small Businesses (to see, type this in browser: bit.ly/ftcadguide).

### *Print advertising*

Print advertisers should not attempt to hide the real cost or the critical terms or conditions by:

- putting them in obscure locations, such as the border area on a print ad;
- burying them in numerous, densely packed lines of fine print; or
- including them in small-type footnotes.

### *Television advertising*

Television advertisers should not hide key information in:

- a fast-moving "crawl";
- superscripts or subscripts using small print sizes or a color that fades into the background;
- type that disappears from the screen too fast for consumers to read and comprehend, or
- the middle of a long statement that scrolls vertically on the screen within a short period of time.

For more information: See FTC publication, Big Print. Little Print, What's the Deal? (to see, type this in browser: bit.ly/sizeofprint).

## Proximity, placement, prominence, and freedom from distractions

Here are other FTC statements to describe what the clear and conspicuous standard requires.

### *Proximity and placement*

A disclosure is more effective if it is placed near the claim it qualifies or other relevant information. Proximity increases the likelihood that consumers will see the disclosure and relate it to the relevant claim or product. For print ads, an advertiser might measure proximity in terms of whether the disclosure is placed adjacent to the claim, or whether it is separated from the claim by text or graphics.

### *Prominence*

It is the advertiser's responsibility to draw attention to the required disclosures. Display disclosures prominently so they are noticeable to consumers. The size, color, and graphics of the disclosure affect its prominence. The type size should be big enough to read easily. There should be a sharp contrast between the disclosure and the background. The typeface design should be easy to read. For TV ads, the consumer must have enough time to read the disclosure.

### *Freedom from distractions*

Don't let other parts of an ad get in the way. On television, moving visuals behind a text message make the text hard to read and may distract consumers' attention from the message.

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## FTC's definition of clear and conspicuous

In a 2018 enforcement action against a dealership for advertising violations, the FTC, in its Order and Decision ( to see, type this in browser: bit.ly/cowboyag), defined clear and conspicuous as follows:

"Clearly and conspicuously" means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be made visually or audibly.

2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.

6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices.

7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

### *Television advertising*

All qualifying statements and required disclosures should be readable and understandable on the TV screen. The text should also appear on the screen long enough to be read and understood.

### *Radio advertising*

On radio, qualifying statements and required disclosures should not be read so rapidly or in such a manner that they cannot be heard and understood by the ordinary consumer. The qualifying statements and disclosures should be presented with adequate volume and cadence.

### *Newspaper and print media*

With the exceptions noted above for Price Leader and Autobroker advertising, there is no rule stating what the type size should be for disclosures or qualifying statements required by either federal or California law. Sometimes these statements are seen in type so narrow and small that a magnifying glass is needed to read them. At other times there will be a colored background with white lettering making the text almost unreadable.

Tip: If the statements are not readable and understandable, the clear and conspicuous standard is not satisfied. It is recommended that unless otherwise required by law, non-narrow type size of no less than 8 points be used in print media for disclosures and qualifiers.


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### *Billboards and oversize media*

The clear and conspicuous rule also applies to billboards and oversize media. Any disclosure must be in a size able to be read by the viewer.

### *Internet and social media advertising*

Anyone advertising on a website or social media must read the FTC publication .com Disclosures, How to Make Effective Disclosures in Digital Advertising (to see, type this in browser: bit.ly/howtodisclose). This is a comprehensive guide for digital advertising. Also see Chapter 64, Social Media Advertising.

Language to be used for disclosures

Important that language of disclosures be same as the language of advertisement: In a 2018 enforcement action against a dealership, the FTC made it very clear that any required disclosure must be made in the language of the advertisement to which the disclosure relates. In this case the advertisement was in Spanish, but the disclosures were in English. The FTC Order and Decision states: "The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears. To read the Order and Decision, type this in browser: bit.ly/ftclanguage.

## Cross-references

Chapter 63: Website Advertising

Chapter 43: Credit Advertising

Chapter 47: Fuel Economy Claims

Chapter 26: Incentives – Dealer Participation

Chapter 39: Installment Sales and Regulation Z Trigger Terms

Chapter 64: Internet and Social Media Advertising

Chapter 23: Price Advertising

Chapter 42: Leases and Regulation M

Chapter 52: Warranty Advertising

## Examples

See Example 1, Example 6, and Example 11.

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# Chapter 13 - Lessor-Retailers

## Basic rule

Lessor-Retailers, as defined in California Vehicle Code § 373 quoted below, must follow, with some exceptions, the laws applicable to dealer advertising. Also, unless otherwise provided, California regulations §§ 255.00 through 262.09 (discussed in other parts of this manual) cover licensed lessor-retailers.

## Text of the law

### Definition of lessor-retailer

**California Vehicle Code § 373:** A "lessor-retailer" is a lessor or renter who, except under circumstances described in subdivision (a) of §286, makes a retail sale or sales of a previously leased or rented vehicle or vehicles to other than any of the following:

(a) The lessee of the vehicle, or the person who, for a period of at least one year, has been designated by the lessee as the driver of the vehicle covered by a written lease agreement.

(b) A buyer for agricultural, business, or commercial purposes.

(c) A government or governmental agency or instrumentality.

### Exceptions

**California Vehicle Code § 286(a):** The term "dealer" does not include any of the following: (a) Insurance companies, banks, finance companies, public officials, or any other person coming into possession of vehicles in the regular course of business, who sells vehicles under a contractual right or obligation, in performance of an official duty, or in authority of any court of law, if the sale is for the purpose of saving the seller from loss or pursuant to the authority of a court.

### Retail sale

**California Vehicle Code § 520:** A "retail sale" is a sale of goods to a person for the purpose of consumption and use, and not for resale to others, including, but not limited to, an arrangement where a motor vehicle is consigned to a dealer for sale

### License required

**California Vehicle Code § 11600**: It shall be unlawful for any lessor-retailer to make a retail sale of a vehicle of a type subject to registration without having first procured either a vehicle dealer license or a lessor-retailer license or temporary permit issued by the department or when such license or temporary permit issued by the department has been canceled, suspended, revoked, or invalidated or has expired.

For more information: California Vehicle Code § 11614 lists some of the specific advertising rules for Lessor-Retailers, which generally are the same as those applicable to dealers.


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**13 California Code of Regulations § 255.04:** Unless otherwise provided, the provisions of Sections 255.00 through 262.09 are intended to govern the advertising of all entities subject to licensure by the Department of Motor Vehicles under Chapters 3.5 and 4 of Division 5 of the Vehicle Code.

## Discussion

Lessor-Retailers who make retail sales must generally follow the same advertising rules applicable to dealers.

### Reason for the law

Lessor-Retailers should be required to follow the same rules applicable to dealers in vehicle advertising.

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# Part B
# Describing and identifying the vehicle






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# Chapter 14 - Identification and Description of Vehicles

## Basic rule

California statutes and regulations provide the details required in the advertisement of specific vehicles and classes of vehicles.

### Identification numbers

Specific vehicles offered for sale must be identified by their vehicle identification number or license plate number. It is alright to include the last part of a vehicle's identification number that specifically distinguishes the vehicle from all other vehicles. There is no requirement to identify vehicles by identification or license plate numbers when a class of vehicles is being advertised, provided that the year (with the exception noted below) and model of the vehicles are stated. A class is defined as 5 or more vehicles that are all of the same make, model, and model-year.

### Model-year

Unless the vehicle advertised is a current model-year, the model-year of the vehicle must be stated. When a price is advertised for a class of vehicles, the model-year must be stated unless the vehicles are current year models. Important: Year models are no longer current when ensuing year models are advertised and available for purchase at retail in California.

### Model

All advertisements of specific vehicles must include the name of the vehicle model the manufacturer applies to the vehicle. See discussion definition of "model" below. For example, simply advertising a "Mustang" or "Prius" will not suffice. A proper model description would be "Mustang GT Convertible" or "Toyota Camry XLE." Manufacturers are required to show the model description on the MSRP (Monroney) sticker, so using that description will adequately describe the model in advertising. Information is available to dealers from various sources to ascertain the model name for used vehicles, such as market guides and listing services. If the price of a class of vehicles is advertised, the vehicles must all be of the same model. Model designations must be used in all types of vehicle advertising, including newspaper liner ads.

### Class of vehicles

When a class of vehicles is advertised, the advertisement must include the model and model year; however, the model-year does not have to be included if the vehicles advertised are all of the current model-year. Identification numbers or license plate numbers are not required when a class of vehicles is advertised. As stated above, a class of vehicles is defined as 5 or more vehicles that are all of the same make, model, and model-year.

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## Used vehicles

Used vehicles which are of the current or prior model-year, must be advertised as "used," "previously owned," or by a similar term indicating that the vehicle is used. There could be one section in an ad where a banner could indicate "used," or a similar term, for all vehicles in that section.

## Condition and equipment

Statements of the condition of a vehicle must be accurate. Any vehicle advertised as having special equipment or accessories must have the equipment or accessories installed and operative at the time of the advertisement.

## Pictures

Any picture of a vehicle must be of the year, make and model being offered for sale, and must not depict the vehicle with optional equipment or a design not offered for sale at the advertised price. See Chapter 19, Pictures of Vehicles.

## Vehicle history

See Chapter 18, History of Vehicles, for the rules in advertising and disclosing vehicle history.

## What does make and model mean?

California Vehicle Code § 11713.1(y) states that the terms "make" and "model" have the same meaning as is provided in 49 Code of Federal Regulations § 565.12. In 49 Code of Federal Regulations § 565.12 the following definitions are given in describing the elements and coding of vehicle identification numbers.

"Make means a name that a manufacturer applies to a group of vehicles or engines."

"Type means a class of vehicle distinguished by common traits, including design and purpose. Passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, incomplete vehicles, low speed vehicles, and motorcycles are separate types."

"Model means a name that a manufacturer applies to a family of vehicles of the same type, make, line, series and body type."

"Line means a name that a manufacturer applies to a family of vehicles within a make which have a degree of commonality in construction, such as body, chassis or cab type."

"Series means a name that a manufacturer applies to a subdivision of a "line" denoting price, size or weight identification and that is used by the manufacturer for marketing purposes."

"Body type means the general configuration or shape of a vehicle distinguished by such characteristics as the number of doors or windows, cargo-carrying features and the roofline (e.g., sedan, fastback, hatchback)."

Tip for deciphering a VIN: For a description on how to decipher a VIN number, see 49 Code of Federal Regulations § 565.15 (to see, type this in browser: bit.ly/vindecipher).


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## Text of the law

### Identifying information required

**California Vehicle Code § 11713.1 (a):** It is a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(a) Advertise any specific vehicle for sale without identifying the vehicle by its model, model-year, and either its license number or that portion of the vehicle identification number that distinguishes the vehicle from all other vehicles of the same make, model, and model-year. Model-year is not required to be advertised for current model-year vehicles. Year models are no longer current when ensuing year models are available for purchase at retail in California. Any advertisement that offers for sale a class of new vehicles in a dealer's inventory, consisting of five or more vehicles, that are all of the same make, model, and model-year is not required to include in the advertisement the vehicle identification numbers or license numbers of those vehicles.

### Definition of make and model

**California Vehicle Code § 11713.1(z):** As used in this section, "make" and "model" have the same meaning as is provided in Section 565.12 of Title 49 of the Code of Federal Regulations.

### Model year

**California Vehicle Code § 11713.5:** Unlawful representation of vehicle model-year; housecars; applicability of section

(a) It is unlawful and a violation of this code for the holder of any license issued under this article to display for sale, offer for sale, or sell, a motor vehicle, representing the motor vehicle to be of a year model different from the year model designated at the time of manufacture or first assembly as a completed vehicle.

(b) It is unlawful and a violation of this code for the holder of any license issued under this article to directly or indirectly authorize or advise another holder of a license issued under this article to change the year model of a motor vehicle in the inventory of the other holder.

(c) It is unlawful and a violation of this code for the holder of any license issued under this article to display for sale, offer for sale, or sell, a housecar which has been manufactured in two or more stages, unless the licensee informs the buyer that the housecar has been so manufactured and the licensee provides the buyer with a form, approved by the department, which sets forth the date of chassis and engine manufacture and the date and model year of the other stages of the vehicle. The licensee shall retain a copy of the form, which shall be signed by the purchaser prior to entering into any sales contract, indicating that the purchaser has received a copy of the form.

(d) This section does not apply to the displaying or offering for sale, or selling, of any new motortruck or truck tractor weighing over 10,000 pounds.

(e) This section does not apply to a vehicle which has been remanufactured by a licensed remanufacturer. The year model of a remanufactured vehicle will be the year the vehicle was remanufactured.

### Pictures of vehicles

**California Vehicle Code § 11713(s):** No holder of any license issued under this article shall do any of the following: Use a picture in connection with an advertisement of the price of a specific vehicle or class of

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vehicles, unless the picture is of the year, make, and model being offered for sale. The picture shall not depict a vehicle with optional equipment or a design not actually offered at the advertised price.

## Formerly used by occupational licensees

**California Vehicle Code § 11713(t):** No holder of any license issued under this article shall do any of the following: Advertise for sale a vehicle that was used by the selling licensee in its business as a demonstrator, executive vehicle, service vehicle, rental, loaner, or lease vehicle, unless the advertisement clearly and conspicuously discloses the previous use made by that licensee of the vehicle. An advertisement shall not describe any of those vehicles as "new."

## History of other types of vehicles

**13 California Code of Regulations § 260.02. Vehicle History:**

(a) Express advertisements of a vehicle's prior use or ownership history must be accurate.

(b) Former taxicabs, rental vehicles, publicly owned vehicles, insurance salvage vehicles and revived salvage vehicles shall be clearly identified as such if the previous status is known to the seller.

(c) If a vehicle is advertised and/or sold as a "demonstrator" and such a vehicle has been previously registered or sold to a retail purchaser, the selling dealer shall clearly disclose to the buyer the fact of such prior registration or sale before obtaining the buyer's signature on a purchase order or sales contract.

## Advertisement of used vehicles

**California Vehicle Code § 11713.16(a):** It is a violation of this code for the holder of any dealer's license issued under this article to do any of the following: (a) Advertise any used vehicle of the current or prior model-year without expressly disclosing the vehicle as "used," "previously owned," or a similar term that indicates that the vehicle is used, as defined in this code.

## Must have all equipment listed as standard

**California Vehicle Code § 11713.16(h):** It is a violation of this code for the holder of any dealer's license issued under this article to do any of the following: Advertise the price of a new vehicle or class of new vehicles unless the vehicle or vehicles have all of the equipment listed as standard by the manufacturer or distributor or the dealer has replaced the standard equipment with equipment of higher value.

## Vehicle condition

**13 California Code of Regulations § 260.03. Vehicle Condition:** Statements of vehicle condition must accurately reflect the known condition, and pictures of vehicles must accurately depict their overall appearance.

## Special equipment or accessories

**13 California Code of Regulations § 260.05. Vehicle Equipment:** No specific vehicle shall be advertised as having special equipment or accessories unless such equipment or accessories are installed and operative at the time of the advertisement.


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## Discussion

As noted above, when a class of vehicles is advertised, the VIN or license plate numbers do not have to be included. However, if specific vehicles are being advertised, and also when a class of vehicles consisting of 4 or less vehicles that are all of the same make, model, and model-year is being advertised, their VIN numbers or license plate numbers must be shown.

Example: If 5 price leader vehicles of the same make, model, and model-year were being advertised with a "5 at this price" disclosure, and, even though a dealer might have more than 5 in inventory, no VIN or license plate numbers would have to be shown. If the VIN is used, only that part of it that distinguishes the vehicle from all other vehicles must be shown.

### Statement of legislative intent

In a statement of legislative intent regarding an amendment to Vehicle Code section 11713.1(a) effective January 1, 2002, the author of the bill stated the following regarding the advertising of a class of vehicles: SB 481 is also intended to clarify that if a dealer advertises a specific vehicle for sale, the advertisement must identify the vehicle by either its license plate number or that portion of its vehicle identification number (VIN) that distinguishes the vehicle from all other vehicles of the same make, model, model-year, and type. For example, if a dealer ran an advertisement that states "1996 Ford Mustang $10,000", the dealer would be required to include the license plate number or distinguishing portion of the VIN in the advertisement and post the $10,000 sale price on the vehicle or list the advertised price in the dealer's showroom during the period the vehicle is advertised at that price. However, advertisements that offer for sale a class of new vehicles in a dealer's inventory consisting of five or more vehicles that are all of the same make, model, model-year, and type, are not required to contain the VIN for each vehicle in the class and no price posting is required. For example, if a Toyota dealer advertised "$2,500 off MSRP all Camry LEs in Stock" and had five or more of those vehicles in inventory, the dealer would not be required to include the VIN for each Camry LE in the advertisement or post the advertised price on the vehicles or in the showroom.

Note: The word "type" was removed from the statute by legislation effective January 1, 2003. Describing a vehicle by "Type" is no longer required.

### Stock numbers

Sometimes stock numbers are seen in advertising; however, listing stock numbers cannot substitute for listing the vehicle identification or license plate number.

### Mixing prior and current model years

The DMV is critical of newspaper advertisements in which offers of new, but prior model-year vehicles, are intermingled with those of new current year models in a manner that could tend to mislead a reader into believing that all the vehicles advertised are of the current year model. You must clearly and conspicuously identify used current model-year or prior model-year vehicles as "used", "previously owned," or some similar description indicating used.

Tip about vehicles previously used by the dealer: Dealers should pay particular attention to advertising demonstrators, executive cars, service vehicles, rental, loaner, or lease vehicles. As the statute states, the previous use of those vehicles by the selling licensee must be disclosed in the advertisement and the vehicles may not be described "new."

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For more information: See also Chapter 18, History of Vehicles, for further rules regarding the advertising and disclosure rules for former taxicabs, rental vehicles, publicly owned vehicles, insurance salvage vehicles, and revived salvage vehicles.

## Cross-References

Chapter 17: Demonstrators

Chapter 18: History of Vehicles

Chapter 16: New and Used

Chapter 19: Pictures of Vehicles

## Examples

See Example 1, Example 3, Example 9, and Example 10.


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# Chapter 15 - Availability of Vehicles

## Basic rule

Dealers may not advertise, or offer for sale, vehicles not actually for sale at the dealership premises or available to the dealer directly from the manufacturer at the time the advertisement or offer for sale is made. Dealers who have been issued an autobroker's endorsement to their license may advertise the service of arranging or negotiating the purchase of a new vehicle from a new motor vehicle dealer in accordance with the specific rules of the statute below.

## Text of the law

### California Vehicle Code

**California Vehicle Code § 11713 (b)** provides that no dealer, manufacturer, or distributor shall:

**Vehicles must be on premises or available from manufacturer; autobroker exception**

(1) (A) Advertise or offer for sale or exchange in any manner, any vehicle not actually for sale at the premises of the dealer or available to the dealer directly from the manufacturer or distributor of the vehicle at the time of the advertisement or offer. However, a dealer who has been issued an autobroker's endorsement to his or her dealer's license may advertise his or her service of arranging or negotiating the purchase of a new motor vehicle from a franchised new motor vehicle dealer and may specify the linemakes and models of those new vehicles. Autobrokering service advertisements may not advertise the price or payment terms of any vehicle and shall disclose that the advertiser is an autobroker or auto buying service, and shall clearly and conspicuously state the following: "All new cars arranged for sale are subject to price and availability from the selling franchised new car dealer."

**Size of autobroker disclosure**

(B) As to printed advertisements, the disclosure statement required by subparagraph (A) shall be printed in not less than 10-point bold type size and shall be textually segregated from the other portions of the printed advertisement.

**Autobroker's short, classified ads**

(2) Notwithstanding subparagraph (A), classified advertisements for autobrokering services that measure two column inches or less are exempt from the disclosure statement in subparagraph (A) pertaining to price and availability.

**Short radio ads**

(3) Radio advertisements of a duration of less than 11 seconds that do not reference specific line makes or models of motor vehicles are exempt from the disclosure statement required in subparagraph (A).

### California Code of Regulations

**Title 13, California Code of Regulations, § 260.04:**

Rules for ordered vehicles

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(a) No dealer shall advertise a specific vehicle or a class of vehicles for sale, unless such vehicle(s) is in the dealer's possession, or is available to the dealer pursuant to a franchise agreement with the manufacturer or distributor of the vehicle(s). An advertisement of a vehicle not in a dealer's possession must so indicate, and must include a reasonable estimate of the date such vehicle will be available from the franchisor for delivery to a prospective purchaser.

Must be sold as advertised

(b) A specific vehicle advertised by a dealer or lessor-retailer shall be in condition to demonstrate and shall be willingly shown and sold at the advertised price and terms while such vehicle remains unsold or unleased, unless the advertisement states that the advertised price and terms are good only for a specific time and such time has elapsed. Advertised vehicles must be sold at or below the advertised price irrespective of whether or not the advertised price has been communicated to the purchaser.

Manufacturer advertising prohibitions

(c) No manufacturer or distributor shall advertise vehicles for sale unless such vehicles are available to the franchised dealers, within the meaning of subsection (a) of Vehicle Code Section 11713.2, or, if not so available, the advertisement must include the date such vehicles will be available for purchase from retail dealers in the area in which the advertisement is disseminated.

Note about manufacturer coercion: Vehicle Code § 11713.2(a), referenced in Regulation 260.04(c) is the section that makes it unlawful for a manufacturer to coerce or attempt to coerce any dealer in this state (a) to order or accept delivery of any motor vehicle, part or accessory thereof, appliance, equipment or any other commodity not required by law which shall have not been voluntarily ordered by the dealer. It appears that the reference to this code section may be a mistake and that the actual code section referred to should be Vehicle Code § 11713.3(a) which makes it unlawful for a manufacturer "To refuse or fail to deliver in reasonable quantities and within a reasonable time after receipt of an order from a dealer having a franchise for the retail sale of a new vehicle sold or distributed by the manufacturer or distributor, a new vehicle or parts or accessories to new vehicles as are covered by the franchise, if the vehicle, parts, or accessories are publicly advertised as being available for delivery or actually being delivered. This subdivision is not violated, however, if the failure is caused by acts or causes beyond the control of the manufacturer, manufacturer branch, distributor, or distributor branch."

## Discussion

When a vehicle is not in the dealer's possession, dealers can advertise that the vehicle may be ordered; the advertisement must state an estimate of the date the vehicle will be available for delivery, and the advertisement must in some way indicate the vehicle is not currently in the dealer's possession. Otherwise, all vehicles advertised must be in the dealer's possession, except for autobroker ads as discussed above.

## Reason for the law

There are various reasons for the laws noted above. When vehicles are advertised, they should be on the dealer's lot and available to the public. If the vehicle is not in the dealer's possession, the public has a right to know that fact and to know when the vehicle will be available. In these cases, new vehicles must be available to the dealer directly from the manufacturer pursuant to a franchise agreement. Also, it would be unfair to the public to have manufacturers advertising vehicles that are not available to dealers in the area where the advertising is done. Because autobrokers merely arrange for sales, their ads must notify the public of this fact and that all new cars are sold by the selling franchised dealer.


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## Cross-references

Chapter 8: Non-Franchised Dealers and Autobrokers

## Example

See Example 5.

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# Chapter 16 - New and Used Vehicles

## Basic rule

Vehicles that are used may not be advertised or sold as new. The California Vehicle Code definitions of new and used vehicles are stated below. Generally, any vehicle which has been sold and/or operated on the highways, or has been registered, is considered to be used. Demonstrators, even though never sold at retail, or registered, are considered to be used and must be sold as used. All used vehicles of the current or prior model year must be advertised expressly as used, or some similar description indicating used such as "preowned." There are also specific rules for advertising a used vehicle as "certified."

## Text of the law

### Basic rule for advertising used vehicles

**California Vehicle Code § 11713 (d):** No licensee shall advertise or represent a vehicle as a new vehicle if the vehicle is a used vehicle.

### Sale contract requirements

**California Vehicle Code § 11713.1(v):** It is unlawful for a dealer to enter into a contract for the retail sale of a motor vehicle unless the contract clearly and conspicuously discloses whether the vehicle is being sold as a new vehicle or a used vehicle, as defined in this code.

### Definition of new vehicle

**California Vehicle Code § 430:** A "new vehicle" is a vehicle constructed entirely from new parts that has never been the subject of retail sale, or registered with the department, or registered with the appropriate agency or authority of any other state, District of Columbia, territory or possession of the United States, or foreign state, province, or country.

### Definition of retail sale

**California Vehicle Code § 520:** A "retail sale" is a sale of goods to a person for the purpose of consumption and use, and not for resale to others, including, but not limited to, an arrangement where a motor vehicle is consigned to a dealer for sale.

### Definition of used vehicle

**California Vehicle Code § 665:** A "used vehicle" is a vehicle that has been sold, or has been registered with the department, or has been sold and operated upon the highways, or has been registered with the appropriate agency of authority, of any other state, District of Columbia, territory or possession of the United States or foreign state, province or country, or unregistered vehicles regularly used or operated as demonstrators in the sales work of a dealer or unregistered vehicles regularly used or operated by a manufacturer in the sales or distribution work of such manufacturer. The word "sold" does not include or extend to: (1) any sale made by a manufacturer or a distributor to a dealer, (2) any sale by a new motor vehicle dealer franchised to sell a particular line-make to another new motor vehicle dealer franchised to sell


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the same line-make, or (3) any sale by a dealer to another dealer licensed under this code involving a mobilehome, as defined in Section 396, a recreational vehicle, as defined in Section 18010.5 of the Health and Safety Code, a commercial coach, as defined in Section 18012 of the Health and Safety Code, an offhighway motor vehicle subject to identification, as defined in Section 38012, or a commercial vehicle, as defined in Section 260.

## Definition of demonstrator

**13 California Code of Regulations § 255.02**: A "demonstrator" is a vehicle specifically assigned by a dealer to be regularly used for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type. A vehicle in a dealer's inventory which is only occasionally demonstrated to a prospective purchaser whose interest has focused on a particular vehicle is not a "demonstrator."

## Vehicles used by licensees may not be advertised as new

**California Vehicle Code § 11713(t):** No holder of any license issued under this article shall do any of the following: (t) Advertise for sale a vehicle that was used by the selling licensee in its business as a demonstrator, executive vehicle, service vehicle, rental, loaner, or lease vehicle, unless the advertisement clearly and conspicuously discloses the previous use made by that licensee of the vehicle. An advertisement shall not describe any of those vehicles as "new."

## Vehicles that must be advertised as used

**California Vehicle Code § 11713.16(a):** It is a violation of this code for the holder of any dealer's license issued under this article to do any of the following: (a) Advertise any used vehicle of the current or prior model-year without expressly disclosing the vehicle as "used," "previously owned," or a similar term that indicates that the vehicle is used, as defined in this code.

## Conditional sale contract requirements

**California Civil Code § 2982 (q):** The contract shall disclose on its face, by printing the word "new" or "used" within a box outlined in red, that is not smaller than one-half inch high and one-half inch wide, whether the vehicle is sold as a new vehicle, as defined in Section 430 of the Vehicle Code, or as a used vehicle, as defined in Section 665 of the Vehicle Code.

## Rules for advertising certified used vehicles

**California Vehicle Code § 11713.18**: (a) It is a violation of this code for the holder of any dealer's license issued under this article to advertise for sale or sell a used vehicle as "certified" or use any similar descriptive term in the advertisement or the sale of a used vehicle that implies the vehicle has been certified to meet the terms of a used vehicle certification program if any of the following apply:

(1) The dealer knows or should have known that the odometer on the vehicle does not indicate actual mileage, has been rolled back or otherwise altered to show fewer miles, or replaced with an odometer showing fewer miles than actually driven.

(2) The dealer knows or should have known that the vehicle was reacquired by the vehicle's manufacturer or a dealer pursuant to state or federal warranty laws.

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(3) The title to the vehicle has been inscribed with the notation "Lemon Law Buyback," "manufacturer repurchase," "salvage," "junk," "nonrepairable," "flood," or similar title designation required by this state or another state.

(4) The vehicle has sustained damage in an impact, fire, or flood, that after repair prior to sale substantially impairs the use or safety of the vehicle.

(5) The dealer knows or should have known that the vehicle has sustained frame damage.

(6) Prior to sale, the dealer fails to provide the buyer with a completed inspection report indicating all the components inspected.

(7) The dealer disclaims any warranties of merchantability on the vehicle.

(8) The vehicle is sold "AS IS."

(9) The term "certified" or any similar descriptive term is used in any manner that is untrue or misleading or that would cause any advertisement to be in violation of subdivision (a) of Section 11713 of this code or Section 17200 or 17500 of the Business and Professions Code.

### Remedies for violations

(b) A violation of this section is actionable under the Consumers Legal Remedies Act (Title 1.5 (commencing with Section 1750) of Part 4 of Division 3 of the Civil Code), the Unfair Competition Law (Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code), Section 17500 of the Business and Professions Code, or any other applicable state or federal law. The rights and remedies provided by this section are cumulative and shall not be construed as restricting any right or remedy that is otherwise available.

### Does not limit disclosure obligation imposed by law

(c) This section does not abrogate or limit any disclosure obligation imposed by any other law.

### Does not apply to motorcycles, off-road vehicles

(d) This section does not apply to the advertisement or sale of a used motorcycle or a used off-highway motor vehicle subject to identification under Section 38010.

## Discussion

### Dealer trades

Dealers franchised for the same line-makes may make dealer trades, or purchases and sales, between themselves of the same line-make vehicles without causing the vehicle to be considered used.

### Exceptions

Sales between licensed dealers of mobilehomes, recreational vehicles, commercial coaches, off-highway vehicles, and certain commercial vehicles do not cause these kinds of vehicles to be considered as "used". See the Vehicle Code definition of used vehicles above, which also refers to the California statutes defining these types of vehicles.


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## Demonstrators and other vehicles

As Vehicle Code § 11713(t) states vehicles used by selling licensees in their businesses as demonstrators, executive cars, dealer service vehicles, rental, loaner, or lease vehicles must be advertised with a disclosure of their previous use and cannot be described as new.

## Returns and rollbacks

New vehicles that have been previously sold and then returned to a dealer because of a rollback or default, must be advertised and sold as used. If a deal is unwound before a customer takes delivery, an argument can be made that the vehicle is still "new."

## Non-franchised dealers

Vehicles acquired by a dealer not franchised to sell the line-make of the vehicle acquired must be advertised and sold as used. A dealer may buy vehicles described in Vehicle Code § 117l3.l(f)(2) (for example, commercial vehicles with a gross rating of more than 10,000 pounds, or vehicles which will be substantially altered or modified by a converter prior to sale) on a hold for resale basis and then later sell the vehicle in a retail sale. There is an argument that vehicles described in Vehicle Code § 117l3.l(f)(2) may be advertised and sold as new by the non-franchised dealer. The argument would be that the Vehicle Code definition of a new vehicle quoted above became effective on January 1, 1995, and that definition states that a vehicle is new if it has never been the subject of a retail sale or registered with the appropriate agency. The definition of a used vehicle was enacted by the legislature in 1988, and it would require that any vehicle that has been purchased by the non-franchised dealer be described as a used vehicle because the vehicle was "sold" to the non-franchised dealer. One would argue that the later legislative definition of a new vehicle controls. Dealers should consult their attorney for advice about this issue.

## Previously registered

All vehicles that have been previously registered, whether to the dealer or to someone else, must be advertised and sold as used.

## Description of used vehicles in advertising

Vehicle Code § 11713.16(a) requires that all used vehicles of the current or prior model year be advertised as used, or by some similar term indicating used. Thus, descriptions such as "formerly owned," "previously owned," and "certified used" are allowed. There could be one section in an ad where a banner could indicate "used" for all vehicles in that section. There is no exception for liner ads in the classified section.

## Certified used, or similar description

See the detailed requirements of Vehicle § 11713.18 quoted above whenever a used vehicle is advertised as certified, or some similar descriptive term. If any of the nine criteria which would prohibit this type of advertising is present, the vehicle cannot be advertised as certified, or with some similar designation. The rules apply to any certification program, not just factory-sanctioned certification programs.

Note the prohibitions that a dealer may not sell a certified vehicle "AS IS," and may not disclaim any warranty of merchantability when selling certified used vehicles. Some contracts have language in fine print on the reverse side of the contract either referring to "AS IS" sales, or disclaiming the warranty of merchantability.

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This type of language should not be in the sales contract for a certified vehicle or in the Buyer's Guide which is affixed to the vehicle.

Note: These rules do not apply to used motorcycles or off-highway motor vehicles subject to identification under Vehicle Code § 38010.

## Reason for the law

Purchasers of vehicles have the right to know whether the vehicle being purchased is truly "new", or whether it is used. These laws also ensure that a new vehicle is not being purchased with a partially used up warranty period. Further, a dealer franchised to sell the line-make of the new vehicle sold is uniquely qualified to service the vehicle and to explain its operation to the purchaser. These assurances should be available to anyone who purchases a vehicle as "new". The restrictions on advertising a used vehicle as certified assure that the certified vehicle will be well inspected and has the qualities that a consumer expects.

## Cross-references

Chapter 17: Demonstrators

Chapter 18: History of Vehicles

Chapter 14: Identification and Description of Vehicles

Chapter 8: Non-Franchised Dealers and Autobrokers

## Example

See Example 4.


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# Chapter 17 - Demonstrators

## Basic rule

Demonstrators and the other vehicles described below may not be advertised, sold or leased as new vehicles. In advertising, they must be described by their previous use by the selling licensee in the licensee's business, such as a demonstrator, executive car, dealer service vehicle, rental, loaner, or lease vehicle.

## Text of the law

### Definition of demonstrator

**13 California Code of Regulations § 255.02:** A "demonstrator" is a vehicle specifically assigned by a dealer to be regularly used for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model and type. A vehicle in a dealer's inventory which is only occasionally demonstrated to a prospective purchaser whose interest has focused on a particular vehicle is not a "demonstrator."

### Description and disclosure of demonstrators used in selling dealer's business

**California Vehicle Code § 11713(t):** It is unlawful for a dealer to advertise for sale a vehicle that was used by the selling licensee in its business as a demonstrator, executive vehicle, service vehicle, rental, loaner, or lease vehicle, unless the advertisement clearly and conspicuously discloses the previous use made by that licensee of the vehicle. An advertisement shall not describe any of those vehicles as "new."

### Cannot advertise used vehicle as new

**California Vehicle Code § 11713 (d):** It is unlawful for a dealer to advertise or represent a vehicle as a new vehicle if the vehicle is a used vehicle.

### Definition of used vehicle

**California Vehicle Code § 665:** A "used vehicle" is a vehicle that has been sold, or has been registered with the department, or has been sold and operated upon the highways, or has been registered with the appropriate agency of authority, of any other state, District of Columbia, territory or possession of the United States or foreign state, province or country, or unregistered vehicles regularly used or operated as demonstrators in the sales work of a dealer or unregistered vehicles regularly used or operated by a manufacturer in the sales or distribution work of such manufacturer. The word "sold" does not include or extend to: (1) any sale made by a manufacturer or a distributor to a dealer, (2) any sale by a new motor vehicle dealer franchised to sell a particular line-make to another new motor vehicle dealer franchised to sell the same line-make, or (3) any sale by a dealer to another dealer licensed under this code involving a mobilehome, as defined in Section 396, a recreational vehicle, as defined in Section 18010.5 [should be 18010 ] of the Health and Safety Code, a commercial coach, as defined in Section 18012 of the Health and Safety Code, an off-highway motor vehicle subject to identification, as defined in Section 38012, or a commercial vehicle, as defined in Section 260.

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### Sale contract must disclose vehicle as new or used

**California Vehicle Code § 11713.1 (v):** It is unlawful for a dealer to enter into a contract for the retail sale of a motor vehicle unless the contract clearly and conspicuously discloses whether the vehicle is being sold as a new vehicle or a used vehicle, as defined in this code.

### How to disclose as new or used on conditional sale contract

**California Civil Code § 2982 (q):** The contract shall disclose on its face, by printing the word "new" or "used" within a box outlined in red, that is not smaller than one-half inch high and one-half inch wide, whether the vehicle is sold as a new vehicle, as defined in Section 430 of the Vehicle Code, or as a used vehicle, as defined in Section 665 of the Vehicle Code.

### Advertising used vehicles of current or prior model-year

**California Vehicle Code § 11713.16(a):** It is a violation of this code for the holder of any dealer's license issued under this article to do any of the following: (a) Advertise any used vehicle of the current or prior model-year without expressly disclosing the vehicle as "used," "previously owned," or a similar term that indicates that the vehicle is used, as defined in this code.

### Disclosure of demonstrator status before customer signs sale contract

**13 California Code of Regulations § 260.02 (c):** If a vehicle is advertised and/or sold as a "demonstrator" and such a vehicle has been previously registered or sold to a retail purchaser, the selling dealer shall clearly disclose to the buyer the fact of such prior registration or sale before obtaining the buyer's signature on a purchase order or sales contract.

## Discussion

Demonstrators and the other vehicles described above used by the selling licensee, whether registered or not, must not be advertised, sold, or leased as new vehicles. They are "used" under the law. California Vehicle Code § 11713(t) requires that when these types of vehicles are advertised, the advertisement must clearly disclose their prior use by the selling licensee, i.e., if the vehicle was used as a demonstrator, it must be advertised as a demonstrator. Vehicle Code § 1171l.16(a) also requires that a demonstrator of the current or prior model year be advertised as used, or a similar term indicating used. Advertising a registered or an unregistered demonstrator as a "dealer-used demonstrator" should suffice. If a vehicle was previously sold and/or registered, and then subsequently used as a demonstrator, the dealer must disclose the prior registration or sale to the buyer before the buyer signs the purchase order or sales contract. It is recommended that a dealer obtain the buyer's acknowledgment of this disclosure in writing. Because a demonstrator is a used vehicle, it should have a Buyer's Guide posted on it in connection with the sale.

Note on describing demonstrator on contract: A demonstrator should not be shown on the sales contract as a demonstrator. It should be described as used.

For more information, see Chapter 16, New and Used Vehicles.


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## Reason for the law

These laws exist to clearly identify the prior use of purchased vehicles, and to ensure that the purchaser is not misled into believing that the advertised vehicle is new when it is not.

## Cross-references

Chapter 18: History of Vehicles

Chapter 15: New and Used

## Example

See Example 4.

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# Chapter 18 - History of Vehicles

## Basic rule

Vehicles that have been used by the selling licensee in its businesses (such as dealers, manufacturers, distributors) as demonstrators, executive vehicles, service vehicles, rental, loaner, or lease vehicles must be advertised as such. These vehicles may not be described as "new." If a vehicle has been previously used by anyone as a taxicab, rental vehicle, publicly owned vehicle, insurance salvage vehicle, or revived salvage vehicle, and the previous use is known to the seller, then the previous use must be disclosed in any advertising of the vehicle. It is logical to conclude that these categories include Uber, Lyft, and similar vehicles.

For more information: Also see Chapter 22, Damage Disclosure, for the rules regarding disclosure of damage to new and used vehicles; and Chapter 16, New and Used Vehicles, for rules when vehicles must be disclosed as used.

## Text of the law

### Vehicles previously used by the selling occupational licensee

**California Vehicle Code § 11713(t):** It is unlawful for a dealer advertise for sale a vehicle that was used by the selling licensee in its business as a demonstrator, executive vehicle, service vehicle, rental, loaner, or lease vehicle, unless the advertisement clearly and conspicuously discloses the previous use made by that licensee of the vehicle. An advertisement shall not describe any of those vehicles as "new."

### Description must be accurate

**13 California Code of Regulations § 260.02; Vehicle History:**

(a) Express advertisements of a vehicle's prior use or ownership history must be accurate.

(b) Former taxicabs, rental vehicles, publicly owned vehicles, insurance salvage vehicles and revived salvage vehicles shall be clearly identified as such if the previous status is known to the seller.

(c) If a vehicle is advertised and/or sold as a "demonstrator" and such a vehicle has been previously registered or sold to a retail purchaser, the selling dealer shall clearly disclose to the buyer the fact of such prior registration or sale before obtaining the buyer's signature on a purchase order or sales contract.

### Definition of rental vehicle

**California Vehicle Code § 508:** A "renter" is a person who is engaged in the business of renting, leasing, or bailing vehicles for a term not exceeding four months and for a fixed rate or price. Salvage vehicle California Vehicle Code § 544: "Total loss salvage vehicle" means either of the following: (a) A vehicle, other than a nonrepairable vehicle, of a type subject to registration that has been wrecked, destroyed, or damaged, to the extent that the owner, leasing company, financial institution, or the insurance company that insured or is responsible for repair of the vehicle, considers it uneconomical to repair the vehicle and because of this, the vehicle is not repaired by or for the person who owned the vehicle at the time of the event resulting in damage.


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(b) A vehicle that was determined to be uneconomical to repair, for which a total loss payment has been made by an insurer, whether or not the vehicle is subsequently repaired, if prior to or upon making the payment to the claimant, the insurer obtains the agreement of the claimant to the amount of the total loss settlement, and informs the client that, pursuant to subdivision (a) or (b) of Section 11515, the total loss settlement must be reported to the Department of Motor Vehicles, which will issue a salvage certificate for the vehicle.

## Describing vehicles as used

**California Vehicle Code § 11713.16 (a)**: It is unlawful for a dealer to advertise any used vehicle of the current or prior model-year without expressly disclosing the vehicle as "used," "previously owned," or a similar term that indicates that the vehicle is used, as defined in this code.

## No advertising used as new

**California Vehicle Code § 11713 (d):** It is unlawful for a dealer to advertise or represent a vehicle as a new vehicle if the vehicle is a used vehicle. Contract must disclose vehicle as new or used California Vehicle Code § 11713.1 (v): It is unlawful for a dealer to enter into a contract for the retail sale of a motor vehicle unless the contract clearly and conspicuously discloses whether the vehicle is being sold as a new vehicle or a used vehicle, as defined in this code.

## Conditional sale contract requirements

**California Civil Code § 2982 (q):** The contract shall disclose on its face, by printing the word "new" or "used" within a box outlined in red, that is not smaller than one-half inch high and one-half inch wide, whether the vehicle is sold as a new vehicle, as defined in Section 430 of the Vehicle Code, or as a used vehicle, as defined in Section 665 of the Vehicle Code.

## Rules for advertising certified used vehicles

**California Vehicle Code c 11713.18:** a) It is a violation of this code for the holder of any dealer's license issued under this article to advertise for sale or sell a used vehicle as "certified" or use any similar descriptive term in the advertisement or the sale of a used vehicle that implies the vehicle has been certified to meet the terms of a used vehicle certification program if any of the following apply:

(1) The dealer knows or should have known that the odometer on the vehicle does not indicate actual mileage, has been rolled back or otherwise altered to show fewer miles, or replaced with an odometer showing fewer miles than actually driven.

(2) The dealer knows or should have known that the vehicle was reacquired by the vehicle's manufacturer or a dealer pursuant to state or federal warranty laws.

(3) The title to the vehicle has been inscribed with the notation "Lemon Law Buyback," "manufacturer repurchase," "salvage," "junk," "nonrepairable," "flood," or similar title designation required by this state or another state.

(4) The vehicle has sustained damage in an impact, fire, or flood, that after repair prior to sale substantially impairs the use or safety of the vehicle.

(5) The dealer knows or should have known that the vehicle has sustained frame damage.

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(6) Prior to sale, the dealer fails to provide the buyer with a completed inspection report indicating all the components inspected.

(7) The dealer disclaims any warranties of merchantability on the vehicle.

(8) The vehicle is sold "AS IS."

(9) The term "certified" or any similar descriptive term is used in any manner that is untrue or misleading or that would cause any advertisement to be in violation of subdivision (a) of Section 11713 of this code or Section 17200 or 17500 of the Business and Professions Code.

### Remedies for violations

(b) A violation of this section is actionable under the Consumers Legal Remedies Act (Title 1.5 (commencing with Section 1750) of Part 4 of Division 3 of the Civil Code), the Unfair Competition Law (Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code), Section 17500 of the Business and Professions Code, or any other applicable state or federal law. The rights and remedies provided by this section are cumulative and shall not be construed as restricting any right or remedy that is otherwise available. (c) This section does not abrogate or limit any disclosure obligation imposed by any other law.

### Does not apply to motorcycles and off-road vehicles

(d) This section does not apply to the advertisement or sale of a used motorcycle or a used off-highway motor vehicle subject to identification under Section 38010.

## Discussion

### Vehicles used by licensees in their business

Vehicle Code § 11713(t) requires that the previous status of vehicles used by selling licensees in their businesses as a demonstrator, executive vehicle, service vehicle, rental, loaner, or lease vehicle be described as such in any advertising of the vehicles. The vehicles may not be advertised as "new." It is important to note that this statute only requires disclosure of the described prior uses of the vehicles if it was the selling dealer who made use of the vehicle in one of the described categories. So, if the factory, not the dealer, used a vehicle as an executive vehicle, the prior use of that vehicle as an executive vehicle would not have to be disclosed in an advertisement.

Based upon section 11713(t), here are some examples of the selling dealer's advertising requirements.

### Examples of Disclosure Requirements

| Example | Disclosure? |
|---|---|
| **Factory, not dealer, used vehicle as a service vehicle** | Best practice to disclose |
| **Consumer used vehicle as a lease vehicle** | No disclosure required |
| **Dealer used vehicle as a rental vehicle** | Disclosure required |


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| | |
|---|---|
| **Dealer used vehicle as a loaner vehicle** | Disclosure required |
| **Dealer used vehicle as a demonstrator** | Disclosure required |

## Former taxicabs, rental vehicles, publicly owned vehicles, insurance salvage vehicles, and revived insurance salvage vehicles

DMV Regulation 260.02 (b) is an entirely separate rule from Vehicle Code 11713(t) and requires disclosure of the prior use of vehicles as taxicabs, rental vehicles, publicly owned vehicles, insurance salvage vehicles, and revived salvage vehicles, "if the previous status is known to the seller," in any advertising of the vehicles. If a rental vehicle was previously used by any person as a rental vehicle, and the dealer knew of that use, the vehicle must be advertised as a former rental vehicle. Rental vehicles are those rented for a period not exceeding 4 months and for a fixed rate or price. (See Vehicle Code section 508.) If a vehicle was previously leased to a consumer for a term exceeding 4 months, the prior use as a lease vehicle does not have to be advertised or disclosed.

Regulators and courts will hold dealers to a high standard of knowledge about a vehicle. If there is anything in the paperwork trail or in the vehicle indicating the prior use, it is quite likely the dealer will be considered to have had knowledge of the use. The prior use of vehicles that fall into the categories described in this regulation should always also be disclosed in writing to the buyer prior to the time of sale or lease and the buyer's acknowledgment of the disclosure should be obtained in writing

Important: Some dealers have customers sign a form by which the customer acknowledges disclosure of the prior use of the purchased or leased vehicle. It is essential for a dealer to have some type of written acknowledgment from the customer of the disclosure. For an example of a disclosure form available from The Reynolds and Reynolds Company, use the online version of this manual to view the form in the CNCDA Comply section at www.cncda.org.

Tip: Some dealers have the customer sign a trade-in disclosure form when taking in a vehicle on trade. This form discloses the prior use of the trade and is helpful if, for example, the trade vehicle later turns out to be a "salvage vehicle" when the title comes in. For an example of a disclosure form available from The Reynolds and Reynolds Company, use the online version of this manual to view the form in the CNCDA Comply section at www.cncda.org.

## Certified used, or similar description

See the detailed requirements of Vehicle § 11713.18 quoted above whenever a used vehicle is advertised as certified, or some similar descriptive term. If any of the nine criteria which would prohibit this type of advertising is present, the vehicle cannot be advertised as certified, or with some similar designation. The rules apply to any certification program, not just factory-sanctioned certification programs. Note the prohibitions that the dealer may not sell a certified vehicle "AS IS," and may not disclaim any warranty of merchantability.

Some contracts have language on the reverse side of the contract either referring to "AS IS" sales, or disclaiming the warranty of merchantability. This type of language should not be in the sales contract for a certified vehicle or in the Buyer's Guide which is affixed to the vehicle. These rules do not apply to used motorcycles or off-highway motor vehicles subject to identification under Vehicle Code § 38010.

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### Note on demonstrators

**13 California Code of Regulations § 260.02 (c) provides:** If a vehicle is advertised and/or sold as a "demonstrator" and such a vehicle has been previously registered or sold to a retail purchaser, the selling dealer shall clearly disclose to the buyer the fact of such prior registration or sale before obtaining the buyer's signature on a purchase order or sales contract.

For more information: See Chapter 17, Demonstrators, for a more complete discussion of demonstrators, and Chapter 16, New and Used Vehicles.

Note: A demonstrator should not be shown on the sales contract as a demonstrator. It should be described as used.

## Reason for the law

Disclosure of a vehicle's history is important information in considering a purchase. The statutes and DMV regulations on vehicle history disclosure recognize the importance of this information and consequently impose the disclosure duties described above.

## Cross-references

Chapter 22: Damage Disclosure

Chapter 17: Demonstrators

Chapter 16: New and Used Vehicles

## Examples

See Example 4 and Example 7.


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# Chapter 19 - Pictures of Vehicles

## Basic rule

When pictures of vehicles are used in advertising the price of a vehicle, the pictures must accurately depict the overall appearance of the vehicle actually offered for sale or lease.

## Text of the law

### Pictures must be accurate

**California Vehicle Code § 11713(s):** It is unlawful for a licensee to use a picture in connection with an advertisement of the price of a specific vehicle or class of vehicles, unless the picture is of the year, make, and model being offered for sale. The picture shall not depict a vehicle with optional equipment or a design not actually offered at the advertised price.

### Condition and appearance

**13 California Code of Regulations § 260.03:** Statements of vehicle condition must accurately reflect the known condition, and pictures of vehicles must accurately reflect their overall appearance.

## Discussion

Items, such as fancy wheel rims, should not be shown if they are not included in the advertised price of the vehicle. When a color of a vehicle is shown in an advertisement, Vehicle Code § 11713(s) would not appear to require that a dealer have a vehicle of that color in inventory.

## Reason for the law

The laws regarding pictures of vehicles prevent consumers from being misled concerning the vehicle they will receive for the price advertised.

## Cross-references

Chapter14: Identification and Description of Vehicles

Chapter 9: Manufacturer Advertising

## Examples

See Example 10.

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# Chapter 20 - Fully Factory Equipped

## Basic rule

It is unlawful to advertise a vehicle in such a way to indicate to the public that the vehicle advertised has factory-installed optional equipment when in fact it does not.

## Text of the law

### Fully factory equipped

**California Vehicle Code § 11713.1(p):** It is unlawful for a licensee to make an untrue or misleading statement indicating that a vehicle is equipped with all the factory-installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is "fully factory equipped."

## Discussion

This law prohibits the use of the words "fully factory equipped" to describe a vehicle unless the advertised vehicle is equipped with all factory-installed equipment that the manufacturer offers. According to a statement of legislative intent when this law was passed in 1988, the term "loaded" does not mean that a vehicle is equipped with all factory-installed equipment the manufacturer offers, and the term "loaded" may be used in a non-deceptive manner.

## Reason for the law

This law was enacted to prevent the public from being misled concerning the amount of optional factory equipment on an advertised vehicle.

## Example

See Example 2.


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# Chapter 21 - Display of Vehicles for Sale

## Basic rule

A dealer may display a vehicle for sale only at the dealer's premises authorized by the DMV. A dealer may not consign a new vehicle to another vehicle dealer for sale. Under certain circumstances, offsite display of vehicles is allowed. Offsite sales of used and new vehicles are possible if the dealers involved obtain a temporary branch license from the DMV.

## Text of the law

### No protest for temporary exhibit

**California Vehicle Code § 3062(c):** (c) Subdivision (a) [giving a dealer a right to protest when a competitor dealership is established in the dealer's relevant market area] does not apply to a display of vehicles at a fair, exposition, or similar exhibit if actual sales are not made at the event and the display does not exceed 30 days. This subdivision may not be construed to prohibit a new vehicle dealer from establishing a branch office for the purpose of selling vehicles at the fair, exposition, or similar exhibit, even though the event is sponsored by a financial institution, as defined in Section 31041 of the Financial Code or by a financial institution and a licensed dealer. The establishment of these branch offices, however, shall be in accordance with subdivision (a) where applicable.

### Display at exhibit

**California Vehicle Code § 11709:**

(b) Notwithstanding Section 11704 and this section, a dealer may display vehicles at a fair, exposition, or similar exhibit without securing a branch license, if no actual sales are made at those events and the display does not exceed 30 days.

(c) A vehicle displayed pursuant to subdivision (b) or (e) shall be identified by a sign or device providing information relating to the dealer's name and the location and address of the dealer's established place of business.

(d) This section shall not be applicable to a dealer who deals only in off-highway vehicles subject to identification, as defined in Section 38012.

(e) Notwithstanding Section 11704 and this section, a vessel dealer may display a trailer and may sell a trailer in conjunction with the sale of a vessel at a fair, exposition, or similar exhibit without securing a branch license if the display does not exceed 30 days.

### Unlawful to consign new vehicles

**California Vehicle Code § 11713(q):** It is unlawful for a dealer to consign for sale to another dealer a new vehicle.

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### Unlawful to display at other sites

**California Vehicle Code § 11713(r)**: It is unlawful for a dealer to display a vehicle for sale at a location other than an established place of business authorized by the department for that dealer or display a new motor vehicle at the business premises of another dealer registered as an autobroker. This subdivision does not apply to the display of a vehicle pursuant to subdivision (b) of Section 11709 or the demonstration of the qualities of a motor vehicle by way of a test drive.

### Display area and display at exhibit

**13 California Code of Regulations § 270.08: Display Area.**

(a) The display area of the principal place of business of each branch location and additional display areas as permitted by this section shall be of sufficient size to physically accommodate vehicles of a type for which the dealership is licensed to sell. The display area must be clearly for the exclusive use of the dealer for display purposes only. Additional display areas are permitted within a radius of 1,000 feet from the principal place of business and any licensed branch location without being subject to separate licensing. However, such display areas must also meet the signing requirement as identified in Vehicle Code Section 11709(a).

(b) The provisions of Vehicle Code Section 11709(b), which permits a dealer to display vehicles at a fair, exposition, or similar exhibit without securing a branch license extends to public shopping areas, public shopping centers, autoramas and other similar locations or events open to the public and intended to merely bring the dealer's identity and product to the public's attention, provided that:

(1) No sales are offered, attempted, solicited, negotiated or otherwise transacted from such locations or at such public event, including the acceptance of cash deposits, trade-in vehicles or any other considerations from persons for the purpose of inducing or binding a sale.

(2) Such locations are available to all dealers licensed in this state without discrimination as to type of manufacture, make, or year of vehicle displayed.

(3) Every dealer participating at such locations or events shall post a sign on the vehicle or vehicles or in close proximity thereto, printed in letters of not less than three (3) inches in height, which shall show the dealer's name, location and address of his established place of business and the following statement: “No sales permitted, or deposits accepted at this location.”

## Discussion

### Offsite sales

Offsite sales of used vehicles are permitted by the DMV upon the issuance to a dealer of a temporary branch location license. A temporary branch location license could be issued for an offsite sale of new vehicles; however, this rarely occurs because any new motor vehicle dealer within a ten-mile radius of the sale site has the right to file a protest with the New Motor Vehicle Board under Vehicle Code section 3062.

### Thirty-day temporary displays

Vehicle Code §§ 3062(c) and 11709 quoted above allow for a temporary display of vehicles in another dealer’s relevant market area if the display does not last for more than 30 days and no sales are made from the location.


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### New vehicle display restrictions

Dealers may not display new vehicles for sale at another dealer's premises, may not display a new vehicle at a dealer-autobroker's premises, and may not consign a new vehicle to another dealer for sale.

## Reason for the law

This law protects the franchise system for dealers. It also protects the public from buying new vehicles from a dealer who is not financially capable of standing behind any problems with the sale, and who does not have adequate service facilities to service the vehicle and honor the manufacturer's warranty. It also assists consumers by protecting them from purchasing vehicles from a fly-by-night dealer, or dealer-autobroker, who may not have title to the vehicle sold.

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# Chapter 22 - Damage Disclosure

## Basic rule

California Vehicle Code §§ 9990-9993 quoted below give the rules regarding disclosures in the sale of new or previously unregistered vehicles. There are no statutes that specifically govern damage disclosure in the sale of used vehicles. The duty of disclosure of damages to used vehicles is governed by the general laws of the State of California relating to concealment of material facts and misrepresentation of facts amounting to fraud, as discussed further below.

## Text of the law

### When damage is material

**California Vehicle Code § 9990:** For purposes of this chapter, damage sustained by a motor vehicle is material under any of the following circumstances:

(a) The damage required repairs having a value, including parts and labor calculated at the repairer's cost, exceeding 3 percent of the manufacturer's suggested retail price of the vehicle or five hundred dollars ($500), whichever is greater. The replacement of damaged or stolen components, excluding the cost of repainting or refinishing those components, if replaced by the installation of new original manufacturer's equipment, parts, or accessories that are bolted or otherwise attached as a unit to the vehicle, including, but not limited to, the hood, bumpers, fenders, mechanical parts, instrument panels, moldings, glass, tires, wheels and electronic instruments, shall be excluded from the damage calculation, except that any damage having a cumulative repair or replacement value which exceeds 10 percent of the manufacturer's suggested retail price of the vehicle shall be deemed material.

(b) The damage was to the frame or drive train of the motor vehicle.

(c) The damage occurred in connection with a theft of the entire vehicle.

(d) The damage was to the suspension of the vehicle requiring repairs other than wheel balancing or alignment.

### Disclosure in writing of repaired material damage

**California Vehicle Code § 9991:** Every dealer shall disclose in writing to the purchaser of a new or previously unregistered motor vehicle, prior to entering into a contract for the vehicle or, if unknown at that time, prior to delivery of the vehicle, any material damage known by the dealer to have been sustained by the vehicle and subsequently repaired.

### Disclosure in writing of unrepaired damage

**California Vehicle Code § 9992:** Every dealer shall disclose in writing to the purchaser of a new or previously unregistered motor vehicle, prior to entering into a contract for the vehicle or, if unknown at that time, prior to delivery of the vehicle, any damage, including but not limited to, material damage, known by the dealer to have been sustained by the vehicle and not repaired.


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### Truthful responses

**California Vehicle Code § 9993:** Nothing in this chapter permits any dealer to respond to the inquiry of a purchaser in any untrue or misleading manner.

### Disclosure of theft of vehicle

As set forth in Vehicle Code § 9990(c), any damage which occurs in connection with a theft of the entire vehicle is material and must be disclosed. What if a vehicle has been stolen from the dealer's premises, but there is no apparent damage? Must this fact of the theft be disclosed?

The California Court of Appeal case of Horn vs. Guaranty Chevrolet Motors (1969) 270 Cal.App.2d 477 would appear to indicate that not disclosing the theft of the vehicle would be concealment of a material fact from the purchaser, possibly subjecting the dealer to damages, including punitive damages. In the Horn case, the vehicle had been stolen. The police report indicated the two front seats, the rear seat, knobs on the dashboard, and the gear selection mechanism had been removed; the car door had been "jimmied" open with a screwdriver; the ignition wires were "yanked from underneath the ignition" and connected, and the car driven through an orange grove to a vacant garage.

At one point the court opinion states: "In the instant case either a concealment that the car had been stolen, driven through an orange grove and 'stripped' by the thief or an affirmative representation that the Impala was 'new' could constitute the necessary fraud. The evidence supports a finding of fraud upon any or all of these grounds."

Tip: If a new car has been stolen with no damage to it, you should either make a disclosure concerning the theft, or have your attorney review the Horn case for his or her opinion.

## Discussion

### Damage to new vehicles

The rules regarding damage to new or previously unregistered vehicles are clearly set forth in the statutes. Because the statutes also refer to previously unregistered vehicles, unregistered demonstrators are subject to these rules.

California Vehicle Code Sections 9990-9993 cover the legal duty that a dealership has to disclose damage sustained by a new or previously unregistered vehicle prior to its sale by the dealership. Dealers should take special care to make sure that dealership employees comply with these statutes to avoid potentially serious legal problems. Key questions concerning the application of these statutes are answered below.

For an interesting case on whether the California Consumers Legal Remedies Act takes precedence over the Vehicle Code statutes quoted above, see the unpublished Court of Appeal case of Bourgi vs. West Covina Motors (WL 2207477), June 8, 2011, in which the court found that the Vehicle Code sections governed as a safe harbor. Note, however, non-published Court of Appeal cases are not binding on California courts.

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## Questions and answers regarding disclosure of damage to new vehicles

### *Is a dealership required to make any disclosure to the purchaser of a new or previously unregistered vehicle regarding damage previously sustained by that vehicle?*

Yes, pursuant to Vehicle Code Sections 9991 and 9992, a dealership is required to disclose to the purchaser of such a vehicle any "material" damage sustained by the vehicle (whether repaired or not). Note that even though the statutes refer to a "purchaser", the disclosure requirements should be considered to apply to a "lessee" as well.

### *What does "material" damage mean?*

Vehicle Code Section 9990 defines damage as "material" if any of the following circumstances exist:

- Three percent rule

  The damage to the vehicle required repairs that have a value (including parts and labor calculated at the repairer's cost) exceeding 3% of the MSRP of the vehicle or $500, whichever is greater. The replacement of damaged or stolen components, excluding the cost of repainting or refinishing those components, is not considered in this calculation, if the components involved are replaced by installation of new original manufacturer's equipment, parts or accessories that are bolted or otherwise attached as a unit to the vehicle, including, but not limited to, the hood, bumpers, fenders, mechanical parts, instrument panels, moldings, glass, tires, wheels, and electronic instruments.

- Ten percent rule

  However, any damage having a cumulative repair or replacement value that exceeds 10% of the MSRP of the vehicle is to be considered "material."

- Frame or drive train damage

  The damage was to the frame or drive train of the vehicle.

- Theft of vehicle

  The damage occurred in connection with the theft of the entire vehicle.

- Suspension damage

  The damage was to the suspension of the vehicle requiring repairs other than wheel balancing or alignment.

### *What does the term "repairer's cost" mean in the context of calculating the value of repairs to a vehicle?*

It means the dealership's cost if the dealership is the entity that performed the repairs involved. There is some question about what this term means if the repairs are performed by a third party (i.e. a sublet situation). In that situation, at least arguably, the calculation of value could be based upon the third party's repair cost rather than the amount charged to the dealership by that repair facility. However, this analysis has a risk because there is no case law on the issue.


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### *How does a dealership make the required disclosure?*

Pursuant to Vehicle Code Sections 9991 and 9992, the disclosure must be made to the purchaser in writing. Note that it is a good idea to have the purchaser sign a copy of the written disclosure as confirmation of its receipt. The signed copy should be retained in the deal jacket by the dealership. For an example of a disclosure form available from The Reynolds and Reynolds Company, use the online version of this manual to view the form in the CNCDA Comply section at www.cncda.org.

### *When must a dealership make the required disclosure to the purchaser?*

Pursuant to Vehicle Code Sections 9991 and 9992, the written disclosure must be made prior to the purchaser signing the contract for the vehicle. If the dealership learns of the "material" damage after the contract is signed, but prior to delivery of the vehicle, the disclosure must be made prior to the delivery of the vehicle to the purchaser. Note that a dealership's duty to disclose prior damage under these statutes applies to "material" damage known to the dealership.

### *Does a dealership have any other legal duty to disclose information regarding prior damage sustained by a new or previously unregistered vehicle?*

Yes, in the context that a dealership must respond to the inquiry of a purchaser in a manner that is truthful and not misleading.

## Damage to used vehicles

A dealership's legal duty to disclose damage sustained by a used vehicle prior to its sale arises from general California laws which prohibit misrepresentation and fraud. Because this legal duty is not subject to the precise statutory rules set forth in California Vehicle Code Sections 9990 through 9993 which apply to new vehicles and unregistered demonstrator vehicles (which must be sold as "used"), significant compliance challenges exist.

To best meet these challenges, a dealer should make sure that the dealership's used vehicles are competently inspected, and that the dealership's upper management takes an active role in deciding what prior damage should be disclosed. These decisions are critical because a failure to disclose information regarding a used vehicle's prior damage may have significant legal consequences, including claims for punitive damages against the dealership based upon fraud. Key questions concerning the legal duty to disclose damage regarding used vehicles are addressed below.

## Questions and answers regarding disclosure of damage to used vehicles

### *Is a dealership required to make any disclosure to the purchaser of a used vehicle regarding damage previously sustained by that vehicle?*

It depends on the nature and extent of the damage. In contrast to the situation involving new vehicles, there is no precise definition of what "material" damage is relating to used vehicles. Under these circumstances, prior damage to a used vehicle should be evaluated to determine its impact on the value, operation or safety of the vehicle. If any of these factors are in any way significantly impacted, the prior damage should be disclosed to the purchaser.

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### *How does a dealership evaluate the impact of damage on the value, operation, or safety of a used vehicle?*

There is no precise answer to this question because this type of evaluation has subjective components. However, a dealership should have the vehicle carefully evaluated by personnel with appropriate expertise, taking into account all factors impacting the vehicle's value, operation, or safety. At one extreme, minor scratches and dents on a used vehicle would probably not need to be disclosed. At the other extreme, if a vehicle has any kind of frame damage, or damage sustained as a result of a traumatic event such as theft, fire, or flood, that damage should be disclosed to the purchaser.

Many dealerships do not sell used vehicles which have frame damage on a retail basis. However, even when wholesaling a vehicle with known frame damage, the dealership should disclose that damage to the purchaser. Deciding whether damage to a used vehicle reaches the level which requires disclosure to a purchaser can in many instances be a difficult decision.

Dealers should be aware that a dealership's decision not to disclose damage may be heavily scrutinized in the event of a dispute and so the conservative approach of making a disclosure is the best protection to avoid claims of fraud.

### *If a vehicle (new or used) has been stolen from the dealership, but there has been no damage, does the theft have to be disclosed?*

According to the California Court of Appeal Horn case discussed above, the fact of the theft should be disclosed, even if there has been no damage to the vehicle.

### *How should a dealership make a disclosure of damage to the purchaser of a used vehicle?*

The best approach is to make the disclosure in writing. Note that it is a good idea to have the purchaser sign a copy of the written disclosure as confirmation of its receipt. The signed copy should be retained in the deal jacket by the dealership. For an example of a disclosure form available from The Reynolds and Reynolds Company, use the online version of this manual to view the form in the CNCDA Comply section at www.cncda.org.

### *When should the dealership make the disclosure of damage to the purchaser of a used vehicle?*

The disclosure should be made prior to the purchaser signing a contract for the vehicle. What happens if the dealership is not aware of prior damage to a used vehicle? Technically, a dealership does not have a legal duty to disclose damage that is unknown to it. However, the reality is that a dealership will face potential liability if it appears that the dealership should have known about the damage based upon information provided by the prior owner of the vehicle, records that may be in the glove compartment, or information from various services that provide vehicle history if the dealership normally runs these types of vehicle histories, or the dealership's own inspection of the vehicle.

### *Does selling a used vehicle "as is" excuse a dealership from making a disclosure to a purchaser regarding prior damage sustained by the vehicle?*

A dealership should not rely on an "as is" sale to avoid complying with the legal duty to disclose prior damage sustained by a used vehicle.


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### *Does a dealership have any other legal duty to disclose information regarding prior damage sustained by a used vehicle?*

Yes, in the context that a dealership must respond to the inquiry of a purchaser in a manner that is truthful and not misleading. Any express advertisement of a vehicle's prior use or history must also be accurate. Note that regarding the history of a vehicle, Vehicle Code Section 11713 (t) requires that the dealership must disclose if the vehicle has been used by the dealership as a demonstrator, executive vehicle, service vehicle, rental, loaner, or lease vehicle and must not describe the vehicle as "new". 13 California Code of Regulations Section 260.02(b) also provides that "Former taxicabs, rental vehicles, publicly owned vehicles, insurance salvage vehicles and revived salvage vehicles shall be clearly identified as such if the previous status is known to the seller."

## Cross-references

Chapter 18: History of Vehicles

## Reason for the law

Because of confusion over what type of damage to new vehicles should be disclosed to purchasers, the California legislature has specified in detail the types of damage that should be disclosed and the manner of disclosure.

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# Part C
# Advertising the price of the vehicle





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# Chapter 23 - Price Advertising

## Basic rule

In advertising the price of a vehicle, the advertised price must include all costs to the purchaser except taxes, vehicle registration fees, the California tire fee, emission testing charges not exceeding fifty dollars ($50), actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, finance charges, and any dealer document processing charge or charge to electronically register or transfer the vehicle.

### Newspaper and other advertisements

For newspaper ads, magazines, and direct mail publications, except for the small ads described in the statute quoted below, the advertisement must state that there will be added to the advertised price at the time of sale: charges for sales tax, vehicle registration fees, the California tire fee, the fee charged by the state for the issuance of a certificate of compliance or noncompliance pursuant to a statute, finance charges, a charge to electronically register or transfer the vehicle, and a dealer document processing charge. This requirement can be satisfied by the following language: "Plus government fees and taxes, any finance charges, any dealer document processing charge, any electronic filing charge, and any emission testing charge."

### Websites

For websites, the information must be displayed on any web page of a dealer's website that displays the price of a vehicle offered for sale on the internet. The following statutory language should be used in substantially the following form with no abbreviations:

"Plus government fees and taxes, any finance charges, any dealer document processing charge, any electronic filing charge, and any emission testing charge."

### Document processing charge

The document processing charge must not be represented as a governmental fee. Dealers are not obligated to charge a document processing charge.

### Advertising unpaid balance

If an amount is advertised as an "unpaid balance," "balance can be financed," or some similar term, the total sales price must be clearly and conspicuously disclosed and close to the advertised balance amount.

### Prices must include all standard equipment

Prices of new vehicles cannot be advertised unless the vehicle has all the standard equipment for the vehicle, or the dealer has replaced the standard equipment with equipment of higher value.

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### Prices must clearly relate to product advertised

If any price is advertised, it must be clear to which vehicle the price relates when there is more than one vehicle advertised. An advertisement of more than one vehicle must clearly and conspicuously identify the price of all vehicles to which the price applies.

## Text of the law

### Must advertise total price with certain items excluded

**California Vehicle Code § 11713.1(b):** It is a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

Advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except taxes, vehicle registration fees, the California tire fee, as defined in Section 42885 of the Public Resources Code, emission testing charges not exceeding fifty dollars ($50), actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, finance charges, and any dealer document processing charge or charge to electronically register or transfer the vehicle.

### Must add statutory disclosure to advertised price (Plus Disclosure)

**California Vehicle Code § 11713.1(c):** It is a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(1) Exclude from an advertisement of a vehicle for sale that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the California tire fee, the fee charged by the state for the issuance of a certificate of compliance or noncompliance pursuant to a statute, finance charges, a charge to electronically register or transfer the vehicle, and a dealer document processing charge.

(2) The obligations imposed by paragraph (1) are satisfied by adding to the advertisement a statement containing no abbreviations and that is worded in substantially the following form: "Plus government fees and taxes, any finance charges, any dealer document processing charge, any electronic filing charge, and any emission testing charge."

(3) For purposes of paragraph (1), "advertisement" means an advertisement in a newspaper, magazine, or direct mail publication that is two or more columns in width or one column in width and more than seven inches in length, or on a Web page of a dealer's Internet Web site that displays the price of a vehicle offered for sale on the Internet, as that term is defined in paragraph (6) of subdivision (f) of Section 17538 of the Business and Professions Code.

### Document fee cannot be represented as a government fee

**California Vehicle Code § 11713.1(d):** It is a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(d) Represent the dealer document processing charge, electronic registration or transfer charge, or emission testing charge, as a governmental fee.


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### Must sell at the advertised price with certain exclusions

**California Vehicle Code § 11731.1(e):** It is a violation of this code for the holder of any dealer's license issued under this article to do any of the following: Fail to sell a vehicle to a person at the advertised total price, exclusive of taxes, vehicle registration fees, the California tire fee, the fee charged by the state for the issuance of a certificate of compliance or noncompliance pursuant to a statute, finance charges, mobilehome escrow fees, the amount of a city, county, or city and county imposed fee or tax for a mobilehome, a dealer document processing charge, an electronic registration or transfer charge, and a charge for emission testing not to exceed fifty dollars ($50) plus the actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, while the vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed. Advertised vehicles shall be sold at or below the advertised total price, with statutorily permitted exclusions, regardless of whether the purchaser has knowledge of the advertised total price.

### Unpaid balance advertising restriction

**California Vehicle Code § 11713.16 (c):** It is unlawful for a dealer to advertise an amount described by terms such as "unpaid balance" or "balance can be financed" unless the total sale price is clearly and conspicuously disclosed and in close proximity to the advertised balance.

### Advertised vehicle must have all standard equipment

**California Vehicle Code § 11713.16 (h):** It is unlawful for a dealer to advertise the price of a new vehicle or class of new vehicles unless the vehicle or vehicles have all of the equipment listed as standard by the manufacturer or distributor or the dealer has replaced the standard equipment with equipment of higher value.

### No confusion over prices when more than one vehicle advertised

**California Business and Professions Code § 17507:** It is unlawful for any person, firm, corporation or association to make an advertising claim or representation pertaining to more than one article of merchandise or type of service, within the same class of merchandise or service, if any price set forth in such claim or representation does not clearly and conspicuously identify the article of merchandise or type of service to which it relates. Disclosure of the relationship between the price and particular article of merchandise or type of service by means of an asterisk or other symbol, and corresponding footnote, does not meet the requirement of clear and conspicuous identification when the particular article of merchandise or type of service is not represented pictorially.

## Discussion

### Statutory disclosure (Plus Disclosure)

The obligations under Vehicle Code Section 11713.1(c)(1) are satisfied by the statutory disclosure ("Plus Disclosure") provided in Section 11713.1(c)(2) by adding a statement with no abbreviations and worded in substantially the following form:

"Plus government fees and taxes, any finance charges, any dealer document processing charge, any electronic filing charge, and any emission testing charge."

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Although the statute says that the Plus Disclosure must be "substantially" in the words given by the statute, it is best for dealers to simply use the exact words of the statute to avoid any mistakes.

### *Plus Disclosure must be in an "Advertisement"*

The statute says that the Plus Disclosure must be used in any "advertisement" referred to in California Vehicle Code § 11713.1(c)(3). That section defines an "advertisement" as an "advertisement in a newspaper, magazine, or direct mail publication that is two or more columns in width or one column in width and more than seven inches in length, or on a Web page of a dealer's Internet Web site that displays the price of a vehicle offered for sale on the Internet, as that term is defined in paragraph (6) of subdivision (f) of Section 17538 of the Business and Professions Code." Thus, the Plus Disclosure must be made when there is such an "advertisement" as defined in the statute. While this means that technically the Plus Disclosure is not required in radio and television advertising, it is a good practice to include the Plus Disclosure in such advertising, especially on television, to avoid any claim that the content is misleading.. Typical liner ads in the classified section would not have to have the Plus Disclosure.

### *What is meant by a dealer's web page?*

Because the statute says that the Plus Disclosure must be displayed on any Web page of the dealer's website that displays the price of a vehicle offered for sale, any page that stands by itself, including a page where you can scroll down to the end of the page, is considered to be a Web page, and the Plus Disclosure must appear on that page. Having the Plus Disclosure on a page that one can link to would not be considered to be the same page as the page where the price is advertised.

### *Does the Plus Disclosure have to be included in lease advertising?*

No, the Plus Disclosure only applies with regard to advertising a vehicle's price for purposes of a sale to a purchaser. Consequently, the Plus Disclosure is not required in lease advertising. Lease advertising has its own disclosure rules mandated by Regulation M and California law.

### *Is there any type size required for the Plus Disclosure?*

There is no specific type size requirement for the Plus Disclosure, but all disclosures must be made clearly and conspicuously. Less than 8-point type for the Plus Disclosure in print advertising is not recommended. The Plus Disclosure must also be readable, so narrow type sizes, faded colored backgrounds which make reading difficult, and the like should not be used. Dealers should instruct media that the statement should never be made in less than 8-point type size, or its equivalent, and that it should always be placed in the advertisement so that its application to the advertised vehicles is clear.

## Note regarding excluding leases and adding accessories

### *Sales prices exclude leases*

Some dealers state in their ads that sales prices exclude their leases. Because leases are an entirely different financial transaction from vehicle purchases, this type of disclaimer would appear to be appropriate. It might be clearer, however, to state: "The prices of vehicles advertised for sale do not apply to leases."


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### *Price excludes options*

The price of a specific vehicle or vehicles should not be advertised with a disclaimer that the advertised price excludes dealer-added options or accessories, which refers to options or accessories already on the vehicle(s) at the time of the advertisement. However, a price can be advertised for a class of vehicles in inventory that are the same make, model, and model-year, with a disclaimer that the advertised price does not apply to vehicles in inventory with dealer added options or accessories. When this type of disclaimer is used:

1. If the number of vehicles for sale at the advertised price is given, (for example, "6 at this price"), those 6 vehicles should not have dealer-added options or accessories on them.

2. If ID numbers are given because the number of vehicles advertised is 4 or less, those vehicles should not have dealer-added options or accessories on them.

3. If the number for sale at the advertised price is not given (because demand will not exceed supply), and no ID numbers are given because a class of 5 or more vehicles is advertised, there should be no dealer-added accessories or options on the vehicles to which the advertised price applies. For more information, see Chapter 28, Price Leaders Disclosure.

### *Price excludes security system*

When dealers add security systems on all vehicles to prevent theft from a dealer's inventory, and which can be removed at the time of sale, it would appear that the advertised price would not have to reflect the cost of the security system if a proper disclosure is made such as or similar to the following: "Notice regarding Security System: All of our vehicles are equipped with an anti-theft device to prevent theft from our inventory. The advertised price for all of our vehicles does not include the price of the anti-theft device. This device can be purchased for an additional cost, or may be removed at the customer's option."

## Reason for the law

These laws prevent dealers from adding hidden charges to the advertised price. They also disclose to the consumer what will be added to the advertised price.

## Cross-references

Chapter 37: Dealer Preparation Charges

Chapter 24: Duty to Sell at Advertised Price and Posting Rules

Chapter 28: Price Leaders Disclosure

Chapter 34: Sales Below Cost

## Examples

See Example 1, Example 2, and Example 5.

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# Chapter 24 - Duty to Sell at Advertised Price and Posting Rules

## Basic rule

A dealer must sell a vehicle at the advertised price, whether or not a customer has knowledge of the advertised price. If the advertisement has an expiration date, there is no duty to sell the vehicle at the advertised price after the expiration date. If the vehicle has been sold or withdrawn from sale, the dealer must, in writing, withdraw the advertisement of the vehicle. This request must be made within forty-eight hours of the time the vehicle has been sold or withdrawn from sale. Dealers must display a list in the showroom of advertised vehicles when the requirements discussed below are present.

## Text of the law

### Must sell as advertised

**California Vehicle Code § 11713(a):** A holder of a license issued under this article shall not do any of the following: Make or disseminate, or cause to be made or disseminated, before the public in this state, in a newspaper or other publication, or an advertising device, or by public outcry or proclamation, or in any other manner or means whatever, a statement that is untrue or misleading and that is known, or that by the exercise of reasonable care should be known, to be untrue or misleading; or to so make or disseminate, or cause to be so disseminated, a statement as part of a plan or scheme with the intent not to sell a vehicle or service so advertised at the price stated therein, or as so advertised.

### Must sell at the advertised price

**California Vehicle Code § 11713.1(e):** It is a violation of this code for the holder of a dealer's license issued under this article to do any of the following: Fail to sell a vehicle to a person at the advertised total price, exclusive of taxes, vehicle registration fees, the California tire fee, the fee charged by the state for the issuance of a certificate of compliance or noncompliance pursuant to a statute, finance charges, mobilehome escrow fees, the amount of a city, county, or city and county imposed fee or tax for a mobilehome, a dealer document processing charge, an electronic registration or transfer charge, and a charge for emission testing not to exceed fifty dollars ($50) plus the actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, while the vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed. Advertised vehicles shall be sold at or below the advertised total price, with statutorily permitted exclusions, regardless of whether the purchaser has knowledge of the advertised total price.

### Must withdraw ad within forty-eight hours

**California Vehicle Code § 11713(c):** A holder of a license issued under this article shall not do any of the following: Fail, within 48 hours, to withdraw in writing an advertisement of a vehicle that has been sold or withdrawn from sale.


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### Duty to display list of advertised vehicles in showroom

**California Vehicle Code § 11709.3:**

(a) Every dealer shall clearly and conspicuously display in its showroom at its established place of business, in a place that is easily accessible to prospective purchasers, a clear and conspicuous listing of each vehicle that the dealer has advertised for sale if the vehicle meets all of the following requirements:

(1) The vehicle is advertised for sale in a newspaper or other publication of general circulation, or in any other advertising medium that is disseminated to the public generally, including, but not limited to, radio, television, or the Internet.

(2) The vehicle is advertised at a specific price and is required pursuant to subdivision (a) of Section 11713.1 to be identified in the advertisement by its vehicle identification number or license number.

(3) The vehicle has not been sold or leased during the time that the advertised price is valid.

(4) The vehicle does not clearly and conspicuously have displayed on or in it the advertised price.

(b) The listing required by subdivision (a) may be satisfied by clearly and conspicuously posting in the showroom a complete copy of any print advertisement that includes vehicles currently advertised for sale or by clearly and conspicuously displaying in the showroom a list of currently advertised vehicles described by make, model, model-year, vehicle identification number, or license number, and the advertised price.

### Must sell at advertised price whether or not advertised price communicated to purchaser

**13 California Code of Regulations § 260.04(b):** A specific vehicle advertised by a dealer or lessor retailer shall be in condition to demonstrate and shall be willingly shown and sold at the advertised price and terms while such vehicle remains unsold or unleased, unless the advertisement states that the advertised price and terms are good only for a specific time and such time has elapsed. Advertised vehicles must be sold at or below the advertised price irrespective of whether or not the advertised price has been communicated to the purchaser.

## Discussion

### Selling at advertised price

A dealer must sell the vehicle at the advertised price, whether or not the customer is aware of the advertisement. This is so even if a customer, unaware of the advertisement, would be willing to pay a higher price.

### Internet specials

Some dealers may mistakenly believe that if they advertise the price of an "internet special," this falls into a different category of advertising and that duty to sell at the advertised price does not apply to these "specials." If the price of a vehicle is advertised to the public on the internet, that price must be given to anyone who wants to purchase the vehicle, whether or not the advertisement was seen or known by the prospective purchaser.

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## Expiration date

The advertisement must clearly state the time for which the ad is good. If no expiration date is stated, the customer can argue that the customer has the right to purchase the advertised vehicle at the advertised price at least within a reasonable period of time after the vehicle has been advertised.

## Withdrawal from sale

If the vehicle is sold or withdrawn from sale, the dealer must in writing withdraw the advertisement of the vehicle within 48 hours of the sale or withdrawal from sale. The notification should request that the ad be withdrawn, and the dealer should obtain a written acknowledgment from the advertising vendor involved of receipt of the request for withdrawal. The notification of withdrawal should be kept in the dealer's business records for further reference. The notification should be provided to the advertising vendor within the 48 hours. Stated expiration dates or use of "subject to prior sale" do not excuse the dealer's duty to notify the publisher of withdrawal within the 48 hours. Some regulators have taken the position that this statute means that the advertisement must actually be withdrawn within the 48 hours.

## Adding accessories

If a customer wants to add accessories or other items to the advertised price, it is recommended that dealers obtain a Statement of Facts from the customer showing the items added to the advertised price. If accessories or options have been added to the advertised price at the time of the advertisement, the advertised price must include such items. Prices should not be advertised which do not include accessories or options already added to the vehicle. An exception might be a situation where a dealer routinely installs alarm systems on all vehicles in inventory as a theft deterrent while the vehicles are in inventory, but the alarm system may either be purchased by the customer or removed from the vehicle at the time of sale. (See note below.)

## Note on sales prices

### *"Sales prices exclude leases"*

Some dealers state in newspaper ads that sales prices exclude leases. Because leases are an entirely different financial transaction from vehicle purchases, this type of disclaimer would appear to be appropriate. It might be clearer, however, to state: "The prices of vehicles advertised for sale do not apply to leases."

### *"Price excludes options"*

The price of a specific vehicle or vehicles should not be advertised with a disclaimer that the advertised price excludes dealer-added options or accessories, which refers to options or accessories already on the vehicle(s) at the time of the advertisement. However, a price can be advertised for a class of vehicles in inventory that are the same make, model, and model-year, with a disclaimer that the advertised price does not apply to vehicles in inventory with dealer added options or accessories.

When this type of disclaimer is used:

1. If the number of vehicles for sale at the advertised price is given, (for example, "6 at this price"), those 6 vehicles should not have dealer-added options or accessories on them.

2. If ID numbers are given because the number of vehicles advertised is 4 or less, those vehicles should not have dealer-added options or accessories on them.


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3. If the number for sale at the advertised price is not given (because demand will not exceed supply), and no ID numbers are given because a class of 5 or more vehicles is advertised, there should be no dealer-added accessories or options on the vehicles to which the advertised price applies.

### *"Price excludes security system"*

When dealers add security systems on all vehicles to prevent theft from a dealer's inventory and which can be removed at the time of sale, it would appear that the advertised price would not have to reflect the cost of the security system if a proper disclosure is made such as or similar to the following:

"Notice regarding Security System: All of our vehicles are equipped with an anti-theft device to prevent theft from our inventory. The advertised price for all of our vehicles does not include the price of the antitheft device. This device can be purchased for an additional cost, or may be removed at the customer's option."

## Duty to list advertised vehicles in showroom

Vehicle Code § 11709.3 requires each dealer to clearly and conspicuously display in its showroom, in a place that is easily accessible to prospective purchasers, a clear and conspicuous listing of each vehicle that the dealer has advertised for sale if the vehicle meets all of the following requirements:

The vehicle is advertised for sale in a newspaper or other publication of general circulation, or in any other advertising medium that is disseminated to the public generally, including, but not limited to, radio, television, or the internet.

The vehicle is advertised at a specific price and is required pursuant to subdivision (a) of Section 11713.1 to be identified in the advertisement by its vehicle identification number or license plate number. (An advertisement of 5 or more vehicles of the same make, model, and model-year, does not require a vehicle identification or license plate number.)

The vehicle has not been sold or leased during the time that the advertised price is valid.

The vehicle does not clearly and conspicuously have displayed on or in it the advertised price.

The listing of advertised vehicles, as required above, may be satisfied by clearly and conspicuously posting in the showroom a complete copy of any print advertisement that includes vehicles currently advertised for sale, or by clearly and conspicuously displaying in the showroom a list of currently advertised vehicles described by make, model, model-year, vehicle identification number or license number, and the advertised price.

## Letter from Senator Speier

The following is an annotated copy of a letter from Senator Speier that was published in both the Assembly and Senate Journals and is part of the official legislative history of SB 481. The letter further explains the purpose and provisions of the law and provides instructional details.

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August 22, 2001
E. Dotson Wilson
Chief Clerk of the Assembly
Room 3196
The State Capitol
Sacramento, California
Re: SB 481 (Speier)
Reason for the Law

Dear Mr. Wilson:

I have introduced SB 481 in response to two actions prosecuted by local district attorneys and an undercover expose produced by a bay area television station involving situations where automobile dealers quoted or actually sold advertised vehicles to unsuspecting customers at prices that greatly exceeded their advertised price.

Although it is currently unlawful for a dealer to fail to sell a vehicle at an advertised total price during the time period for which the advertisement applies, there is no current requirement that the advertised price be posted on either the vehicle or at the dealer's business premises. The lack of a posting requirement has led to consumer confusion relative to which vehicles in a dealer's inventory are the subject of a dealer's advertisements.

*Different ways that prices can be posted, including computer monitor*

I have introduced SB 481 to remedy this problem and assist consumers when shopping for a new or used vehicle by requiring dealers to post advertised prices in one of several manners. A dealer may post the advertised price on or in the advertised vehicle or post a list of its advertised vehicles in a conspicuous location in the showroom. It is intended that the showroom posting requirement may be fulfilled by clearly and conspicuously posting a copy of the advertisement itself or clearly and conspicuously displaying a list of the advertised vehicles on a bulletin board, computer monitor, or other location that is easily accessible by prospective purchasers.

*Consumer knowledge of price not relevant; includes price advertising on websites*

SB 481 is also intended to codify existing regulations which require that an advertised vehicle must be sold at the total advertised price to any consumer, regardless of whether the consumer has knowledge of the advertisement or the advertised total price. It is also intended that specific vehicles advertised for sale on an internet website that is accessible by the public be subject to the provisions of subdivision (e) of Vehicle Code Section 11713.1. However, website and other types of media advertisements that do not display specific prices for advertised vehicles or advertisements that display no prices but invite consumers to request individual price quotes via e-mail or other direct one-on-one communications, are not covered.

*No posting necessary for class of advertised vehicles*

SB 481 is also intended to clarify that if a dealer advertises a specific vehicle for sale, the advertisement must identify the vehicle by either its license plate number or that portion of its vehicle identification number (VIN) that distinguishes the vehicle from all other vehicles of the same make, model, model-year, and type. For example, if a dealer ran an advertisement that states "1996 Ford Mustang $10,000," the dealer would be required to include the license plate number or distinguishing portion of the VIN in the advertisement and post the $10,000 sale price on the vehicle or list the advertised price in the dealer's showroom during the period the vehicle is advertised at that price. However, advertisements that offer for sale a class of new vehicles in a dealer's inventory consisting of five or more vehicles that are all of the same make, model, model-


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year, and type, are not required to contain the VIN for each vehicle in the class and no price posting is required. For example, if a Toyota dealer advertised "$2,500 off MSRP all Camry LEs in Stock" and had five or more of those vehicles in inventory, the dealer would not be required to include the VIN for each Camry LE in the advertisement or post the advertised price on the vehicles or in the showroom.

*MSRP itself not an advertisement of price*

Finally, federal law requires each vehicle manufacturer to affix a window sticker (Monroney Sticker) to the windshield or side window of each new motor vehicle prior to its delivery to a dealer (see 15 U.S.C. 1232). The Monroney Sticker is required to contain specified information, including the make, model, VIN, final assembly point, name and location of dealer to whom the vehicle is to be delivered, and the retail price of vehicle suggested by the manufacturer (MSRP). As displayed on a new vehicle pursuant to federal law or as listed on a website or other advertisement for information purposes, the MSRP is nothing more than the manufacturer's suggested retail price and is not reflective of a dealer's asking price or a dealer's advertised price. [Author note: see MSRP Advertising discussion below.] However, if a dealer utilizes MSRP in an advertisement as a benchmark for determining the dealer's specific asking price ($2,500 Off MSRP on All Chevy Tahoes -- this weekend only) or publishes an advertisement that infers or implies that a new vehicle will be sold for MSRP, any such vehicle has been advertised at a specified dealer price that must be honored for the duration of any time period specified in the advertisement.

All the best,

JACKIE SPEIER, Eighth District

State Senate

### MSRP Advertising

If a specific vehicle is identified in an advertisement (such as by VIN, stock number, or otherwise), and the MSRP is not the asking price for the vehicle, the best practice is to not show the MSRP in the advertisement, but rather show the dealer's asking price. Showing just the MSRP might mislead consumers to think that MSRP is an advertised price for the vehicle.

If a class of vehicles is advertised not requiring identification of specific vehicles, and if the MSRP is shown without the dealer's asking price for the vehicles, then the best practice is to include a clear and conspicuous statement next to the MSRP such as: "The MSRP is the manufacturer's suggested retail price for informational purposes only. Contact dealer for dealer's asking price."

## Mistakes in advertising

### Does a dealer have an obligation to sell a vehicle at the advertised price when there has been a mistake in the advertisement?

In 2001 the California Supreme Court decided the case of Donovan v. RII Corporation (2001) 26 Cal.4th 1060 dealing with whether a dealer must sell a vehicle at the advertised price when a mistake has been made in the advertisement. Because a knowledge of the facts of this case is important, they are quoted below directly from the Supreme Court opinion.

"While reading the April 26, 1997, edition of the Costa Mesa Daily Pilot, a local newspaper, plaintiff noticed a full-page advertisement placed by defendant. The advertisement promoted a "PRE-OWNED COUP-A-RAMA SALE!/2-DAY PRE-OWNED SALES EVENT" and listed, along with 15 other used automobiles, a 1995 Jaguar XJ6

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Vanden Plas. The advertisement described the color of this automobile as sapphire blue, included a vehicle identification number, and stated a price of $25,995. The name Lexus of Westminster was displayed prominently in three separate locations in the advertisement, which included defendant's address along with a small map showing the location of the dealership. The following statements appeared in small print at the bottom of the advertisement: "All cars plus tax, lic., doc., smog & bank fees. On approved credit. Ad expires 4/27/97[.]"

"Also on April 26, 1997, plaintiff visited a Jaguar dealership that offered other 1995 Jaguars for sale at $8,000 to $10,000 more than the price specified in defendant's advertisement. The following day, plaintiff and his spouse drove to Lexus of Westminster and observed a blue Jaguar displayed on an elevated ramp. After verifying that the identification number on the sticker was the same as that listed in defendant's April 26 Daily Pilot advertisement, they asked a salesperson whether they could test drive the Jaguar. Plaintiff mentioned that he had seen the advertisement and that the price "looked really good." The salesperson responded that, as a Lexus dealer, defendant might offer better prices for a Jaguar automobile than would a Jaguar dealer. At that point, however, neither plaintiff nor the salesperson mentioned the specific advertised price.

"After the test drive, plaintiff and his spouse discussed several negative characteristics of the automobile, including high mileage, an apparent rust problem, and worn tires. In addition, it was not as clean as the other Jaguars they had inspected. Despite these problems, they believed that the advertised price was a very good price and decided to purchase the vehicle. Plaintiff told the salesperson, "Okay. We will take it at your price, $26,000." When the salesperson did not respond, plaintiff showed him the advertisement. The salesperson immediately stated, "That's a mistake."

"After plaintiff asked to speak with an individual in charge, defendant's sales manager also told plaintiff that the price listed in the advertisement was a mistake. The sales manager apologized and offered to pay for plaintiff's fuel, time, and effort expended in traveling to the dealership to examine the automobile. Plaintiff declined this offer and expressed his belief that there had been no mistake. Plaintiff stated that he could write a check for the full purchase price as advertised. The sales manager responded that he would not sell the vehicle at the advertised price. Plaintiff then requested the sales price. After performing some calculations, and based upon defendant's $35,000 investment in the automobile, the sales manager stated that he would sell it to plaintiff for $37,016. Plaintiff responded, "No, I want to buy it at your advertised price, and I will write you a check right now." The sales manager again stated that he would not sell the vehicle at the advertised price, and plaintiff and his spouse left the dealership.

"Defendant's advertising manager compiles information for placement in advertisements in several local newspapers, including the Costa Mesa Daily Pilot. Defendant's advertisement published in the Saturday, April 19, 1997, edition of the Daily Pilot listed a 1995 Jaguar XJ6 Vanden Plas but did not specify a price for that automobile; instead, the word "Save" appeared in the space where a price ordinarily would have appeared. The following Thursday afternoon, defendant's sales manager instructed the advertising manager to delete the 1995 Jaguar from all advertisements and to substitute a 1994 Jaguar XJ6 with a price of $25,995. The advertising manager conveyed the new information to a representative of the Daily Pilot that same afternoon.

"Because of typographical and proofreading errors made by employees of the Daily Pilot, however, the newspaper did not replace the description of the 1995 Jaguar with the description of the 1994 Jaguar, but did replace the word "Save" with the price of $25,995. Thus, the Saturday, April 26, edition of the Daily Pilot erroneously advertised the 1995 Jaguar XJ6 Vanden Plas at a price of $25,995. The Daily Pilot acknowledged its error in a letter of retraction sent to defendant on April 28. No employee of defendant reviewed a proof sheet of the revised Daily Pilot advertisement before it was published, and defendant was unaware of the mistake until plaintiff attempted to purchase the automobile.


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"Except for the 1995 Jaguar XJ6 Vanden Plas, defendant intended to sell each vehicle appearing in the April 26, 1997, Daily Pilot advertisement at the advertised price. Defendant's advertisements in the April 26 editions of several other newspapers correctly listed the 1994 Jaguar XJ6 with a price of $25,995. In May 1997, defendant's advertisements in several newspapers listed the 1995 Jaguar XJ6 Vanden Plas for sale at $37,995. Defendant subsequently sold the automobile for $38,399."

## Municipal Court and Court of Appeal rulings

The Municipal Court ruled in the dealer's favor. The Court of Appeal reversed the Municipal Court and held that defendant's advertisement constituted a contractual offer that invited acceptance by the act of tendering the advertised price, which plaintiff performed. Acknowledging that the question was close, however, the Court of Appeal reasoned that Vehicle Code section 11713.1, subdivision (e), "tips the scale in favor of .... construing the advertisement as an offer ...." The dealer was bound to sell, regardless of the mistake.

## California Supreme Court ruling

The California Supreme Court, on a 4-2 vote, reversed the Court of Appeal. In reversing the Court of Appeal, the Supreme Court found that the dealer's advertisement constituted an offer to sell and that a contract was formed when Mr. Donovan accepted the offer. However, the Court held that the dealer's unilateral mistake of fact provided a basis for rescinding the contract.

The Court ruled that although Vehicle Code section 11713.1, subdivision (e), justifies a reasonable expectation on the part of consumers that an automobile dealer intends that such an advertisement constitute an offer, and that the offer can be accepted by paying the advertised price, that statute does not supplant governing common law principles authorizing rescission of a contract on the ground of mistake.

The Court also ruled that rescission was warranted because the evidence established that the dealer's unilateral mistake of fact was made in good faith, the dealer did not bear the risk of the mistake, and enforcement of the contract with the erroneous price would be unconscionable. The court's holding applies even where the consumer is ignorant of the mistake and has no reason to suspect that an error might have been made.

## Correcting an erroneously advertised price

Whenever there is the possibility that you will not sell at an erroneously advertised price, do the following:

Upon becoming aware of the error, consider immediately posting a notice on both the vehicle itself and in a prominent place in the sales office advising that the price was an error caused by the newspaper, other media, or the dealership.

Instruct all sales staff to immediately advise any customer interested in the vehicle about the erroneous advertisement.

If the advertisement did not expire by its own terms on the date of the erroneous publication, see if a correction can be published immediately, in size and type equal to that of the original advertisement.

The idea behind these steps is that even if the advertisement is considered a contractual offer, the dealership may withdraw it at any time prior to being accepted. The dealership must communicate the withdrawal before the customer communicates his or her acceptance (by saying "I'll take it" or tendering a check, for example.) If not, the acceptance of the offer can still be rescinded after it has been accepted under the principles of the Donovan case.

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Tip: Dealers should also try and obtain indemnity agreements from advertising media whereby the media would be responsible to the dealer for any damages a dealer suffers because of the media's mistakes.

### Advertising mistake checklist

Consider the following checklist when planning your strategy for dealing with advertising mistakes:

- Don't waive rights against the advertising media for its errors
- Have the advertising media indemnify you against its errors
- If not honoring the ad, know the risks; and –
- Post notices on the vehicle and in the showroom
- Disclose error "first thing" to interested customers
- Print correction/retraction if the ad has not yet expired
- Offer the customer reimbursement, such as fuel and other costs
- Have zero-tolerance for dealership preventable errors.

## Reason for the law

Truthful advertising requires that vehicles be sold at the advertised price. The law also recognizes that some vehicles will be sold while the advertisement is still running and consequently gives the dealer forty-eight (48) hours to withdraw the advertisement. The posting requirements are designed to aid consumers so that they know which vehicles are being advertised and so that they do not end up paying more than the advertised price.

## Cross-references

Chapter 15: Availability of Vehicles

Chapter 2: Bait and Switch

Chapter 28: Price Leaders Disclosure

Chapter 12: Qualifiers, Disclosures, and Disclaimers

## Examples

See Example 4, Example 7, Example 9, and Example 10.


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# Chapter 25 - Savings and Discount Claims

## Basic rule

Savings and discount claims must be based on facts and not reflect a saving or discount from some fictitious price at which the vehicle is not sold. Savings and discount claims must follow the general rule found in Vehicle Code § 11713 (a) making it unlawful for any dealer to do any advertising which is untrue or misleading. Such claims must also follow the FTC Guides Against Deceptive Pricing discussed below.

## Text of the law

### False statements regarding price reductions

**California Civil Code § 1770:** Unlawful Practices. (a) The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful:

(13) Making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.

### Truthful advertising

**California Vehicle Code § 11713 (a):** It is unlawful for a dealer to make or disseminate, or cause to be made or disseminated, before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, 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; or to so make or disseminate, or cause to be so disseminated, any statement as part of a plan or scheme with the intent not to sell any vehicle or service so advertised at the price stated therein, or as so advertised.

### FTC Guides Against Deceptive Pricing

**16 Code of Federal Regulations §§ 233.1-233.5,** Guides Against Deceptive Pricing deals with former price comparisons; retail price comparisons; comparable value comparisons; advertising retail prices which have been established or suggested by manufacturers (or other nonretail distributors); bargain offers based upon the purchase of other merchandise; and miscellaneous price comparisons. Any dealer advertising savings claims should be familiar with this FTC guide (to see, type this in browser: bit.ly/ftcpricing).

## Discussion

### Discounts from MSRP

To the extent that MSRP does not represent a price at which a substantial number of sales are made, the advertisement of a reduction from MSRP may mislead the consumer if an amount of savings is stated or

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implied. If an advertisement shows MSRP at $30,000, with a discount of $4,000, and states, “You save $4,000,” the ad is misleading if a significant number of sales have not been made at $30,000. In these types of advertisements, it is better not to state, "You save," or "Savings."

Important: See the 2018 Court of Appeal case of Hansen vs. Newegg.com (2018) 25Cal.App.5th 714 in which the Court of Appeal said that crossing out what Newegg showed as a list price and showing below that the current price of the item violated California law because if the higher price had not been the prevailing market price, the ad was deceptive. The court said the presence of a higher original price affects the perception of consumers about the product's worth and increases their willingness to buy the product.

Nonetheless, advertising "net cost" after deduction of a rebate from MSRP is allowed, as well as advertising "net cost" after deduction of a rebate and discount from MSRP. See Chapter 29, Rebates and Cash Back, for how rebates providing customer discounts are sometimes used by dealers in direct mail or in newspaper advertising. If a dealer’s prices are negotiable, then the coupon discount should be allowed off the negotiated price. Customers should not be required to disclose possession of the coupon before the price is negotiated; otherwise, a dealer might attempt to keep the price higher and then the customer does not realize the coupon discount. See discussion of coupons in Chapter 62, Direct Mail and Offers to Select Groups.

## Supplemental sticker

Savings from a dealer’s supplemental or add-on sticker should not be advertised unless a substantial number of vehicles are sold at the supplemental sticker price.

## Used vehicles

The same rule regarding savings and discounts claims apply to used vehicles, i.e., they must not be misleading and be based upon a savings from a price at which the used vehicle is usually sold. Used vehicles can also be advertised at a discount or a savings from the price quoted in an accepted market report such as Kelley Blue Book. As with MSRP advertising discussed above, the advertisement should not state that the customer saves a specific amount unless the used vehicle is regularly sold at the retail price quoted in the market report.

## Use of word “sale”

When the word “sale” is used in advertising, it means that there is a reduction from prices at which vehicles have been recently sold. See the FTC Guides Against Deceptive Pricing at 16 Code of Federal Regulations 233.1(e) where it is stated: “If the former price, or the amount or percentage of reduction, is not stated in the advertisement, as when the ad merely states “Sale,” the advertiser must take care that the amount of the reduction is not so insignificant as to be meaningless.” See the U.S. Ninth Circuit Court of Appeal case of Hinojos vs. Kohl's Corp (2013) 718 F.3d 1098 which discusses the "sale" issue. Hinojos alleged he bought several items of merchandise at the advertised "sale" prices and that the items were, in reality, routinely sold by Kohl's at the advertised “sale” prices rather than the purported “original” or “regular” prices. Hinojos further alleges that the advertised “original” or “regular” prices did not reflect prevailing retail market prices during the three months immediately preceding the publication of the advertisements in question and that he would not have bought the items in absence of Kohl's misrepresentation. The court decision allowed Hinojos to proceed with his lawsuit under California's Unfair Competition Law, Fair Advertising Law, and Consumers Legal Remedies Act.


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## Cross-references

Chapter 62: Direct Mail and Offers to Select Groups

Chapter 29: Rebates and Cash Back

Chapter 31: Former Price Comparison

Chapter 34: Sales Below Cost

## Examples

See Example 4 and Example 10.

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# Chapter 26 - Incentives – Dealer Participation

## Basic rule

When dealers advertise factory incentives and are required to contribute to the cost of the incentive, then the dealer must clearly and conspicuously disclose in the advertisement: "Dealer participation may affect consumer cost."

## Text of the law

### Required disclosure

**California Vehicle Code § 11713.1(s)**

It is unlawful for a dealer to advertise an incentive offered by the manufacturer or distributor if the dealer is required to contribute to the cost of the incentive as a condition of participating in the incentive program unless the dealer discloses in a clear and conspicuous manner that dealer participation may affect consumer cost.

### Definition of incentive

For purposes of this subdivision, "incentive" means anything of value offered to induce people to purchase a vehicle, including, but not limited to, discounts, savings claims, rebates, below-market finance rates, and free merchandise or services.

## Discussion

### Clear and conspicuous

The dealer participation disclosure required must be clear and conspicuous. This means that it must be readable and understandable when TV advertising is done. In print media, it is recommended that the disclosure be no smaller than 8 point non-narrow type size. See cross-reference to Qualifiers and Disclosures—Clear and Conspicuous below.

### Cash versus credit price

There is no implication from the wording of this statute that dealers may raise the cash price of a vehicle to a credit customer because dealers may be participating in an interest rate subvention program.

## Reason for the law

The statute requires this disclosure to notify customers that because of the financial participation, dealers may attempt to keep the price of the vehicle higher to cover the cost of the dealer participation.


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## Cross-references

Chapter 30: Cash/Credit Rule

Chapter 12: Qualifiers, Disclosures, and Disclaimers

Chapter 29: Rebates and Cash Back

## Example

See Example 8.

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# Chapter 27 - Supplemental Stickers

## Basic rule

Supplemental price stickers may not be used showing a dealer's asking price in excess of the manufacturer's suggested retail price unless:

a. The largest print on the sticker discloses that the supplemental sticker is the dealer's asking price, not the manufacturer's suggested retail price.

b. The MSRP is clearly and conspicuously disclosed on the sticker.

c. The sticker shows each item not included in the MSRP with the price of each.

d. When the sticker price exceeds the MSRP plus the price of the items added by the dealer, the difference must be stated and described as "added mark-up."

## Text of the law

### Supplemental sticker rules

**California Vehicle Code § 11713.1 (q):** It is unlawful for a dealer to affix on a new vehicle a supplemental price sticker containing a price that represents the dealer's asking price that exceeds the manufacturer's suggested retail price unless all of the following occur:

(1) The supplemental sticker clearly and conspicuously discloses in the largest print appearing on the sticker, other than the print size used for the dealer's name, that the supplemental sticker price is the dealer's asking price, or words of similar import, and that it is not the manufacturer's suggested retail price.

(2) The supplemental sticker clearly and conspicuously discloses the manufacturer's suggested retail price.

(3) The supplemental sticker lists each item that is not included in the manufacturer's suggested retail price, and discloses the additional price of each item. If the supplemental sticker price is greater than the sum of the manufacturer's suggested retail price and the price of the items added by the dealer, the supplemental sticker price shall set forth that difference and describe it as "added mark-up."

### Identification of separate charges

**13 California Code of Regulations § 262.03:** Dealer Added Charges. A dealer may not identify a separate charge or charges for services performed on vehicles prior to delivery to the extent the dealer is or will be reimbursed for such expenditures by another party. If a dealer does identify a separate charge or charges for delivery and preparation services performed over and above those delivery and preparation obligations specified by the franchisor and for which the dealer is to be reimbursed by the franchisor, then the services performed and the charges therefore shall be separately itemized. Such added charges must be included in the advertised price.


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### Special equipment or accessories

**13 California Code of Regulations § 260.05.** Vehicle Equipment: No specific vehicle shall be advertised as having special equipment or accessories unless such equipment or accessories are installed and operative at the time of the advertisement.

## Discussion

The practice of itemizing dealer-added charges on window stickers affixed to new vehicles, as a supplement to the window sticker required by federal law, should be exercised with caution. The DMV has criticized the practice when there is no reasonable relationship between the actual cost of the addition and the amount of the increase. Therefore, the use of supplemental stickers in and of itself raises suspicion. Although the California statute appears clear that a dealer's use of a supplemental sticker is optional, legal arguments have been made that it is required when the dealer's asking price exceeds MSRP. In the California Court of Appeal case of Denike v. Matthew Enterprise, Inc., (2022) 76 Cal.App.5th 371, the court upheld a trial court order for injunctive relief against the dealer defendant, and stated in passing that "…the California Vehicle Code only requires supplemental stickers to be affixed to vehicles when the asking price exceeds the MSRP."

CNCDA filed a petition with the California Supreme court to depublish this statement, claiming this was an inaccurate statement of the supplemental sticker law which applies only when a dealer chooses to use a supplemental sticker. The Supreme Court, however, denied the petition. The language of the Court of Appeal appears to be what is known in the legal profession as "dictum," which is a statement in a court decision not necessary to decide the case and which is not binding on other California courts. However, because of the language used by the court, as a safe practice, dealers may want to consider using a supplemental sticker whenever the asking price is above MSRP.

Certainly, if a dealer uses a supplemental sticker, then the sticker must comply with Vehicle Code § 11713.1(q) quoted above.

If the supplemental sticker lists dealer-added charges for accessories, products, or services, those charges must be itemized separately. Additionally, any listed accessory (for example, an upgraded sound system) or product (for example, a paint protectant) should be actually installed or applied on the vehicle and operational or activated, as applicable, with the stated charge being reasonable and based upon the dealer's typical asking price for the added item. For some items, such as certain security systems that are installed, but may require some additional action to be operational and/or otherwise activated, the best practice is to not include them on a supplemental sticker. F&I products, such as GAP insurance, service contracts, and the like, should not be listed on a supplemental sticker. Questions regarding the use of supplemental stickers and the treatment of items that require such additional action should be reviewed with legal counsel.

### Note on DMV policy

In a bulletin issued May 1, 1984, the DMV set forth its position regarding the use by dealers of auxiliary or supplemental stickers. The bulletin states that a dealer failing to conform with any of the following 4 guidelines may be held in violation of truth-in-advertising laws:

a. The dealer's auxiliary sticker must be clearly recognized as dealer initiated and not designed or formatted so as to create confusion with the manufacturer's window sticker.

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b. Charges for services such as P.D.I. for which the dealer is or will be reimbursed by another party must not be listed on the auxiliary sticker.

c. If the auxiliary sticker lists dealer accessories, such accessories must be actually installed and operative at the time the vehicle is advertised and the prices should reflect the dealer's regular asking price for such accessories.

d. The selling price listed on the auxiliary sticker shall include all costs to the purchaser at time of delivery except for sales tax, vehicle registration, finance charges and documentary fee (now known as document processing charge).

Note: Section d. of the 1984 DMV policy is outdated. As discussed in Chapter 23, Price Advertising, California Vehicle Code § 11713.1(b) allows the exclusion of the following from a price advertisement: taxes, vehicle registration fees, the California tire fee, as defined in Section 42885 of the Public Resources Code, emission testing charges not exceeding fifty dollars ($50), actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, finance charges, and any dealer document processing charge or charge to electronically register or transfer the vehicle. Because the supplemental sticker is an advertisement of the price of a vehicle, the following should be added to the supplemental sticker: "Plus government fees and taxes, any finance charges, any dealer document processing charge, any electronic filing charge, and any emission testing charge."

## Reason for the law

The law regarding supplemental stickers is designed to ensure that consumers are not misled into thinking that the supplemental sticker is a manufacturer price, and to make other appropriate disclosures to the buyer.

## Cross-references

Chapter 37: Dealer Preparation Charges

Chapter 23: Price Advertising


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# Chapter 28 - Price Leaders Disclosure

## Basic rule

Dealers may not advertise the price of a vehicle with the intent not to supply a reasonably expectable demand without disclosing the number of vehicles available. When words such as "starting at" are used in advertising a price, the number of vehicles at that price must be disclosed. Additionally, for newspaper ads the statute prescribes the size and placement of the disclosure stating the number of vehicles available at the advertised price.

Important: Business and Professions Code § 17500.5 below also provides rules that apply when one person wants to buy more than one of the advertised vehicles.

## Text of the law

### Duty to disclose number of vehicles

**California Vehicle Code § 11713.1 (i):**

(1) It is unlawful for a dealer to (1) Advertise vehicles, and related goods or services, at a specified dealer price, with the intent not to supply reasonably expectable demand, unless the advertisement discloses the number of vehicles in stock at the advertised price. In addition, whether or not there are sufficient vehicles in stock to supply a reasonably expectable demand, when phrases such as "starting at," "from," "beginning as low as," or words of similar import are used in reference to an advertised price, the advertisement shall disclose the number of vehicles available at that advertised price.

### Size and placement of disclosure

(2) For purposes of this subdivision, in a newspaper advertisement for a vehicle that is two model-years old or newer, the actual phrase that states the number of vehicles in stock at the advertised price shall be printed in a type size that is at least equal to one-quarter of the type size, and in the same style and color of type, used for the advertised price. However, in no case shall the phrase be printed in less than 8-point type size, and the phrase shall be disclosed immediately above, below, or beside the advertised price without intervening words, pictures, marks, or symbols.

(3) The disclosure required by this subdivision is in addition to any other disclosure required by this code or any regulation regarding identifying vehicles advertised for sale.

### Business and Professions Code § 17500.5:

#### *Quantity restrictions*

(a) It is unlawful for any person, firm, corporation or association to falsely represent by advertisement the quantity of any article so advertised that will be sold to any one customer on his demand in a single transaction, and willfully or negligently to fail to include in such advertisement a statement that any restriction that is in fact put upon the quantity of any article so advertised that is sold or offered for sale to any one customer on his demand in a single transaction.

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### *Refusal to sell in any quantity*

(b) Any person, firm, corporation, or association who, by means of such false or negligent advertisement or publicity, induces any individual retail purchaser and consumer to enter any place of business designated therein seeking to buy any article so advertised or publicized, and then refuses to sell to such person the article at the price advertised in any quantity then available for sale on said premises, shall be liable to each person so induced and refused, for the losses and expenses thereby incurred, and the sum of fifty dollars ($50) in addition thereto.

(c) Nothing in this section shall affect any right a seller may have to refuse to extend credit to a customer, and this section shall not be applicable to a customer purchasing for resale.

(d) The provisions of subdivision (b) are applicable only to actions brought in the name of, and on behalf of, a single plaintiff and shall not be applicable in multiple plaintiff or class actions.

## Discussion

In 1992, the California Legislature enacted AB3069 which is California Vehicle Code section 11713.1(i). The legislation was enacted to correct what the legislature perceived to be deceptive business practices associated with the advertising of price leader specials. It had become fairly commonplace to see advertisements of low-priced vehicles without any disclosure that only one, two, or a small number, of the vehicles, were available at the low price.

### One of two tests must be met before disclosure of number of vehicles available is required

The statute applies if either one of the following two tests is met:

1. First test. The dealer does not intend to supply reasonably expectable customer demand for the vehicle(s) for which a price is advertised. If the price of the vehicle(s) advertised is such (so good, or so low) that there will be more customer demand than supply in stock, then this test is met. Whether this test is met is a decision the dealer must make in good faith based upon all facts and circumstances.

2. Second test. In advertising a vehicle price, the advertisement has phrases such as “starting at,” “from,” “beginning as low as” or similar words are used. Regardless of whether customer demand will exceed the supply of the vehicles in stock, this test is met if these types of phrases are used in advertising a vehicle’s price.

### Disclosure of number of vehicles available when tests met

If either one of the two tests above is met, then the advertisement must disclose the number of vehicles available at the advertised price.

### Type size, color, and style of the quantity disclosure when advertising in newspaper

If the advertisement which requires a disclosure of the number of vehicles available is in a newspaper, and the vehicle is two model years old or newer, the entire phrase that states the number of vehicles in stock at the advertised price must:

1. Be printed in a type size equal to ¼ of the type size of the advertised price.

2. Be printed in the same style and color of type as the color and style of type for the advertised price.

3. Never be less than 8 - point type size.


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4. Be disclosed immediately above, below, or beside the advertised price with no intervening words, pictures, marks, or symbols.

Important: You should instruct the media in which you are advertising regarding these requirements.

## Does the number of vehicles available rule apply to TV, radio, other print media, and internet advertising?

Yes. If either one of the two tests discussed above is met, then the disclosure of the number of vehicles in stock must be made for TV, radio, other print media, and internet advertising. The type size, color, style, and placement rules, however, only apply to newspaper advertising.

## How do these rules apply if a factory rebate is used to advertise a "net cost" amount?

Often dealer newspaper ads will feature in big type the "net cost" amount of a vehicle to a purchaser. This amount is calculated after disclosing in smaller type the sales price and applicable factory rebate amount. See Vehicle Code § 11713.16(e) and Chapter 29, Rebates and Cash Back. In this situation, given the apparent legislative intent, the quantity limitation disclosure (for example, "two at this net cost") should be positioned in relationship to the prominently featured net cost amount. Specifically, under this approach, the quantity limitation disclosure should be positioned above, below, or beside the net cost amount with no intervening words, pictures, marks, or symbols, and the phrase should be at least one-quarter of the type size of the type used to display the net cost amount.

## Do these rules apply to leases?

Vehicle Code section 11713.1(i) refers to the advertisement of "prices." Some might think that because the statute refers to "prices" they only apply to an advertisement for the sale of a vehicle. The statute, however, is not limited explicitly to sales. California Civil Code section 2989.4(a)(3) of the California Vehicle Leasing Act prohibits a lessor from refusing to lease a vehicle to any creditworthy person at the "total advertised price." Thus it appears that the word "price" is also used with regard to leasing, and therefore the price leading specials rules also apply to leases. There is just as much a reason to state the number limitation in lease advertising as there is in sale advertising.

## Do these rules apply to used vehicles?

Yes. The price-leading specials statute makes no distinction between used and new vehicles. If a dealer is advertising a used vehicle at a price where the demand is expected to exceed the supply, then the rules discussed above must be followed. This could occur when a dealer is advertising a used vehicle at an especially attractive price.

## What words may be used to make the quantity limitation disclosure?

The statute says that the number of vehicles at the advertised price must be disclosed. In the statement of legislative intent at the time the statute was enacted, it was stated that examples of acceptable disclosure phrases include:

"3 OF THE MODELS IN STOCK AT THIS PRICE,"

"ONLY 1 AT THIS PRICE,"

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"2 TO CHOOSE FROM,"

"ONE AT THIS PRICE," and

"ONLY ONE."

These examples were not intended to be exclusive. In lease advertising, "2 AT THIS PAYMENT" could be advertised. In advertising specific credit terms, such as $241 a month (and the other Regulation Z disclosures), the statement could be "2 ON THESE TERMS," if there was such a limitation.

## Identification of vehicles by VIN or license plate number

Advertisements of specific vehicles must include the year (unless the vehicle is a current year model) and model, and either its license plate number or that portion of the vehicle identification number which distinguishes that vehicle from all other vehicles of the same year, make, and model. See Chapter 14, Identification and Description of Vehicles.

## Advertising a class of vehicles

Advertisements of a "class of vehicles" do not have to identify the vehicle by VIN or license plate number. A class of new vehicles is defined in Vehicle Code Section 11713.1(a) as 5 or more vehicles that are all of the same make, model, and model-year. An advertisement of 4 or fewer new vehicles of the same make, model, and model-year must include the VIN or license plate number even if they constitute the dealer's entire inventory of such vehicles; whereas, an advertisement of 5 or more such vehicles may exclude the specific identification requirement.

## Limit per customer

Despite the wording of Business and Professions Code § 17500.5 (b) above, it would appear that an advertisement could limit the number of purchases per customer.

## Easy to make mistakes

It is easy to make a technical mistake regarding these rules, so they must be carefully studied and used in your advertising every time they apply. You should direct your advertising media to follow these rules to the letter.

## Statement of legislative intent

The following is a portion of a letter written from an Assembly Member regarding the intent of this statute enacted in 1992:

"AB 3069 sets forth a clear and conspicuous disclosure standard for newspaper advertisements placed by dealers who advertise vehicles at a specified dealer price when the advertised vehicle is of the current model year or of the prior model year. In particular, the bill requires that the actual phrase that discloses the number of vehicles in stock at the advertised price must be printed in a type size that is at least equal to one-quarter of the type size (to a minimum of 8-point type size), and in the same style and color of type, used for the advertised price, and, that the disclosure be placed immediately above, below, or beside the advertised price without any intervening words, pictures, marks or symbols. Examples of acceptable disclosure phrases, provided they are accurate and meet the above criteria, include: "3 OF THE MODELS IN STOCK AT THIS PRICE", "ONLY 1 AT THIS PRICE", "2 TO CHOOSE FROM", "ONE AT THIS PRICE", and "ONLY ONE".


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"The exact disclosure requirements contained in AB 3069 were worked out through discussions with various consumer groups and representatives of the California Motor Car Dealers Association. If the new disclosure requirements do not result in the elimination of deceptive business practices associated with the advertisement of "price leading specials", it may be necessary to revisit this issue through future legislation."

## Reason for the law

The reason for the law was also stated in the letter from an Assembly Member regarding the intent of the statute. It stated: "It is intended that AB 3069 eliminate the deceptive advertising practices of some unscrupulous dealers that run prominent price advertisements on a limited quantity of vehicles with the intent of not supplying enough vehicles at the advertised price so as to meet expectable demand, or fail to clearly and conspicuously disclose a limitation of quantity."

## Cross-references

Chapter 15: Availability of Vehicles

Chapter 2: Bait and Switch

Chapter 14: Identification and Description of Vehicles

Chapter 34: Sales Below Cost

Chapter 23: Price Advertising

## Example

See Example 1.

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# Chapter 29 - Rebates and Cash Back

## Basic rule

Dealer-provided rebates, or "cash back," are not allowed. Factory rebates may be advertised in a specific dollar amount when the rebate is offered directly to the retail purchaser, or to the assignee of the retail purchaser. A dealer may not advertise as the total sales price an amount that includes a deduction for a factory rebate, but may advertise an amount that includes a deduction for the rebate if the price of the vehicle before the rebate deduction and the amount of the rebate are clearly and conspicuously disclosed and identified as such.

## Text of the law

### No dealer rebates or cash back; must advertise specific amount of factory rebates

**California Vehicle Code § 11713.1(j):** It is unlawful for a dealer to use "rebate" or similar words, including, but not limited to, "cash back," in advertising the sale of a vehicle unless the rebate is expressed in a specific dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor, a finance company affiliated with a vehicle manufacturer or distributor, a regulated utility, or a governmental entity directly to the retail purchaser of the vehicle or to the assignee of the retail purchaser.

### Rules for rebate advertising

**California Vehicle Code § 11713.16 (e):** It is unlawful for a dealer to advertise as the total sales price of a vehicle an amount that includes a deduction for a rebate. However, a dealer may advertise a separate amount that includes a deduction for a rebate provided that the advertisement clearly and conspicuously discloses, in close proximity to the amount advertised, the price of the vehicle before the rebate deduction and the amount of the rebate, each so identified. A dealer may not advertise a rebate deduction that conflicts with another advertised rebate deduction.

## Discussion

### Factory rebates

If there is a factory rebate to be paid directly to the purchaser, then the advertisement should disclose the rebate as a "factory rebate" and show the specific dollar amount of the rebate. Dealers cannot use the term "rebate," or similar words in advertising, unless the factory rebate is to be paid directly to the retail purchaser, or the assignee of the purchaser.

### Rebates may come from factory and the other entities in the statute

Vehicle Code § 11713.16(e) allows rebates to come from the factory, finance companies affiliated with the factory, regulated utilities, or governmental entities. When the words "factory" or "manufacturer" are used in the discussion of rebates in this chapter they include the other entities mentioned in the statute.


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## Factory-to-dealer cash or incentives

Factory-to-dealer cash cannot be advertised as a "rebate" because it is not being paid by the factory to the purchaser. It would appear, however, that it would be alright to advertise that consumers may save on the price of the vehicle because of factory-to-dealer incentives. Because dealers cannot charge a higher price for a vehicle purchased on credit over a cash transaction, when a dealer offers a discounted price of a vehicle because of the factory-to-dealer cash or incentives, the customer cannot be forced to choose between the discounted price or special financing terms. The dealer must honor the same price on the vehicle, whether the customer purchases for cash or credit. See Chapter 30, Cash/Credit Rule

## Dealer payments

Any advertisement by a dealer that the dealer will make any payment under the sales contract should be considered the same as "cash back" and is therefore prohibited.

## Rebates up to $5,000

In a civil complaint filed against a new motor vehicle dealer in 2001, the California Attorney General's office took the position that it is a violation of the advertising laws to advertise "Up to $5,000 in rebates." The reasoning for this position is apparently based on reading Vehicle Code section 11713.1(j) to require that a factory rebate be expressed in a specific dollar amount, and that advertising "rebates up to $5,000" does not state the specific dollar rebate amounts. To avoid this problem a dealer could advertise, "Rebates of $2,000 on (specify model)."

## Advertising rebates

Vehicle Code § 11713.16(e) makes it unlawful to advertise as the total sales price of a vehicle an amount that includes a deduction for a rebate. This is so because a rebate is not a discount from the sales price, but rather is an amount provided to the purchaser from the manufacturer and can be used by the buyer as the buyer sees fit. For example, a buyer could use a rebate, or a part of it, as a downpayment. The price of the vehicle on the sales contract will be the price before any rebate and that is the amount on which sales tax is paid.

A dealer may, however, advertise an amount that includes a deduction for a rebate, if the advertisement clearly and conspicuously discloses, near the amount advertised, the price of the vehicle before the rebate and the amount of the rebate. Both the price and the rebate must be identified as such, so the advertisement must state "selling price," "price of vehicle," "dealer price," or something similar indicating the price, and also state the word "factory rebate," "factory cash back," or something similar. Vehicle Code § 11713.15(e) prohibits a dealer from advertising a rebate deduction that conflicts with another advertised rebate deduction.

Tip: It is recommended that the amount shown after rebate be advertised as "net cost," "your net cost," or something similar. Do not use the word "price" to describe the amount after a rebate.

Important: In the past District and City Attorneys in Southern California issued warning letters to various auto dealerships criticizing the way they were advertising stacked rebates which showed a low net cost. The letters warned the dealers that if this type of advertising continued, there would be enforcement actions filed against the dealers.

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## Factory rebates for specialized groups

Sometimes a factory offers rebates for specialized groups such as college graduates, military personnel, those with owner loyalty, and other unique groups. Whenever the rebate is being factored into an advertised net cost, any ad that advertises such a rebate for a specific model must clearly and conspicuously provide the details of the qualifications for that rebate in close proximity to the advertised offer.

## Choosing between rebates and low APR

A dealer sold a vehicle to a customer who chose a low APR over a factory rebate of $2,000. The factory program gave customers a choice of one or the other, but not both. The plaintiff sued the dealership and alleged that the $2,000 cash rebate he would have received if he had paid cash should have been disclosed as part of the finance charge and that the failure to disclose violated the federal Truth In Lending Act (TILA).

The plaintiff in effect was alleging that credit customers were paying more for their vehicle than cash customers who would have received the $2,000 rebate. He argued that the $2,000 difference was a hidden finance charge for credit customers. Generally, discounts to customers using cash that are not extended to credit customers are treated as finance charges for the credit customer and TILA requires that such charges be disclosed. Further, California Vehicle Code Section 11713.1(k) makes it unlawful for a dealer to, "Require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services."

In a 2 to 1 decision, the US Court of Appeals for the Ninth Circuit held that in the situation presented, the amount of the rebate did not have to be disclosed as a finance charge. The $2,000 rebate was not offered to customers to induce them to purchase for cash. The rebate would have been offered to customers who chose to buy on credit through their own financing source, or through the dealership (but not with the low 0.9% rate). The court reasoned that because the rebate was not offered to encourage a cash payment, it did not become a finance charge. The dissenting judge had a contrary opinion, stating that not receiving the $2,000 rebate was a cost of receiving the dealer's 0.9% APR financing, turning it into a finance charge and requiring a TILA disclosure. Because this was a 2 to 1 decision, the majority opinion prevails, and the rebate amount was not an undisclosed finance charge. See Virachack vs. Bob Baker Ford (2005) 410 F.3d 579.

## Checklist for rebate advertising

- Dealer rebates or cash back are not allowed.
- You can advertise factory rebates, but must show the specific amount of the rebate and identify the rebate as a "factory rebate," "manufacturer rebate," or some similar designation.
- You cannot advertise "Rebates up to $5,000" because the specific amount(s) of the rebate must be shown.
- If there are factory-to-dealer rebates or incentives, you can advertise that because of these rebates or incentives customers may save on the price of the vehicle.
- You can advertise the net cost of a vehicle after deduction of the rebate, but
    - you must clearly and conspicuously show the price of the vehicle before the deduction for rebates in a place that is close to the net cost;


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- the price of the vehicle before deductions must be clearly identified so that consumers know it is the price before the deduction for rebates;
- each rebate must be clearly identified (do not use cryptic acronyms) with the qualifications for the rebate clearly explained and in a clear and conspicuous location in the advertisement (no asterisks with mouse print);
- do not advertise rebate deductions to come up with a net cost when the rebate deductions conflict with each other; and
- be cautious when stacking rebates to come up with a low net cost (see "Warning" note below).

Warning! Dealers have to be very careful in rebate stacking advertising where the net cost is shown after several possible rebates have been deducted from the price of the vehicle. This is especially true when very few persons could qualify for some of the rebates, or it would be impossible for one person to qualify for all the rebates. As discussed above, Vehicle Code § 11713.16(e) prohibits a dealer from advertising a rebate deduction that conflicts with another advertised rebate deduction. If one person could not qualify for all the rebate deductions, then that means there is a conflict among the deductions. Thus, in some circumstances, advertising "Your net cost" after deduction of all the rebates could be considered as deceptive advertising.

If you cannot advertise a particular rebate as a deduction to arrive at net cost, that rebate can be advertised separately from the rebate stack in another part of the advertisement.

## Reason for the law

The law prohibiting dealer rebates was enacted to prevent dealer advertising of rebates and cash back when dealers would simply raise the price of the vehicle to recoup the cost of the rebate or cash back. When the price of the vehicle is artificially inflated, the true economic transaction is not shown. The law also requires a clear and conspicuous disclosure of the price of the vehicle and the rebate when a dealer wants to show the net cost after a rebate.

## Cross-references

Chapter 30: Cash/Credit Rule

## Examples

See Example 1, Example 8, and Example 9.

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# Chapter 30 - Cash/Credit Rule

## Basic rule

A dealer may not charge a credit customer a higher price than a cash customer in order for the credit customer to receive advertised credit terms.

## Text of the law

### No higher price for credit sale

**California Vehicle Code § 11713.1(k):** It is unlawful for a dealer to require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, "cash price" has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

### Definition of cash price

**California Civil Code § 2981(e):** "Cash price" means the amount for which the seller would sell and transfer to the buyer unqualified title to the motor vehicle described in the conditional sale contract, if the property were sold for cash at the seller's place of business on the date the contract is executed, and shall include taxes to the extent imposed on the cash sale and the cash price of accessories or services related to the sale, including, but not limited to, delivery, installation, alterations, modifications, improvements, document preparation fees, a service contract, a vehicle contract cancellation option agreement, and payment of a prior credit or lease balance remaining on property being traded in.

## Discussion

### Violation of Truth-In-Lending law

In addition to the California statute prohibiting charging a higher price to receive advertised credit terms than a cash sale price, charging a higher credit price would violate the federal Truth-In- Lending Act. This situation can arise when a dealer starts out with a known credit-risk customer and charges that customer more for the price of the vehicle than the same customer would have had to pay if paying cash. Sometimes in the course of negotiations, a dealer may be tempted to raise the price of the vehicle when the customer's adverse credit becomes known. Charging a higher price than would be charged to a person paying cash in these situations is a violation of the Federal Truth-In-Lending Act. If a dealer is a "creditor" under Regulation Z and charges a higher price for a vehicle sold on credit than would be charged to a person paying cash, the extra consideration may be considered as a "hidden finance charge" and subject the dealer to recovery by the buyer of twice the amount of the finance charge (not to exceed $1,000), plus accrued damages and costs. Typically, a dealer is considered a "creditor" when the customer signs a conditional sale contract, even though all parties know that the contract will be immediately assigned to a finance company.


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### Dealer participation in incentives

As stated in Chapter 26, Incentives–Dealer Participation, when a dealer is required to participate with the factory or finance company in the providing of a rebate or other incentive to a customer, the law requires that any advertisement state: "Dealer participation may affect consumer cost." The use of that phrase in the incentive statute, however, should not lead dealers to believe that they can charge a higher price for a credit customer.

## Reason for the law

This law protects buyers from paying hidden finance charges buried in the price of the vehicle.

## Cross-references

Chapter 43: Credit Advertising

## Example

See Example 4.

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# Chapter 31 - Former Price Comparison

## Basic rule

When bargain advertising is done based upon a former price, the former price must be a bona fide price that was offered to the public for a substantial period of time, or was a price in effect at a time explicitly stated by the advertiser. California Business and Professions Code § 17501 provides a special rule for advertising a former price, as stated below.

## Text of the law

### Definitions

**California Business and Professions Code § 17501:** Worth or value; statements as to former price.

For the purpose of this article the worth or value of anything advertised is the prevailing market price, wholesale if the offer is at wholesale, retail if the offer is at retail, at the time of publication of such advertisement in the locality wherein the advertisement is published.

### When former price prohibited

No price shall be advertised as a former price of any advertised thing, unless the alleged former price was the prevailing market price as above defined within three months next immediately preceding the publication of the advertisement or unless the date when the alleged former price did prevail is clearly, exactly and conspicuously stated in the advertisement.

16 Code of Federal Regulations §§ 233.1-233.5 Guides Against Deceptive Pricing provide further guidelines regarding former price comparisons. The basic rule is stated in § 233.1:

### Reduction from advertiser's own former price

(a) One of the most commonly used forms of bargain advertising is to offer a reduction from the advertiser's own former price for an article. If the former price is the actual, bona fide price at which the article was offered to the public on a regular basis for a reasonably substantial period of time, it provides a legitimate basis for the advertising of a price comparison. Where the former price is genuine, the bargain being advertised is a true one. If, on the other hand, the former price being advertised is not bona fide but fictitious—for example, where an artificial, inflated price was established for the purpose of enabling the subsequent offer of a large reduction—the "bargain" being advertised is a false one; the purchaser is not receiving the unusual value he expects. In such a case, the "reduced" price is, in reality, probably just the seller's regular price.

### Openly and actively offered for sale

(b) A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, that the price is one at which the product was openly and actively offered for sale, for a reasonably substantial period of time, in the recent, regular


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course of his business, honestly and in good faith—and, of course, not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based. And the advertiser should scrupulously avoid any implication that a former price is a selling, not an asking price (for example, by use of such language as, "Formerly sold at $___"), unless substantial sales at that price were actually made.

### Use of the word "sale"

(e) If the former price is set forth in the advertisement, whether accompanied or not by descriptive terminology such as "Regularly," "Usually," "Formerly," etc., the advertiser should make certain that the former price is not a fictitious one. If the former price, or the amount or percentage of reduction, is not stated in the advertisement, as when the ad merely states, "Sale," the advertiser must take care that the amount of reduction is not so insignificant as to be meaningless. It should be sufficiently large that the consumer, if he knew what it was, would believe that a genuine bargain or saving was being offered. An advertiser who claims that an item has been "Reduced to $9.99," when the former price was $10, is misleading the consumer, who will understand the claim to mean that a much greater, and not merely nominal, reduction was being offered.

For more information: See the entire text of 16 Code of Federal Regulations §§ 233.1- 233.5 Guides Against Deceptive Pricing (to see, type this in browser: bit.ly/ftcpricing) with sections on former price comparisons, retail price comparisons, comparable value comparisons, advertising retail prices which have been established or suggested by manufacturers (or other non-retail distributors), bargain offers based upon the purchase of other merchandise, and miscellaneous price comparisons.

## Discussion

The California statute quoted above on former price advertising takes priority over any of the federal FTC guidelines on former price comparisons. However, the FTC guidelines should still be followed. See the 2018 California Court of Appeal case of Hansen vs. Newegg.com (2018) 25Cal.App.5th 714. The Court of Appeal said that crossing out what Newegg showed as a list price and showing below that the current price of the item violated California law because if the higher price had not been the prevailing market price, the ad was deceptive. The court said the presence of a higher original price affects the perception of consumers about the product's worth and increases their willingness to buy the product.

## Reason for the law

This law prevents advertisers from misleading consumers into believing they are getting a bargain based upon the advertiser's former price.

## Cross-references

Chapter 25: Savings and Discount Claims

## Examples

See Example 3, Example 9, and Example 10.

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# Chapter 32 - Options Package Discounts

## Basic rule

When a dealer advertises the Manufacturer's Suggested Retail Price (MSRP), the amount advertised must be the MSRP after deduction of option package discounts. The option package discount cannot be shown as a deduction or savings from MSRP.

## Text of the law

There is no specific statute or regulation regarding option package discount advertising. However, in 1989 the DMV issued a memorandum to clarify the manner in which dealers may lawfully advertise these types of discounts. The memorandum stated:

When a dealer lists the manufacturer's suggested retail price of a vehicle in an advertisement, the amount listed must be the total price on the Monroney sticker after any option package discounts are deducted. The sample window sticker attached shows the following amounts:

| | |
|---|---|
| TOTAL VEHICLE & OPTIONS | $22,718.00 |
| DESTINATION AND DELIVERY | $525.00 |
| TOTAL BEFORE DISCOUNTS | $23,243.00 |
| THIS VEHICLE FEATURES OPTION PACKAGE DISCOUNTS WHICH LOWER THE PRICE BY | -$1,528.00 |
| TOTAL | $21,715.00 |

The manufacturer's suggested retail price is $21,715.00, not $23,243.00. The dealer may not advertise the manufacturer's suggested retail price as $23,243.00 and then show a subtraction of the $1,528.00 "discount".

## Reason for the law

The DMV memorandum seeks to prevent the public from being misled concerning the actual MSRP of the vehicle by implying that MSRP is being reduced by the option package discount, when in fact the MSRP is the bottom-line amount after deducting the option package discount.

## Cross-references

Chapter 28: Fully Factory Equipped

## Example

See Example 2.


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# Chapter 33 - Invoice or Cost Advertising

## Basic rule

In advertising vehicles, dealers may not refer to "invoice," "dealer's invoice," "wholesale price," or similar terms that refer to a dealer's cost of a vehicle.

## Text of the law

### Invoice or cost advertising prohibited

**California Vehicle Code § 11713.1(n):** provides that is unlawful for a dealer to:

(1) Use "invoice," "dealer's invoice," "wholesale price," or similar terms that refer to a dealer's cost for a vehicle in an advertisement for the sale of a vehicle or advertise that the selling price of a vehicle is above, below, or at either of the following:

(A) The manufacturer's or distributor's invoice price to a dealer.

(B) A dealer's cost.

(2) This subdivision does not apply to either of the following:

(A) A communication occurring during face-to-face negotiations for the purchase of a specific vehicle if the prospective purchaser initiates a discussion of the vehicle's invoice price or the dealer's cost for that vehicle.

(B) A communication between a dealer and a prospective commercial purchaser that is not disseminated to the general public. For purposes of this subparagraph, a "commercial purchaser" means a dealer, lessor, lessor-retailer, manufacturer, remanufacturer, distributor, financial institution, governmental entity, or person who purchases 10 or more vehicles during a year.

### Business and Professions Code prohibition of invoice advertising

**California Business and Professions Code § 17537.7:** Except as to communications described in paragraph (2) of subdivision (n) of Section 11713.1 of the Vehicle Code, it is unlawful for any person to use the terms "invoice," "dealer invoice," "wholesale price," or similar terms that refer to a dealer's cost for a motor vehicle in an advertisement for the sale or lease of a vehicle, or advertise that the selling price of a vehicle is above, below, or at either of the following: (a) The manufacturer's or distributor's invoice or selling price to a dealer; (b) A dealer's cost.

## Discussion

The only time reference to invoice or cost can be made in the sale or lease of a vehicle is:

1. During face-to-face negotiations when the respective purchaser initiates the discussion on invoice or cost;

2. During communications with prospective commercial purchasers when communications are not disseminated to the general public.

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Note on dealer cost: In 13 California Code of Regulations § 255.01, "Dealer's cost" and "factory invoice" are defined as the actual cost to the dealer of any vehicle or part thereof delivered to the dealer's place of business. "Dealer's cost" or similar terms do not include expenses incurred by the dealer such as flooring, overhead, commissions, dealer advertising, or other costs.

## Reason for the law

The reason for this law is expressed in Section 3 of AB 1763 of the Statutes of 1991 and reads as follows: Sec. 3. The Legislature finds and declares that a motor vehicle dealer's cost and invoice price advertising has the capacity to confuse the public by erroneously leading it to believe that the advertised dealer cost or invoice price is the dealer's actual cost. The provisions of subdivision (n) of Section 11713.1 of the Vehicle Code, as operative on the day prior to the effective date of the amendments made to Section 11713.1 by this act, or other disclosures of reasonable length cannot (1) adequately dissipate the confusing character of cost or invoice price advertising, (2) explain to the general public complex factors affecting a dealer's actual cost, including manufacturer's holdbacks and incentive programs, or (3) provide a basis for accurately estimating the difference between invoice price or advertised dealer cost and the dealer's actual cost for a vehicle, which usually cannot be determined at the time the vehicle is advertised for sale.

### Intent of the law

The Senate Daily Journal of Sept. 5, 1991, contained the following letter from Assembly Member Sher regarding the intent of A.B.1763 (Stats.1991, c. 935):

Dear Mr. Murman: I have introduced AB 1763 to prohibit invoice and cost advertising by car dealers because such advertisements confuse and mislead retail consumers regardless of disclosure requirements now mandated by law.

### What is invoice price?

Invoice price is the dollar amount a franchised new motor vehicle dealer pays the manufacturer or distributor of a new motor vehicle at the time of purchase. The invoice price is typically reflected by the manufacturer or distributor on an invoice document provided to the dealer at the time of purchase. Such invoice documents are not standardized and vary widely between various manufacturers and distributors. Moreover, the invoice price paid by dealers for any particular vehicle may vary throughout the country or within a state depending upon regional assessments or other arrangements between a dealer and a manufacturer or distributor.

### Invoice versus cost

The invoice price may or may not bear any relation to a dealer's cost for a vehicle. In some cases, a dealer's cost for a vehicle may be significantly less than the invoice price originally paid for the vehicle. Any difference between invoice price and final cost may be caused by a multitude of factors including factory refunds, rebates, allowances, or incentives which the manufacturer or distributor may provide to the dealer and other items which may be included in the invoice price, such as destination charges, holdbacks, and advertising assessments. A dealer's overhead expenses such as inventory charges and other operating expenses also affect the dealer's cost for any particular vehicle may only be calculated as an accounting function at some interval of time (usually after the vehicle is sold) and after all cost and expense factors are tabulated and generally accepted accounting principles, such as inventory depreciation, are applied.


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## Consumer confusion

Consumers, lacking the sophistication of a motor vehicle merchant, typically understand that the term "invoice" is synonymous with "cost". Many consumers believe, or are led to believe, that invoice price represents the ultimate price that the dealer paid for a new vehicle. As discussed above, in many cases invoice price may bear little relation to a dealer's final cost for a new vehicle.

Some dealers advertise vehicles for sale at, above, or below their invoice price. Such advertisements, depending on their form and content, have the capacity to mislead and confuse the consuming public by implying that the advertised vehicles have a particular value in relation to the dealer's actual cost. Most significantly, all such advertisements have the capacity to mislead consumers by suggesting that the advertising dealer is making little or no profit on the advertised new vehicles or that the dealer is losing money on such a transaction. The net result is that a consumer may be misled into believing that the advertised price is a great bargain and that no room for price negotiation exists.

## Attempts to remedy abuses

Attempts have been made to address abuses associated with the use of invoice advertising. The Department of Motor Vehicles defines "dealer's cost", "factory invoice", and similar terms to mean the actual dealer cost of the vehicle exclusive of other costs such as financing, overhead, commissions, and advertising expenses. Advertisements based on prices at, above or below dealer cost are required to be accurate based on the definition of "dealer's cost". (See 13 CCR Secs. 402.01 and 404.00[d].) In addition, I authored AB 4020 in the 1988 Session to require an advertising disclosure indicating that the manufacturer's invoice amount may exceed dealer's cost because of allowances. (See Vehicle Code Sec. 11713.1[n].)

Unfortunately, these provisions have not succeeded in dissipating abuses associated with invoice advertising. It is impossible to explain in an advertising disclosure the approximate amount or even the magnitude by which the invoice price may exceed the dealer's cost. Variables affecting the dealer's cost, such as dealer holdbacks and ever-changing factory incentive programs are often too complex to explain in a concise and meaningful manner in an advertising disclosure. Moreover, a definitive determination of dealer cost cannot be made at the time an advertisement is placed.

## Invoice advertising prohibited

AB 1763 prohibits the use of invoice advertising in the mass media because of its capacity to confuse the general public and because of the absence of reasonable and practical disclosures or other advertising requirements which would eliminate the capacity of invoice advertisements to mislead the public. However, the bill is not intended to cover several types of communications where the continued use of invoice price as a benchmark should be permitted.

## Prohibition does not apply to face-to-face negotiations

First, the prohibition does not cover individual, face-to-face negotiations (as opposed to telephone or other organized forms of solicitation) once the give-and-take bargaining process between a dealer and a prospective retail purchaser has begun. The exception for face-to-face negotiations is intended to benefit those consumers who have become accustomed to invoice pricing and may insist on structuring their negotiations on the basis of invoice price. However, the exception for face-to-face negotiations is not intended to apply to those situations where a prospective retail purchaser is invited to a dealer's premises and then the dealer or his agent initiates a sales pitch based on invoice price.

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### Other exceptions

Second, the prohibition is not intended to extend to communications among dealers or other commercial purchasers who are in the business of buying vehicles for resale, lease, or commercial or government purposes. Such commercial purchasers include dealers, lessors, lessor-retailers, manufacturers, remanufacturers, distributors, financial institutions, governmental entities, and commercial fleet purchasers. The use of invoice price among sophisticated commercial purchasers has become a trade practice and such purchasers, unlike most retail consumers, understand the industry application of invoice price. However, the exception for sophisticated commercial purchasers who purchase for resale, lease or use for commercial or government purposes should not be construed to sanction or permit dealer advertisements directed to those purchasers but placed in a medium where the advertisement is directed at the general public and therefore attracts retail purchasers (e.g., an advertisement in the Los Angeles Times which states, "All vehicles $50 under invoice-dealer and commercial purchasers only"). On the other hand, an invoice advertisement directed to commercial purchasers which is placed in a trade journal, such as the Automotive News, is not intended to be prohibited by my bill because a trade journal is not intended to be disseminated to the general public.

Finally, the bill and the advertising prohibitions contained therein are prospective in nature and are not intended in any way to affect advertising practices which occurred prior to the bill's effective date.

## Example

See Example 3.


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# Chapter 34 - Sales Below Cost

## Basic rule

California law provides that it is unlawful for a dealer to advertise or sell vehicles below cost where:

a. The purpose is to induce the customer to buy another vehicle, i.e. bait and switch;

b. Where there is a tendency to mislead purchasers;

c. Where the effect of the advertising is to divert trade from competitors.

As discussed below, this law has been interpreted by the California Supreme Court to apply where there are sales below cost with the intent on the part of the Seller to injure or destroy competition.

## Text of the law

### Advertising "loss leaders"

**California Business and Professions Code § 17044:** It is unlawful for any person engaged in business within this State to sell or use any article or product as a "loss leader" as defined in Section 17030 of this chapter.

### "Loss leader" defined

**California Business and Professions Code § 17030:** "Loss leader" means any article or product sold at less than cost:

a. Where the purpose is to induce, promote or encourage the purchase of other merchandise; or

b. Where the effect is a tendency or capacity to mislead or deceive purchasers or prospective purchasers; or

c. Where the effect is to divert trade from or otherwise injure competitors.

### Cost defined

**California Business and Professions Code § 17026:** "Cost" as applied to production includes the cost of raw materials, labor and all overhead expenses of the producer.

"Cost" as applied to distribution means the invoice or replacement cost, whichever is lower, of the article or product to the distributor and vendor, plus the cost of doing business by the distributor and vendor and in the absence of proof of cost of doing business a markup of 6 percent on such invoice or replacement cost shall be prima facie proof of such cost of doing business.

"Cost" as applied to warranty service agreements includes the cost of parts, transporting the parts, labor, and all overhead expenses of the service agency.

Discounts granted for cash payments shall not be used to reduce costs.

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### Presumption of intent to injure competition

**California Business and Professions Code § 17071:** Intent to injure competitors or destroy competition; presumption.

In all actions brought under this chapter proof of one or more acts of selling or giving away any article or product below cost or at discriminatory prices, together with proof of the injurious effect of such acts, is presumptive evidence of the purpose or intent to injure competitors or destroy competition.

California Business and Professions Code § 17071.5: Limitation of Quantity; Sale Below Invoice or Replacement Cost; Presumption. In all actions brought under this chapter proof of limitation of the quantity of any article or product sold or offered for sale to any one customer to a quantity less than the entire supply thereof owned or possessed by the seller or which he is otherwise authorized to sell at the place of such sale or offering for sale, together with proof that the price at which the article or product is so sold or offered for sale is in fact below its invoice or replacement cost, whichever is lower, raises a presumption of the purpose or intent to injure competitors or destroy competition. This section applies only to sales by persons conducting a retail business the principal part of which involves the resale to consumers of commodities purchased or acquired for that purpose, as distinguished from persons principally engaged in the sale to consumers of commodities of their own production or manufacture.

## Discussion

The California Supreme Court issued an important ruling regarding sales below cost in the case of Cel-Tech Communications, Inc. vs. Los Angeles Cellular Telephone Company (1999) 20 Cal.4th 163 The case arose out of a lawsuit filed by Cel-Tech Communications, Inc. and other plaintiffs ("Cel-Tech") against Los Angeles Cellular Telephone Company ("LA Cellular").

LA Cellular sold telephones below cost, but made up for the losses with its increased new subscribers. LA Cellular had a "duopoly" with one other company, Air Touch Cellular, to sell subscriptions to cellular telephone services. Cel-Tech sold telephones, but was not allowed to sell telephone services.

Cel-Tech claimed the below cost telephone sales harmed them. Two of the claims Cel-Tech brought against LA Cellular were that the sales below cost violated California's Unfair Practices Act and California's Unfair Competition Law, both found in California's Business and Professions Code.

### The Unfair Practices Act

Cel-Tech alleged that LA Cellular violated the Unfair Practices Act in two ways: (1) by selling below cost in violation of Business and Professions Code section 17043, and (2) by using loss leaders in violation of Business and Professions Code section 17044.

Section 17043 provides:

"It is unlawful for any person engaged in business within this State to sell any article or product at less than the cost thereof to such vendor, or to give away any article or product, for the purpose of injuring competitors or destroying competition."

The Court concluded "that to violate section 17043, a company must act with the purpose, i.e., the desire of injuring competitors or destroying competition." The Supreme Court then found that the lower courts were correct in finding that LA Cellular did not violate Section 17043. LA Cellular's intent was to compete with Air Touch for subscribers, not to injure or destroy Cel-Tech.


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## Loss leaders

California Business and Professions Code section 17044 provides: "It is unlawful for any person engaged in business within this State to sell or use any article or product as a 'loss leader' as defined in section 17030, which in turn defines "Loss leader" as "any article or product sold at less than cost:

a. Where the purpose is to induce, promote or encourage the purchase of other merchandise; or

b. Where the effect is a tendency or capacity to mislead or deceive purchasers or prospective purchasers; or

c. Where the effect is to divert trade from or otherwise injure competitors."

Cel-Tech argued that section 17044(c) prohibits use of loss leaders any time the effect is to divert trade from or otherwise injure competitors, and that Cel-Tech did not have to show that LA Cellular had any particular mental state. The Court, however, disagreed with this contention and ruled that to violate section 17044, a company must have the same mental state required to violate section 17043, i.e., a company must act with the purpose or desire of injuring or destroying the competition.

## Unfair competition law

California Business and Professions Code section 17200 states "…unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising…." Cel-Tech alleged LA Cellular's sales below cost were unfair and therefore a violation of this statute.

According to the Court, section 17200 established three varieties of unfair competition-acts or practices which are unlawful, or unfair, or fraudulent. In the context of the LA Cellular case, the Court focused on the word "unfair" as found in section 17200 and adopted the following test of unfairness:

"When a plaintiff who claims to have suffered injury from a direct competitor's 'unfair' act or practice invokes section 17200, the word 'unfair' in that section means conduct that threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition."

In applying the principles enunciated by the Court, the Court first stated that even if there has been no purpose or desire to injure or destroy competitors, nothing in section 17043 or 17044 makes all below-cost sales lawful.

The Court then focused on the fact that because LA Cellular held a duopoly, it was employing a strategy that might not be available to its nonduopolist competitors such as Cel-Tech. The Court ruled that it would be possible for Cel-Tech to show that LA Cellular's sales under the unfairness test were in fact unfair.

"Allowing a company to sell telephones at a loss to increase profits on services sales, and to recoup its losses with those profits, might threaten the ability of any company not permitted to sell services to compete in telephone sales."

The Court also noted that when someone sues under Unfair Competition Law, the remedies for the one bringing the lawsuit are very limited. Suits under the Unfair Practices Act can lead to treble damages and attorney fees, and may even lead to criminal sanctions. In contrast, remedies under the Unfair Competition Law are generally limited to an injunction and restitution.

The Court made the following statements in commenting that courts must be very cautious in evaluating claims that a competitor's prices are too low:

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"Pricing practices are not unfair merely because a competitor may not be able to compete against them. Low prices often benefit consumers and may be the very essence of competition. Low prices benefit consumers regardless of how those prices are set, and so long as they are above predatory levels, they do not threaten competition. Courts must not prohibit vigorous competition nor render illegal any decision by a firm to increase market share. The antitrust laws require no such perverse result, for it is in the interest of competition to permit dominant firms to engage in vigorous competition, including price competition."

In the automobile dealer world, it would appear that as long as a dealer did not intend to injure or destroy the dealer's competitor, and if there were no extraordinary circumstances, actions against dealers selling below cost would not have a high probability of success. Dealers, of course, should consult with their own counsel to assess any situation where they believe they are being unfairly harmed by their competitors. The principles of the LA Cellular case will provide guidance in any such assessment.

## Reason for the law

The laws regarding sales below cost are designed to prohibit unfair competition between sellers and to ensure that the public is not misled.

## Cross-references

Chapter 2: Bait and Switch

Chapter 28: Price Leaders Disclosure


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# Chapter 35 - Underselling Claims

## Basic rule

Dealers are prohibited from advertising underselling claims that they cannot substantiate by their records. The DMV is entitled to inspect the dealer's records for proof of the claim and the records must be made available to the DMV upon request.

## Text of the law

### Underselling claim must be supportable

**California Vehicle Code § 11713.1(r):** It is unlawful for a dealer to advertise an underselling claim, including, but not limited to, "we have the lowest prices" or "we will beat any dealer's price," unless the dealer has conducted a recent survey showing that the dealer sells its vehicles at lower prices than another licensee in its trade area and maintains records to adequately substantiate the claims. The substantiating records shall be made available to the department upon request.

## Discussion

### Difficult to advertise underselling claims

Dealers must be careful about the claims they make. An innocent statement such as "Come on in for the best deals in town" can technically lead to a claim that the underselling law has been violated. The law places the burden of proof squarely on the dealer to substantiate underselling claims, and as a practical matter, it is very difficult for a dealer to legally advertise such claims. A dealer would have to prove the prices at which vehicles were sold by other dealers in the trade area, and this would appear extremely difficult to do.

### "We won't be undersold"

A phrase sometimes heard is "We won't be undersold." In one matter, the Department of Motor Vehicles contended that a dealer using that phrase was violating the underselling claim law. The dealer filed a court action in Sacramento County Superior Court and obtained a ruling that the slogan "We will not be undersold" is not an "underselling claim" as that term is used in the statute. Part of the court's rationale for this decision apparently was that the dealer was not necessarily claiming to be underselling the dealer's competitors, but rather was willing to match its competitors' prices.

### Matching a competitor's price

A dealer's advertisement which features a low-price guarantee that is based on matching or beating a competitor's advertised price should not require a recent dealer survey as contemplated by Vehicle Code §11713.1(r), because such a low-price guarantee is not a claim that the dealer has the lowest prices.

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Example: If a dealer advertises this type of low-price guarantee, a written disclosure should be made of the relevant details explaining how a customer can make a claim under the guarantee (for example, that a competitor's newspaper ad for the same county where the dealership is located, dated within 30 days, and applicable to the same identical vehicle must be presented).

## Reason for the law

This law prevents unfair competition among dealers.

## Example

See Example 3.


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# Chapter 36 - Sales/Use Tax Included

## Basic rule

A dealer may not state that the use tax, or any part of such tax:

1. Will be assumed or absorbed by the dealer; or

2. Will not be added to the selling price of the vehicle; or

3. If added to the selling price, any part will be refunded.

The tax collected in connection with payments on a lease is a use tax. There is no statute prohibiting a retailer from stating that the sales tax will be assumed or absorbed by the retailer, or that it will not be added to the selling price. See the discussion below, however, concerning whether payment of the sales tax by a dealer would be alright under California law.

## Text of the law

### Unlawful not to charge use tax

**California Revenue and Taxation Code § 6205:** It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the use tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded.

## Discussion

### Argument that dealers can advertise that they will pay the sales tax

There are no exceptions to the law that a retailer cannot advertise that the use tax will be assumed or absorbed by the retailer. Because there is no similar statute with regard to sales taxes, the question is whether a dealer would be violating California Vehicle Code § 11713.1(j) in advertising that the dealer will pay the sales tax, or something similar.

Vehicle Code § 11713.1(j) states:

It is unlawful for a dealer to use "rebate" or similar words, including, but not limited to, "cash back," in advertising the sale of a vehicle unless the rebate is expressed in a specific dollar amount and is, in fact, a rebate offered by the vehicle manufacturer or distributor, a finance company affiliated with a vehicle manufacturer or distributor, a regulated utility, or a governmental entity directly to the retail purchaser of the vehicle or to the assignee of the retail purchaser.

It might be argued that if a dealer paid the sales tax, it would be similar to providing "cash back" or making a downpayment or installment payment for a customer, which would be prohibited. But another argument can be made that payment of the sales tax is not technically "cash back" or similar to paying a customer's installment payment.

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## California Revenue and Taxation Code

California Revenue and Taxation Code § 6051 imposes the sales tax on the retailer. The retailer by agreement or notice can then pass the obligation on to the buyer. In that connection, California Civil Code § 1656.1 (a) provides:

(a) Whether a retailer may add sales tax reimbursement to the sales price of the tangible personal property sold at retail to a purchaser depends solely upon the terms of the agreement of sale. It shall be presumed that the parties agreed to the addition of sales tax reimbursement to the sales price of tangible personal property sold at retail to a purchaser if:

1. The agreement of sale expressly provides for such addition of sales tax reimbursement;

2. Sales tax reimbursement is shown on the sales check or other proof of sale; or

3. The retailer posts in his or her premises in a location visible to purchasers, or includes on a price tag or in an advertisement or other printed material directed to purchasers, a notice to the effect that reimbursement for sales tax will be added to the sales price of all items or certain items, whichever is applicable.

The argument would be that because the sales tax is the retailer's obligation, the retailer by agreement could choose not to pass the sales tax on to the buyer in a particular promotion and advertise that fact without violating the "cash back" or rebate rules.

Important: A dealer choosing to advertise this type of promotion should have the program fully reviewed by the dealer's attorney.


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# Chapter 37 - Dealer Preparation Charges

## Basic rule

A dealer may not charge a dealer preparation charge fee when the dealer is reimbursed for such work by another party, such as the manufacturer. If a dealer charge is a separate dealer preparation fee, which is not reimbursed by a third party, that fee must be itemized and included in the advertised price.

## Text of the law

### Advertising total price of vehicle

**California Vehicle Code § 11713.1 (b):** It is a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

Advertise the total price of a vehicle without including all costs to the purchaser at the time of sale, except taxes, vehicle registration fees, the California tire fee, as defined in Section 42885 of the Public Resources Code, emission testing charges not exceeding fifty dollars ($50), actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, finance charges, and any dealer document processing charge or charge to electronically register or transfer the vehicle.

### No charge for reimbursed prep expenditure

**13 California Code of Regulations § 262.03:** Dealer Added Charges.

A dealer may not identify a separate charge or charges for services performed on vehicles prior to delivery to the extent the dealer is or will be reimbursed for such expenditures by another party. If a dealer does identify a separate charge or charges for delivery and preparation services performed over and above those delivery and preparation obligations specified by the franchisor and for which the dealer is to be reimbursed by the franchisor, then the services performed and the charges therefore shall be separately itemized. Such added charges must be included in the advertised price.

## Discussion

Charges for delivery and preparation over and above delivery and preparation fees for which the dealer is reimbursed must be included in the total price of the vehicle. They cannot be advertised separately and shown in the separate reference to taxes, registration, etc. And although Regulation 262.03 requires a dealer to separately itemize such fees to the buyer, the Automobile Sales Finance Act found in Civil Code § 2982 does not allow for a separate itemization of such charges on the conditional sale contract. They must be included in the cash price of the vehicle, just as they must be included in the total advertised price of the vehicle.

Tip: Because of California's single document rule in California Civil Code § 2981.9 legal counsel should be consulted if separate charges are being made for delivery and preparation.

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## Reason for the law

This law is designed to prevent dealers from adding extra charges in connection with the purchase of the vehicle.

## Example

See Example 5.


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# Chapter 38 - Factory-Authorized Sales

## Basic rule

Although there are no specific California statutes or regulations on the subject, advertising which implies that a factory is somehow connected with a special sale or promotion, when it is not, is misleading and false advertising.

## Discussion

In a letter to all of its dealers nationally, a major manufacturer cited advertising which implies a special unique relationship with the factory to be misleading. A statement is false or misleading if it is shown that members of the public are likely to be deceived. The intent of the seller and knowledge of the customer is irrelevant and therefore may not be considered in establishing whether or not the advertising is misleading.

Some years ago, the Vermont Attorney General obtained deceptive advertising penalties from dealerships advertising "Factory Authorized Clearance Sale," "Factory Outlets," and "Factory Authorized Sale." This type of advertising is misleading because it implies to the public that the factory is somehow uniquely connected with the dealer and participating with the dealer in the sale. This advertising intends to lead the consumer to believe that the dealer is some type of special factory outlet with a special arrangement with the factory. Some states have specific laws prohibiting this type of advertising.

Note on website advertising: The manufacturer who wrote the letter discussed above also mentioned as misleading using a dealer-initiated website on the internet as an individual dealership or collectively as a group of dealerships and inferring in some way that the address on the website is sponsored or endorsed by the factory.

It is possible that California Business and Professions Code § 17505 could be interpreted as prohibiting the type of advertising discussed in this chapter. That code section states: "No person shall state, in an advertisement of his goods, that he is a producer, manufacturer, processor, wholesaler, or importer, or that he owns or controls a factory or other source of supply of goods when such is not the fact, and no person shall in any other manner misrepresent the character, extent, volume, or type of his business."

Also see the Consumers Legal Remedies Act, California Civil Code § 1770 (5) which makes the following an unfair method of competition and an unfair or deceptive practice: "(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have."

## Reason for the law

The principles in this chapter prevent false and misleading advertising.

## Example

See Example 10.

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# Part D
# Installment sales, leases, and credit advertising




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# Chapter 39 - Installment Sales and Regulation Z Trigger Terms

## Basic rule

Regulation Z, promulgated by the Federal Reserve Board, applies in a closed-end credit sale.

If any of the following are advertised:

- the downpayment
- number of payments or period of repayment
- amount of any payment
- the amount of any finance charge
- then the following disclosures must be stated in the advertisement:
- the amount or percentage of the downpayment
- the terms of repayment
- the "annual percentage rate," using that term or the abbreviation "APR."

Although both Regulation Z and the Federal statute govern trigger terms, use Regulation Z as your guide in this area because it has somewhat more detail than the statute.

## Text of the law

### Only available terms may be advertised

**Regulation Z, 12 Code of Federal Regulations § 226.24 (a):** If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

### Regulation Z trigger terms

**Regulation Z, 12 Code of Federal Regulations § 226.24 (d)**

**Advertisement of terms that require additional disclosures**

(1) If any of the following terms is set forth in an advertisement, the advertisement shall meet the requirements of paragraph (d)(2) of this section:

(i) The amount or percentage of any downpayment.

(ii) The number of payments or period of repayment.

(iii) The amount of any payment.

(iv) The amount of any finance charge.

Disclosures when trigger terms are advertised

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(2) An advertisement stating any of the terms in paragraph (d)(1) of this section shall state the following terms, as applicable (an example of one or more typical extensions of credit with a statement of all the terms applicable to each may be used):

(i) The amount or percentage of the downpayment.

(ii) The terms of repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment.

(iii) The "annual percentage rate," using that term, and, if the rate may be increased after consummation, that fact.

### No liability for media or agency

**15 United States Code § 1665:** There is no liability under this chapter on the part of any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

### Deferred downpayment, escalated and balloon payments

**California Vehicle Code § 11713.16(d):** It is unlawful for a dealer to advertise credit terms that fail to comply with the disclosure requirements of Section 226.24 of Title 12 of the Code of Federal Regulations. Advertisements of terms that include escalated payments, balloon payments, or deferred downpayments shall clearly and conspicuously identify those payments as to amounts and time due.

### Clear and conspicuous standard

**Federal Reserve Board Staff Comment 24(b):** Clear and conspicuous standard. This section is subject to the general "clear and conspicuous" standard for this subpart, but prescribes no specific rules for the format of the necessary disclosures. The credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement. For example, a merchandise tag that is an advertisement under the regulation complies with this section if the necessary credit terms are on both sides of the tag, so long as each side is accessible.

## Discussion

### Clear and conspicuous

The Regulation Z sections quoted above are subject to the general "clear and conspicuous" standards with regard to disclosures. The Regulations do not prescribe any specific rules for the format of the disclosures and the credit terms need not be printed in a certain type size or appear in any particular place in the advertisement. For more information, see Chapter 12, Qualifiers, Disclosures, and Disclaimers.

### Zero downpayment advertising

Advertising that there is no downpayment is not a trigger term.

### Advertising annual percentage rate only

An advertisement of the Annual Percentage Rate by itself is not a trigger term. The Annual Percentage Rate may be abbreviated as "APR". See Chapter 40, Annual Percentage Rate.


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### Use of examples to make disclosures

12 Code of Federal Regulations § 226.24(d)2 states with regard to the disclosures required when there is a trigger term in an advertisement: "An example of one or more typical extensions of credit with a statement of all the terms applicable to each may be used."

Paragraph 24(d)(2) of Official Staff Interpretation of Regulation Z states:

5. Use of examples. A creditor may use illustrative credit transactions to make the necessary disclosures under §226.24(d)(2). That is, where a range of possible combinations of credit terms is offered, the advertisement may use examples of typical transactions, so long as each example contains all of the applicable terms required by §226.24(d). The examples must be labeled as such and must reflect representative credit terms made available by the creditor to present and prospective customers

### Disclosing terms of repayment

To satisfy the disclosure of the "terms of repayment", the Federal Reserve Board Staff Comment 24(d)(2) (i) states:

"A creditor may use a unit-cost approach in making the disclosure such as '48 monthly payments of $28.83 per $1000 borrowed'."

### When amount of downpayment varies with credit

Where the amount or percentage of a downpayment varies with credit, the use of statements such as, "For example, 10% down" should be acceptable in a situation where the transaction typically involves a 10% downpayment. Use of statements such as "For example, downpayment ranges from 5%-30% depending on credit", when such a range is typical, would also seem to be acceptable.

## Reason for the law

The federal statutes and Regulation Z were enacted to provide consumers with a minimum amount of information when credit terms are advertised. These advertising laws provide the consumer with a basic understanding and disclosure of the credit terms advertised.

## Cross-references

Chapter 40: Annual Percentage Rate

Chapter 41: Downpayments in Installment Sales

Chapter 12: Qualifiers, Disclosures, and Disclaimers

## Examples

See Example 7 and Example 8.

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# Chapter 40 - Annual Percentage Rate

## Basic rule

Whenever the rate of a finance charge is advertised, it must be expressed as an annual percentage rate, using that term, or abbreviated as "APR."

## Text of the law

### Must state as an annual percentage rate

**15 United States Code § 1664 (c):** If any advertisement to which this section applies states the rate of a finance charge, the advertisement shall state the rate of that charge expressed as an annual percentage rate.

### Regulation Z requirement

**Regulation Z, 12 Code of Federal Regulations § 226.24 (b):** If an advertisement states a rate of finance charge, it shall state that rate as "annual percentage rate," using that term. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. The advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

## Discussion

The rules for calculating the amount of the annual percentage rate are found in Regulation Z, 12 Code of Federal Regulations § 226.14.

### APR alone not a trigger term

An advertisement of an annual percentage rate by itself does not trigger other Regulation Z disclosures. An annual percentage rate may consequently be advertised by itself (although adding an "on approved credit" disclaimer is recommended). For more information, see Chapter 39, Installment Sales and Regulation Z Trigger Terms.

### Advertising a low APR

Advertisers must use discretion when advertising a low annual percentage rate which is only available for a short term of repayment. Either the length of the term of repayment should be stated, or the advertisement should disclose that the rate is available only for short-term financing. The length of the term of repayment (for example, 60 months), however, is a trigger term requiring the other Regulation Z disclosures.

Note: Federal Reserve Board Comment 24(c)-1 allows the abbreviation "APR." See also Comment 24(d)(2)-4.


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For more information, see Chapter 39, Installment Sales and Regulation Z Trigger Terms.

## Reason for the law

This law provides consumers with the information they need to make informative credit decisions regarding finance charges and other credit terms.

## Cross-references

Chapter 43: Credit Advertising

Chapter 39: Installment Sales and Regulation Z Trigger Terms

## Example

Example 6

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# Chapter 41 - Downpayments in Installment Sales

## Basic rule

This chapter focuses on downpayments in the sale of a vehicle. See Chapter 42, Leases and Regulation M for the rules regarding advertising downpayments in leasing.

### Prohibition against no downpayment advertising

A dealer may not advertise that no downpayment is required when a downpayment is required, and the buyer is induced to finance the downpayment.

### Zero downpayment advertising

An advertisement of a 0 downpayment means that the vehicle must be delivered without any payment or trade-in of any kind by the buyer, including the use of a rebate as a downpayment.

### No other charge other than amount advertised as a downpayment

When an amount of a downpayment has been advertised, no other amount can be charged upon delivery of the vehicle, including any charge for sales tax or license.

### Downpayment as regulation Z trigger term

When a downpayment is advertised, it becomes a trigger term under Regulation Z. The other disclosures required by Regulation Z must be disclosed in the advertisement. See Chapter 39, Installment Sales and Regulation Z Trigger Terms.

## Text of the law

### When zero downpayment advertising is prohibited

**California Vehicle Code § 11713 (k):** A holder of a license issued under this article shall not do any of the following: Advertise or otherwise represent, or knowingly allow to be advertised or represented on behalf of, or at the place of business of, the licenseholder that no downpayment is required in connection with the sale of a vehicle when a downpayment is in fact required and the buyer is advised or induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the vehicle. The terms "no downpayment," "zero down delivers," or similar terms shall not be advertised unless the vehicle will be sold to a qualified purchaser without a prior payment of any kind or trade-in.

### Downpayment advertised must be total due at delivery

**California Vehicle Code § 11713.16(g):** It is a violation of this code for the holder of any dealer's license issued under this article to do any of the following: Advertise the amount of any downpayment unless it represents the total payment required of a purchaser prior to delivery of the vehicle, including any payment for sales


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tax or license. Statements such as "$_____ delivers," "$____ puts you in a new car" are examples of advertised downpayments.

## Discussion

When a zero downpayment in the sale of a vehicle is advertised, the buyer must not be required to provide a trade-in or pay any amount at the time of the purchase. This means a dealer cannot require payment of any sales tax, registration and license fees, factory rebate, or payment of any other amount whatsoever. When the amount of a downpayment is advertised, only the amount of the downpayment advertised may be collected from the buyer at the time of sale. There can be no other amount collected from the buyer for tax, license, and registration, or other items.

## Reason for the law

The laws regarding downpayment advertising are designed to provide buyers with clear disclosures regarding the downpayment required and to ensure that they are not misled regarding the amount of money they will have to pay on delivery of the vehicle.

## Cross-references

Chapter 43: Credit Advertising

Chapter 39: Installment Sales and Regulation Z Trigger Terms

## Examples

See Example 6 and Example 7.

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# Chapter 42 - Leases and Regulation M

## Basic rule

The rules regarding lease advertising are contained in federal Regulation M and California Civil Code § 2985.71. This chapter sets forth the Regulation M requirements, which must be followed by all lessors advertising consumer leases. A consumer lease is a lease primarily for personal, family, or household purposes for a period exceeding 4 months and initially under Regulation M a total contractual obligation not exceeding a threshold amount of $25,000 whether or not the lessee has the option to purchase at the end of the lease. The federal threshold amount is adjusted on January 1 of each year. The federal threshold amount has no effect in California because California does not have a threshold amount and California law requires that all Regulation M disclosures be made in addition to those required by California law.

### California law of lease advertising

In addition to the federal law, all lessors must follow the California law of lease advertising, which imposes some disclosures which are in addition to those required under federal law.

### "Usually and customarily"

Under both Regulation M § 213.7 (a) and California Civil Code § 2985.71(c), no lease advertisement may state specific amounts or terms unless the lessor usually and customarily leases or will lease the vehicle at those amounts or terms. According to Federal Reserve Board Staff Comment 7(a), "usually and customarily" does not prohibit the advertisement of a single item or the promotion of a new leasing program, but prohibits the advertising of terms that are not and will not be available. Thus, the advertisement may state terms that will be offered for only a limited period or terms that will become available at a future date.

### Regulation M and California trigger terms

Under Regulation M and California Civil Code § 2985.71, if an advertisement of a closed-end consumer lease states any of the following "trigger terms":

The amount of any payment (Example, $250 per month); or

A statement of any capitalized cost reduction, or other payment, required when the lease starts, or that no payment is required (Example, $500 down, or $0 down);

then the advertisement must also state all the following:

1. The transaction is a lease;

2. The total amount due prior to or at consummation of the lease (signing), or by the time of delivery if delivery occurs after signing;

3. The number, amounts, and due dates of the lease payments;

4. Whether or not a security deposit is required.

Under California law the following additional disclosures must be made:


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5. The charge per mile for mileage in excess of the limit stated;

6. The statement "Plus tax and license" if amounts due for use tax, license and registration fees are not included in the advertised lease payments.

## Equal prominence regarding amounts due at lease signing

Except for a statement of the monthly or other periodic lease payment, if there is any statement of any amount due at lease signing (such as "$500 down") which is part of the total amount due at lease signing, or a statement that a particular charge is not due (such as "$0 down"), then such a statement shall not appear more prominently than the total due at lease signing. Consequently, the advertisement of a monthly lease payment by itself does not require that the amounts due at lease signing be in the same size. It is only when there is a reference to any other amounts due at lease signing (such as "$500 down") or that a particular charge is not due (such as "$0 down") that the equal prominence rule applies.

For more information: See Federal Reserve Staff Comment 7(b)(1) (to see, type this in browser: bit.ly/frbcomments).

## What to include in amount due at lease signing

The amount disclosed as the amount due at lease signing must include all amounts paid, such as the downpayment, lease acquisition fee, security deposit, first monthly payment, and any other charges paid by the customer on lease signing. Note both Regulation M and California law allow the statement "Plus tax and license".

Example: To advertise the impact of a factory rebate, the best practice is to show the total amount due at lease signing and then an equation showing the amount due from the customer after application of the stated factory rebate amount could be included. A way to state this could be: "$2,000 due at start of lease ($1,000 out of pocket after application of $1,000 factory rebate)."

See further discussion below about advertising leases with rebates.

## Advertising a lease rate

If a lease rate is advertised, the lease rate cannot be advertised more prominently than any of the other Regulation M disclosures. The advertisement must state:

"This percentage may not measure the overall cost of financing this lease."

This statement must be in close proximity to the advertisement of the rate. The terms "annual percentage rate," "annual lease rate," or any other equivalent terms may not be used. It is rare to see lease rate advertising.

## Use of toll-free telephone number

Under both California and Federal law, a toll-free telephone number can be used for TV and radio lease advertising. Any lease advertisement that states a trigger term, as described in the discussion above, will comply with the disclosure requirements if an advertisement lists all but #4 above and:

1. Lists a toll-free number advising that consumers may use the number to obtain all required lease disclosures;

OR

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2. Directs the consumer to a written advertisement in a publication of general circulation in the community served by the media station, including name and date of the publication, stating that the required lease disclosures are included in the advertisement. The advertisement must be published beginning at least 3 days before and ending at least days 10 after the broadcast.

Note: The toll-free number must be available for at least 10 days beginning on the date of the broadcast. The lessor must also provide the required lease disclosures orally, or in writing upon request.

### Clear and conspicuous disclosure requirement

All of the required lease disclosures must be clear and conspicuous. This means they must be easily readable and understandable by the average person. The FTC's approach is to strictly enforce this requirement.

For more information: See the federal regulation 213.7(b) quoted below and the Federal Reserve Commentary to that section. See also Chapter 12, Qualifiers, Disclosures, and Disclaimers, for a more detailed discussion regarding the clear and conspicuous disclosure requirement.

### Record keeping rule

The lessor must keep lease transaction records showing compliance with Regulation M for at least two years after a lease transaction; however, there is no requirement that evidence of compliance with the advertising rules be kept for any period of time. The records of lease transactions can be maintained digitally, or by any other method designed to reproduce records accurately, as well as in paper form. The lessor need only retain enough information to reconstruct the required disclosures or other records. For California purposes, the records relating to leases must be kept for 3 years. See 13 California Code of Regulations § 272.00. As a best practice, CNCDA recommends that such records be kept for 10 years.

## Text of the law

### Lease advertised must be available

**Regulation M, 12 Code of Federal Regulations § 213.7 (a):** General rule. An advertisement for a consumer lease may state that a specific lease of property at specific amounts or terms is available only if the lessor usually and customarily leases or will lease the property at those amounts or terms.

### Clear and conspicuous standard

**Regulation M, 12 Code of Federal Regulations § 213.7 (b):**(b) Clear and conspicuous standard. Disclosures required by this section shall be made clearly and conspicuously.

Federal Reserve Board Official Staff Comment 7(b)-1 elaborates on the clear and conspicuous standard as follows:

1. Standard. The disclosures in an advertisement in any media must be reasonably understandable. For example, very fine print in a television advertisement or detailed and very rapidly stated information in a radio advertisement does not meet the clear and conspicuous standard if consumers cannot see and read or hear, and cannot comprehend, the information required to be disclosed.


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## Equal prominence rule

**Regulation M, 12 Code of Federal Regulations § 213.7 (b)(1):** Amount due at lease signing or delivery. Except for the statement of a periodic payment, any affirmative or negative reference to a charge that is a part of the disclosure required under paragraph (d)(2)(ii) of this section shall not be more prominent than that disclosure.

## Advertising a lease rate

**Regulation M, 12 Code of Federal Regulations § 213.7 (b)(2):** Advertisement of a lease rate. If a lessor provides a percentage rate in an advertisement, the rate shall not be more prominent than any of the disclosures in §213.4, with the exception of the notice in §213.4(s) required to accompany the rate; and the lessor shall not use the term "annual percentage rate," "annual lease rate," or equivalent term.

**Regulation M, 12 Code of Federal Regulations § 213.4 (s):** Limitations on rate information. If a lessor provides a percentage rate in an advertisement or in documents evidencing the lease transaction, a notice stating that "this percentage may not measure the overall cost of financing this lease" shall accompany the rate disclosure. The lessor shall not use the term "annual percentage rate," "annual lease rate," or any equivalent term.

**Federal Reserve Board Official Staff Comment 7 (b)(2)** provides as follows: Location of statement. The notice required to accompany a percentage rate stated in an advertisement must be placed in close proximity to the rate without any other intervening language or symbols. For example, a lessor may not place an asterisk next to the rate and place the notice elsewhere in the advertisement. In addition, with the exception of the notice required by §213.4(s), the rate cannot be more prominent than any other §213.4 disclosure stated in the advertisement.

## Regulation M trigger terms and required disclosures

**Regulation M, 12 Code of Federal Regulations § 213.7 (d):**

Advertisement of terms that require additional disclosure—(1) Triggering terms. An advertisement that states any of the following items shall contain the disclosures required by paragraph (d)(2) of this section, except as provided in paragraphs (e) and (f) of this section:

(i) The amount of any payment; or

(ii) A statement of any capitalized cost reduction or other payment (or that no payment is required) prior to or at consummation or by delivery, if delivery occurs after consummation.

(2) Additional terms. An advertisement stating any item listed in paragraph (d)(1) of this section shall also state the following items:

(i) That the transaction advertised is a lease;

(ii) The total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;

(iii) The number, amounts, and due dates or periods of scheduled payments under the lease;

(iv) A statement of whether or not a security deposit is required; and

(v) A statement that an extra charge may be imposed at the end of the lease term where the lessee's liability (if any) is based on the difference between the residual value of the leased property and its realized value at the end of the lease term. (Author note: this is not required with regard to closed-end leases.)

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## Use of toll-free number

**Regulation M, 12 Code of Federal Regulations § 213.7 (f):**

Alternative disclosures—television or radio advertisements—(1) Toll-free number or print advertisement. An advertisement made through television or radio stating any item listed in paragraph (d)(1) of this section complies with paragraph (d)(2) of this section if the advertisement states the items listed in paragraphs (d)(2)(i) through (iii) of this section, and:

(i) Lists a toll-free telephone number along with a reference that such number may be used by consumers to obtain the information required by paragraph (d)(2) of this section; or

(ii) Directs the consumer to a written advertisement in a publication of general circulation in the community served by the media station, including the name and the date of the publication, with a statement that information required by paragraph (d)(2) of this section is included in the advertisement. The written advertisement shall be published beginning at least three days before and ending at least ten days after the broadcast.

(2) Establishment of toll-free number. (i) The toll-free telephone number shall be available for no fewer than ten days, beginning on the date of the broadcast.

(ii) The lessor shall provide the information required by paragraph (d)(2) of this section orally, or in writing upon request.

The following are Federal Reserve Board Comments 7(f)(1).01-.04 with regard to toll-free number advertising:

1. Publication in general circulation. A reference to a written advertisement appearing in a newspaper circulated nationally, for example, USA Today or the Wall Street Journal, may satisfy the general circulation requirement in §213.7(f)(1)(ii).

2. Toll-free number, local or collect calls. In complying with the disclosure requirements of §213.7(f)(1)(i), a lessor must provide a toll-free number for nonlocal calls made from an area code other than the one used in the lessor's dialing area. Alternatively, a lessor may provide any telephone number that allows a consumer to reverse the phone charges when calling for information.

3. Multi-purpose number. When an advertised toll-free number responds with a recording, lease disclosures must be provided early in the sequence to ensure that the consumer receives the required disclosures. For example, in providing several dialing options—such as providing directions to the lessor's place of business—the option allowing the consumer to request lease disclosures should be provided early in the telephone message to ensure that the option to request disclosures is not obscured by other information.

4. Statement accompanying toll-free number. Language must accompany a telephone and television number indicating that disclosures are available by calling the toll-free number, such as "call 1-800-000- 0000 for details about costs and terms."

## Record retention

**Regulation M, 12 Code of Federal Regulations § 213.8:**

A lessor shall retain evidence of compliance with the requirements imposed by this part, other than the advertising requirements under §213.7, for a period of not less than two years after the date the disclosures are required to be made or an action is required to be taken.


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## California lease law definitions

**California Civil Code § 2985.71:** (a) "Motor vehicle" means any vehicle required to be registered under the Vehicle Code. Motor vehicle does not include any trailer which is sold in conjunction with a vessel.

(b) "Lessor" includes "bailor" and is a person who is engaged in the business of leasing, offering to lease or arranging the lease of a motor vehicle under a lease contract.

For the purpose of this subdivision, "person" means an individual, partnership, corporation, limited liability company, estate, trust, cooperative, association or any other legal entity.

(c) "Lessee" includes "bailee" and is a natural person who leases, offers to lease or is offered the lease of a motor vehicle under a lease contract.

(d) "Lease contract" means any contract for or in contemplation of the lease or bailment for the use of a motor vehicle, and the purchase of services incidental thereto, by a natural person for a term exceeding four months, primarily for personal, family or household purposes, whether or not it is agreed that the lessee bear the risk of the motor vehicle's depreciation. Lease contract does not include a lease for agricultural, business or commercial purposes, or to a government or governmental agency or instrumentality.

(e) "Regulation M" means any rule, regulation, or interpretation promulgated by the Board of Governors of the Federal Reserve System under the federal Consumer Leasing Act (15 U.S.C. Secs. 1667-1667e), and any interpretation or approval issued by an official or employee of the Federal Reserve System duly authorized by the board to issue such interpretations or approvals.

(f) "Constant yield method" means the following:

(1) In the case of a periodic payment lease, the method of determining the rent charge portion of each base payment in which the rent charge for each computational period is earned in advance by multiplying the constant rate implicit in the lease contract times the balance subject to rent charge as it declines during the scheduled lease term. At any time during the scheduled term of a periodic payment lease, the balance subject to rent charge is the difference between the adjusted capitalized cost and the sum of (A) all depreciation and other amortized amounts accrued during the preceding computational periods and (B) the first base periodic payment.

(2) In the case of a single payment lease, the method of determining the periodic earning of rent charges in which the rent charge for each computational period is earned in advance by multiplying the constant rate implicit in the lease contract times the balance subject to rent charge as it increases during the scheduled lease term. At any time during the scheduled term of a single payment lease, the balance subject to rent charge is determined by subtracting from the residual value the total rent charge scheduled to be earned over the term of the lease contract and adding to the difference all rent charges accrued during the preceding computational periods.

(3) Periodic rent charge calculations are based on the assumption that the lessor will receive the lease payments on their exact due dates and that the lease does not end before its scheduled termination date.

## California lease trigger terms and disclosure requirements

**California Civil Code § 2985.71:**

(a) Any solicitation to enter into a lease contract that includes any of the following items shall contain the disclosures described in subdivision (b):

(1)The amount of any payment.

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(2) A statement of any capitalized cost reduction or other payment required prior to or at consummation or by delivery, if delivery occurs after consummation.

(3) A statement that no capitalized cost reduction or other payment is required prior to or at consummation or by delivery, if delivery occurs after consummation.

(b) A solicitation to enter into a lease contract that includes any item listed in subdivision (a) shall also clearly and conspicuously state all of the following items:

(1) All of the disclosures prescribed by Regulation M set forth in the manner required or permitted by Regulation M, whether or not Regulation M applies to the transaction.

(2) The mileage limit after which mileage charges may accrue and the charge per mile for mileage in excess of the stated mileage limit.

(3) The statement "Plus tax and license" or a substantially similar statement, if amounts due for use tax, license fees, and registration fees are not included in the payments.

(c) No solicitation to aid, promote, or assist directly or indirectly any lease contract may state that a specific lease of any motor vehicle at specific amounts or terms is available unless the lessor usually and customarily leases or will lease that motor vehicle at those amounts or terms.

(d) A failure to comply with the provisions of the section shall not affect the validity of the leasing contract. No owner or employee of any entity, other than the lessor that serves as a medium in which a lease solicitation appears or through which a lease solicitation is disseminated, shall be liable under this section.

## Discussion

The Federal Reserve Board Staff Commentary to Regulation M gives guidance in the interpretation of the various laws and regulations pertaining to lease advertising (to see, type this in browser: bit.ly/frbcomments). Some of the Staff Comments are referenced below.

### Examples can be used

The Federal Reserve Board Staff Comment 7(d)(1) to Regulation M states that in a multi-lease advertisement, an example of one or more typical leases with a statement of all the terms applicable to each may be used. The examples must be labeled as such and must reflect representative lease terms that are made available by the lessor to consumers.

### Due date requirement

The due date disclosure requirement of Regulation M is satisfied when the advertisement says, for example, "$260 a month."

### Third-party fees

The Federal Reserve Board Staff Commentary regarding third-party fees recognizes that such fees vary state by state. In disclosing the total amount due at lease signing a lessor may:

i. Exclude third-party fees such as taxes, license, and registration fees and disclose that fact; or

ii. Provide a periodic payment or total that includes third-party fees based on a particular state or locality as long as that fact and the fact that fees may vary by state or locality are disclosed.


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For more information: See Comment 7(d)(2) (to see, type this in browser: bit.ly/frbcomments).

Note: As noted previously, California law requires the statement: "Plus tax and license" or a substantially similar statement, if amounts due for use tax, license fees, and registration fees are not included in the payments.

## Always state "plus tax and license"

There is sometimes confusion about the disclosure "Plus tax and license" when tax and license are included in the advertised amount due at start. California Civil Code Section 2985.71(b)(3) requires a lease advertisement to clearly and conspicuously state: "The statement 'Plus tax and license' or a substantially similar statement, if amounts due for use tax, license fees, and registration fees **are not included in the payments."**

The words "are not included in the payments" mean that **"Plus tax and license" must be used if tax and license are not included in all the advertised payments**. It would be rare, if ever, that all taxes and license fees would be included in the advertised lease payments for the entire term of the lease. Because of this, the statement "Plus tax and license" should always be used in every lease advertisement.

## No itemization of amount due at start necessary

In lease advertising, an itemization of the amount due at lease signing is not required. The regulation requires advertising only the total amount due at lease signing or delivery, not an itemization of its component parts.

For more information: See Federal Reserve Board Staff Comment 7(b)(1) (to see, type this in browser: bit.ly/frbcomments).

However, it is alright to disclose to consumers that some tax and first-year license are included in the amount due at start. Similarly, if the security deposit is included in the amount due at start, that can be stated. There should be a short description of whatever tax is included, such as the tax on 1st payment.

Example: The ad could read: "$2,500 due at start (includes tax [describe tax included] , license and security deposit)." However, the statement "Plus tax and license" should also be included somewhere else in the lease ad to satisfy the required "Plus tax and license" disclosure as discussed above.

## Advertising leases with rebates

There has been law enforcement activity over lease advertising that prominently features the amount due at lease signing, especially when the advertisement emphasizes $0 due at signing. If such a message is promoted, it should be factually accurate. Legal concerns arise when there is actually a significant amount due at signing and that amount is deceptively disclosed or buried in the fine print, such as for a security deposit or an amount only covered by factory rebates if certain conditions are met, or even for tax and other government fees.

If a dealership decides to highlight the fact that the customer pays nothing out of pocket on a lease when a rebate is involved, the best practice would be to make a statement such as $0 out of pocket after application of factory rebate, and to only make such a statement when no conditional rebate is involved. If the dealership elects to use a conditional rebate to achieve $0 out of pocket, to minimize the legal risk involved, the applicable rebate conditions should be clearly and conspicuously disclosed near the $0 out of pocket

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reference and in compliance with the equal prominence rule. That rule provides that except for a statement of the monthly or other periodic lease payment, if there is any statement of any amount due at lease signing (such as "$500 down") which is part of the total amount due at lease signing, or a statement that a particular charge is not due (such as "$0 down"), then such a statement shall not appear more prominently than the total due at lease signing.

### Multiple page ads and electronic advertisements

Multiple-page advertisements consist of a series of numbered pages—for example, a supplement to a newspaper. A mailing comprising several separate flyers or pieces of promotional material in a single envelope is not a single multiple-page advertisement.

A catalog or other multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an internet Web site) is a single advertisement (requiring only one set of lease disclosures) if it contains a table, chart, or schedule with the required disclosures. If one of the triggering terms listed in §213.7(d)(1) appears in a catalog, or in a multiple-page or electronic advertisement, it must clearly direct the consumer to the page or location where the table, chart, or schedule begins. For example, in an electronic advertisement, a term triggering additional disclosures may be accompanied by a link that directly connects the consumer to the additional information.

For more information: See Federal Reserve Board Staff Comment 7(c) (to see, type this in browser: bit.ly/frbcomments).

## Reason for the law

These lease advertising laws provide consumers with information to make informed decisions when leasing a vehicle.

## Cross-references

Chapter 12: Qualifiers, Disclosures, and Disclaimers

## Examples

See Example 11, Example 12, Example 13, and Example 14.


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# Chapter 43 - Credit Advertising

## Basic rule

### Deferred and escalated payments

All deferred and escalated payments must be clearly identified.

### "Everybody Financed"

Words such as these must not be used unless credit will be extended to everyone regardless of their credit rating.

### "On approved credit"

It is unlawful for a dealer to use the words "on approved credit," or "on credit approval" unless these terms are unabbreviated and clearly and conspicuously disclosed.

For more information: See Chapter 12, Qualifiers, Disclosures, and Disclaimers, for the "clear and conspicuous" rules.

### Available terms

The ad should state only those credit terms that actually are or will be arranged or offered by the dealer.

### Downpayment advertising

Chapter 41, Downpayments in Installment Sales, should be read with this chapter.

### Regulation Z trigger terms

Chapter 39, Installment Sales and Regulation Z Trigger Terms, should be read with this chapter.

## Text of the Law

### Clear and conspicuous requirement

**California Vehicle Code § 11713.16(i):** It is unlawful for a dealer to fail to clearly and conspicuously disclose in an advertisement for the sale of a vehicle any disclosure required by this code or any qualifying term used in conjunction with advertised credit terms. Unless otherwise provided by statute, the specific size of disclosures or qualifying terms is not prescribed.

### "On Approved Credit"

**California Vehicle Code § 11713.16(b):** It is unlawful for a dealer to use the terms "on approved credit" or "on credit approval" in an advertisement for the sale of a vehicle unless those terms are clearly and conspicuously disclosed and unabbreviated.

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## Advertising unpaid balance

**California Vehicle Code § 11713.16(c):** It is unlawful for a dealer to advertise an amount described by terms such as "unpaid balance" or "balance can be financed" unless the total sale price is clearly and conspicuously disclosed and in close proximity to the advertised balance.

## Credit terms and payments

**California Vehicle Code § 11713.16(d):** It is unlawful for a dealer to advertise credit terms that fail to comply with the disclosure requirements of Section 226.24 of Title 12 of the Code of Federal Regulations. Advertisements of terms that include escalated payments, balloon payments, or deferred downpayments shall clearly and conspicuously identify those payments as to amounts and time due.

## "Everyone Financed"

**California Vehicle Code § 11713.16(f):** It is unlawful for a dealer to advertise claims such as "everyone financed," "no credit rejected," or similar claims unless the dealer is willing to extend credit to any person under any and all circumstances.

## Use of "0 Down" and what downpayment includes

**California Vehicle Code § 11713.16(g):** It is unlawful for a dealer to advertise the amount of any downpayment unless it represents the total payment required of a purchaser prior to delivery of the vehicle, including any payment for sales tax or license. Statements such as "$_____ delivers," "$____ puts you in a new car" are examples of advertised downpayments.

## Clear and conspicuous disclosure of credit terms; specific size not prescribed

**California Vehicle Code § 11713.16(g):** It is unlawful for a dealer to fail to clearly and conspicuously disclose in an advertisement for the sale of a vehicle any disclosure required by this code or any qualifying term used in conjunction with advertised credit terms. Unless otherwise provided by statute, the specific size of disclosures or qualifying terms is not prescribed.

## No downpayment and downpayment loans

**California Vehicle Code § 11713(k):** It is unlawful for any licensee to advertise or otherwise represent, or knowingly allow to be advertised or represented on behalf of, or at the place of business of, the licenseholder that no downpayment is required in connection with the sale of a vehicle when a downpayment is in fact required and the buyer is advised or induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the vehicle. The terms "no downpayment," "zero down delivers," or similar terms shall not be advertised unless the vehicle will be sold to a qualified purchaser without a prior payment of any kind or trade-in.

## Business and Professions Code prohibition

**California Business and Professions Code § 17538.7 (d):** It is unlawful for a seller to advertise terms that actually or not or will not be arranged or offered by the creditor.


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### Actually available terms

**Regulation Z, 12 Code of Federal Regulations § 226.24 (a):** If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

## Discussion

### Clear and conspicuous rule

All credit terms and qualifications must be disclosed clearly and conspicuously. For more information, see Chapter 12, Qualifiers, Disclosures, and Disclaimers, for the rules regarding a clear and conspicuous disclosure.

### "Bad Credit? No Problem."

Advertising such as "Bad credit? No Problem" could be construed under the Vehicle Code § 11713.16(f) quoted above to mean that the customer will be financed regardless of what the credit problems are. It would be better to say "Bad credit? Let us help," or words of similar meaning showing that poor credit history may not be an obstacle to obtaining financing.

### OAC

The abbreviation "OAC" or "O.A.C." (meaning "On Approved Credit") must not be used. Vehicle Code § 11713.16(b) states that "On Approved Credit," or "On Credit Approval", is not to be abbreviated. The words "On Approved Credit", or similar terms, must be stated clearly and conspicuously. There is no type size requirement.

### Credit terms with high qualifications

Credit terms for which only a small percentage of the population can qualify should not be advertised unless the terms of the qualifications are clearly and conspicuously stated. Otherwise, the advertiser may be looked upon as conducting a type of bait and switch advertising.

### Naming the company to which contract will be assigned

Dealers may want to consider using the words "on approved credit by (here name of the finance company to whom dealer will be assigning the contract)" to avoid any claim that the dealer is obligated to provide credit and carry the contract. Most conditional sales contracts, however, allow a dealer to cancel the contract if the dealer follows the specific procedures in the conditional sales contract and is unable to assign the contract to the financial institution(s) with which the dealer conducts business.

## Reason for the law

The laws regarding credit advertising are designed to provide consumers with basic**, fair** information and clear and conspicuous disclosures regarding available credit terms.

## Cross-references

Chapter 30: Cash/Credit Rule

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Chapter 41: Downpayments in Installment Sales

Chapter 39: Installment Sales and Regulation Z Trigger Terms

Chapter 42: Leases and Regulation M

Chapter 12: Qualifiers, Disclosures, and Disclaimers

## Examples

See Example 4, Example 6, Example 8, Example 11, and Example 12.


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# Part E
# Various advertising claims and offers




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# Chapter 44 - Comparison and Factual Claims Advertising

## Basic rule

It is unlawful for any person advertising to consumers in California to make false or misleading advertising claims that do any of the following:

1. Purport to be based on factual, objective, or clinical evidence.

2. Compare the advertised product's effectiveness or safety to that of other brands.

3. Purport to be based on fact.

## Text of the law

### Comparison advertising rules

**California Business and Professions Code § 17508:(a):** It shall be unlawful for any person doing business in California and advertising to consumers in California to make any false or misleading advertising claim, including claims that (1) purport to be based on factual, objective, or clinical evidence, (2) compare the product's effectiveness or safety to that of other brands or products, or (3) purport to be based on any fact.

(b) Upon written request of the Director of Consumer Affairs, the Attorney General, or any city attorney, county counsel, or district attorney, any person doing business in California and in whose behalf advertising claims are made to consumers in California, including claims that (1) purport to be based on factual, objective, or clinical evidence, (2) compare the product's effectiveness or safety to that of other brands or products, or (3) purport to be based on any fact, shall provide to the department or official making the request evidence of the facts on which the advertising claims are based. The request shall be made within one year of the last day on which the advertising claims were made.

Any city attorney, county counsel, or district attorney who makes a request pursuant to this subdivision shall give prior notice of the request to the Attorney General.

(c) The Director of Consumer Affairs, Attorney General, or any city attorney, county counsel, or district attorney may, upon failure of an advertiser to respond by adequately substantiating the claim within a reasonable time, or if the Director of Consumer Affairs, Attorney General, city attorney, county counsel, or district attorney shall have reason to believe that the advertising claim is false or misleading, do either or both of the following:

(1) Seek an immediate termination or modification of the claim by the person in accordance with Section 17535.

(2) Disseminate information, taking due care to protect legitimate trade secrets, concerning the veracity of the claims or why the claims are misleading to the consumers of this state.

(d) The relief provided for in subdivision (c) is in addition to any other relief that may be sought for a violation of this chapter. Section 17534 shall not apply to violations of this section.


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(e) Nothing in this section shall be construed to hold any newspaper publisher or radio or television broadcaster liable for publishing or broadcasting any advertising claims referred to in subdivision (a), unless the publisher or broadcaster is the person making the claims.

(f) The plaintiff shall have the burden of proof in establishing any violation of this section.

(g) If an advertisement is in violation of subdivision (a) and Section 17500, the court shall not impose a separate civil penalty pursuant to Section 17536 for the violation of subdivision (a) and the violation of Section 17500 but shall impose a civil penalty for the violation of either subdivision (a) or Section 17500.

## Discussion

Automobile dealers or manufacturers sometimes do comparison or factual claims advertising, comparing their products with other brands or making factual claims. All such advertising must be based on facts that can be proven. As noted in the statute quoted above, an advertiser making these kinds of claims can be required to present evidence of the facts on which the claims are based.

## Reason for the law

These laws require sellers to back up product claims with verifiable facts.

## Cross-references

Chapter 45: Endorsements and Testimonials

## Example

See Example 5.

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# Chapter 45 - Endorsements and Testimonials

## Basic rule

Testimonials and endorsements may be used in advertising only when they are true and not misleading. Endorsements must always reflect the honest opinion or experience of the endorser.

### What is an endorsement?

According to the FTC Guide for Endorsement and Testimonial Advertising, an endorsement means any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser. The party whose opinions, beliefs, findings, or experience the message appears to reflect is called the endorser and may be an individual, group, or institution. The words "endorsement" and "testimonial" are used interchangeably in the FTC Guide.

### General rules for endorsements

Endorsements must reflect the honest opinions, findings, beliefs, or experiences of the endorser. Furthermore, an endorsement may not convey any express or implied representation that would be deceptive if made directly by the advertiser.

An advertiser may use an endorsement of an expert or celebrity if there is good reason to believe that the endorser continues to subscribe to the views presented.

When the advertisement represents that the endorser uses the endorsed product, the endorser must have been a bona fide user of it at the time the endorsement was given. Additionally, the advertiser may continue to run the advertisement only so long as it has good reason to believe that the endorser remains a bona fide user of the product.

### Consumer endorsements

An advertisement employing endorsements by one or more consumers about the performance of an advertised product or service will be interpreted as representing that the product or service is effective for the purpose depicted in the advertisement. Therefore, the advertiser must possess and rely upon adequate substantiation, including, when appropriate, competent and reliable scientific evidence, to support such claims made through endorsements in the same manner the advertiser would be required to do if it had made the representation directly, i.e., without using endorsements. Consumer endorsements themselves are not competent and reliable scientific evidence.

An advertisement containing an endorsement relating the experience of one or more consumers on a central or key attribute of the product or service also will likely be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve with the advertised product or service in actual, albeit variable, conditions of use.


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Advertisements presenting endorsements by what are represented, directly or by implication, to be "actual consumers" should utilize actual consumers in both the audio and video, or clearly and conspicuously disclose that the persons in such advertisements are not actual consumers of the advertised product.

### Expert endorsements

If the endorsement is made by an expert, then the endorser must have the expertise that he or she is represented to have.

### Organization endorsements

Endorsements by organizations are viewed as representing the judgment of the group, and the endorsement must be reached by a process sufficient to ensure that the endorsement reflects the collective judgment of the organization.

### Disclosure of connection

When there exists a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement (i.e., the connection is not reasonably expected by the audience), that connection must be fully disclosed. Payment of money or providing some other benefits are examples of a connection between the endorser and the advertiser.

## Text of the law

The general rules above come from the Federal Trade Commission (FTC) Guides Concerning Use of Endorsements and Testimonials in Advertising found in 16 Code of Federal Regulations Part 255.0, and following. Anyone doing endorsement advertising should read the Guides with the examples given. To see the Guides, type this in browser: bit.ly/regsendor.

## Discussion

In addition to reading the FTC Guides Concerning Use of Endorsements and Testimonials in Advertising, anyone doing any type of endorsement advertising should read the FTC's publication "The FTC's Endorsement Guides: What People Are Asking" which was issued in September 2017, and which is a very important publication, particularly because of its discussion about endorsements in social media (to see, type this in browser: bit.ly/endorguide). Here are the topics discussed:

About the Endorsement Guides

When Does the FTC Act Apply to Endorsements?

Product Placements

Endorsements by Individuals on Social Networking Sites

How should I Disclose That I Was Given Something for My Endorsement?

Other Things for Endorsers To Know

Social Media Contest

Online Review Programs

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Soliciting Endorsements

What Are an Advertiser's Responsibilities for What Others Say in Social Media?

What About Intermediaries?

What About Affiliate or Network Marketing?

Expert Endorsers Making Claims Outside of Traditional Advertisements

Employee Endorsements

Using Testimonials That Don't Reflect the Typical Consumer Experience

## Reason for the law

These rules ensure that endorsements and testimonials are not misleading.

## Cross-References

Chapter 44: Comparison and Factual Claims Advertising

Chapter 12: Qualifiers, Disclosures, and Disclaimers

## Additional resources

Native Advertising: A Guide for Businesses. The FTC publishes Native Advertising: A Guide for Businesses (to see, type this in browser: bit.ly/nativeftc). As the Guide instructs, "native advertising," is advertising content that bears a similarity to the news, feature articles, product reviews, entertainment, and other material that surrounds it online. As the Guide further states, a basic truth-in-advertising principle is that it's deceptive to mislead consumers about the commercial nature of the content. Advertisements or promotional messages are deceptive if they convey to consumers expressly or by implication that they're independent, impartial, or from a source other than the sponsoring advertiser – in other words, that they're something other than ads. Why would it be material to consumers to know the source of the information? Because knowing that something is an ad likely will affect whether consumers choose to interact with it and the weight or credibility consumers give the information it conveys.

Consumer Review Fairness Act. The FTC publishes Consumer Review Fairness Act: What Businesses Need to Know (to see, type this in browser: bit.ly/ftcfairness). The Consumer Review Fairness Act (CFRA) (to see, type this in browser: bit.ly/crfaftc) was passed in response to reports that some businesses try to prevent people from giving honest reviews about products or services they received. Some companies put contract provisions in place, including in their online terms and conditions, which allowed them to sue or penalize consumers for posting negative reviews. The Consumer Review Fairness Act protects people's ability to share their honest opinions about a business's products, services, or conduct, in any forum, including social media. The FTC publication explains the CFRA and gives compliance tips.

FTC Enforcement Policy Statement on Deceptively Formatted Advertisements (to see, type this in browser: bit.ly/formatdeceptive)


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# Chapter 46 - Environmental and Green Claims

## Basic rule

It is unlawful for any person to make deceptive or misleading environmental marketing claims, whether explicit or implied. As the Federal Trade Commission states: "Section 5 of the FTC Act prohibits deceptive acts and practices in or affecting commerce. A representation, omission, or practice is deceptive if it is likely to mislead consumers acting reasonably under the circumstances and is material to consumers' decisions. To determine if an advertisement is deceptive, marketers must identify all express and implied claims that the advertisement reasonably conveys. Marketers must ensure that all reasonable interpretations of their claims are truthful, not misleading, and supported by a reasonable basis before they make the claims."

## Text of the law

### California environmental claims law

#### *Requirements when making environmental claims*

**California Business and Professions Code §17580:** (a) Any person who represents in advertising or on the label or container of a consumer good that the consumer good that it manufactures or distributes is not harmful to, or is beneficial to, the natural environment, through the use of such terms as "environmental choice," "ecologically friendly," "earth friendly," "environmentally friendly," "ecologically sound," "environmentally sound," "environmentally safe," "ecologically safe," "environmentally lite," "green product," or any other like term, shall maintain in written form in its records the following information and documentation supporting the validity of the representation:

(1) The reasons why the person believes the representation to be true.

(2) Any significant adverse environmental impacts directly associated with the production, distribution, use, and disposal of the consumer good.

(3) Any measures that are taken by the person to reduce the environmental impacts directly associated with the production, distribution, and disposal of the consumer good.

(4) Violations of any federal, state, or local permits directly associated with the production or distribution of the consumer good.

(5) Whether or not, if applicable, the consumer good conforms with the uniform standards contained in the Federal Trade Commission Guidelines for Environmental Marketing Claims for the use of the terms "recycled," "recyclable," "biodegradable," "photodegradable," or "ozone friendly."

(b) Information and documentation maintained pursuant to this section shall be furnished to any member of the public upon request.

(c) For the purposes of this section, a wholesaler or retailer who does not initiate a representation by advertising or by placing the representation on a package shall not be deemed to have made the representation.

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(d) It is the intent of the Legislature that the information and documentation supporting the validity of the representation maintained under this section shall be fully disclosed to the public, within the limits of all applicable laws.

### *Unlawful to make deceptive marketing claims*

**California Business and Professions Code §17580.5:** (a) It is unlawful for any person to make any untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied. For the purpose of this section, "environmental marketing claim" shall include any claim contained in the "Guides for the Use of Environmental Marketing Claims" published by the Federal Trade Commission.

(b) It shall be a defense to any suit or complaint brought under this section that the person's environmental marketing claims conform to the standards or are consistent with the examples contained in the "Guides for the Use of Environmental Marketing Claims" published by the Federal Trade Commission.

### *Violations are misdemeanors*

**California Business and Professions Code §17581:** Any violation of this article is a misdemeanor punishable by imprisonment in the county jail not to exceed six months, or by a fine not to exceed two thousand five hundred dollars ($2,500), or by both.

### Federal environmental claims law

Federal law regarding environmental claims is found in the Federal Trade Commission "Guides for Use of Environmental Marketing Claims" at 16 Code of Federal Regulations §§ 260.1- 260.17. Anyone advertising or marketing environmental claims needs to review these regulations. See also the FTC publication Environmental Claims: Summary of the Green Guides (to see, type this in browser: hbit.ly/greenftc).

## Discussion

Under California Business and Professions Code § 17580 quoted above, if there are any advertising claims that a particular product is environmentally friendly, the advertiser must maintain in written form information required by that section supporting the validity of the representation. California law applies in addition to federal law.

The federal regulations discussed above should always be consulted when there is any marketing of an environmental claim.

## Reason for the law

The laws regarding environmental claims protect consumers from false and misleading advertising.

## Cross-references

Chapter 45: Endorsements and Testimonials

Chapter 12: Qualifiers, Disclosures, and Disclaimers


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## Additional resources

FTC Policy Statement Regarding Advertising Substantiation (to see, type this in browser: bit.ly/advertisingsubstantiation)

FTC Policy Statement on Deception (to see, type this in browser: bit.ly/ftcdeception)

FTC publication "Summary of Green Claims" (to see, type this in browser: bit.ly/ftcgreen)

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# Chapter 47 - Fuel Economy Claims

## Text of the law

In 2016 the FTC approved changes to the Fuel Economy Guide which had originally been adopted in 1975. The Guide prevents advertisers from making unfair and deceptive fuel economy claims. The 2016 changes add guidance for alternative-fueled vehicles such as electric and flex-fueled vehicles. For the complete text of the Guide see FTC Guide Concerning Fuel Economy Advertising for New Automobiles at 16 Code of Federal Regulations, Part 259 (to see, type this in browser: bit.ly/fuelclaims).

## Basic rules

Below are extrapolations from some sections of the regulations. Anyone doing fuel economy advertising should read the complete regulations because they provide detail and examples of various types of fuel economy advertising.

### Section 259.3 Qualifications and disclosures.

#### *Clear and conspicuous rule*

To prevent deceptive claims, qualifications and disclosures should be clear, prominent, and understandable. To make disclosures clear and prominent, marketers should use plain language and sufficiently large type for a person to see and understand them, should place disclosures in close proximity to the qualified claim, and should avoid making inconsistent statements or using distracting elements that could undercut or contradict the disclosure. The disclosures should also appear in the same format as the claim. For example, for television advertisements, if the fuel economy claim appears in the video, the disclosure recommended by this Guide should appear in the visual format; if the fuel economy claim is audio, the disclosure should be in audio.

### Section 259.4 Advertising guidance.

#### *No misrepresentation*

(a) Misrepresentations. It is deceptive to misrepresent, directly or by implication, the fuel economy or driving range of an automobile.

#### *General fuel economy claims*

(b) General fuel economy claims. General unqualified fuel economy claims, which do not reference a specific fuel economy estimate, likely convey a wide range of meanings about a vehicle's fuel economy relative to other vehicles. Advertisers making general fuel economy claims should disclose the advertised vehicle's EPA fuel economy estimate in the form of the EPA MPG rating.

Example 1: A new car advertisement states: “This vehicle gets great mileage.” To avoid deception, the advertisement should disclose the vehicle's EPA fuel economy estimate (e.g., “EPA-estimated 27 combined MPG”).


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Example 2: An advertisement states: "This car gets great gas mileage compared to other compact cars." Because the advertiser cannot substantiate that the vehicle's rating is better than all or almost all other compact cars, the advertisement is deceptive. In addition, the advertiser may not be able to substantiate other reasonable interpretations of the claim. To address this problem, the advertisement should disclose the vehicle's EPA fuel economy estimate.

### *Matching city or highway driving to the claim*

(c) Matching the EPA estimate to the claim. EPA fuel economy estimates should match the mode of driving claim appearing in the advertisement. If they do not, consumers are likely to associate the stated fuel economy estimate with a different type of driving. Specifically, if an advertiser makes a city or a highway fuel economy claim, it should disclose the corresponding EPA-estimated city or highway fuel economy estimate. If the advertiser makes both a city and a highway fuel economy claim, it should disclose both the EPA estimated city and highway fuel economy rating. If the advertiser makes a general fuel economy claim without specifically referencing city or highway driving, it should disclose the EPA combined fuel economy estimate, or, alternatively, both the EPA city and highway fuel economy estimates.

Example 1: An automobile advertisement states that model "XYZ gets great gas mileage in town." However, the advertisement does not disclose the EPA city fuel economy estimate. Instead, it only discloses the EPA highway fuel economy estimate, which is higher than the model's city estimate. To address this problem, the advertisement should disclose the EPA combined estimate (e.g., "37 MPG for combined driving according to the EPA estimate"), or both the EPA city and highway fuel economy estimates.

Example 2: A new car advertisement states that model "XZA gives you great gas mileage" but only provides the EPA highway fuel economy estimate, ... the advertisement should disclose the EPA combined estimate (e.g., "37 MPG for combined driving according to the EPA estimate"), or both the EPA city and highway fuel economy estimates.

Example 3: An advertisement states: "according to EPA estimates, new cars in this class are rated at between 20 and 32 MPG, while the EPA estimate for this car is an impressive 35 MPG highway." The advertisement is likely to imply that the 20 to 32 MPG range and 35 MPG estimate are comparable. In fact, the "20 and 32 MPG" range reflects EPA city estimates. Therefore, the advertisement is deceptive. To address this problem, the advertisement should only provide an apples-to-apples comparison—either using the highway range for the class or using the city estimate for the advertised vehicle.

### *Disclosure that fuel economy and driving range rating are estimates*

(d) Identifying fuel economy and driving range ratings as estimates. Advertisers citing EPA fuel economy or driving range figures should disclose that these numbers are estimates. Without such disclosures, consumers may incorrectly assume that they will achieve the mileage or range stated in the advertisement. In fact, their actual mileage or range will likely vary for many reasons, including driving conditions, driving habits, and vehicle maintenance. To address potential deception, advertisers may state that the values are "EPA estimate(s)," or use equivalent language that informs consumers that they will not necessarily achieve the stated MPG rating or driving range.

### *Claims within classes of vehicles, comparing different model types, and "up to" claims*

See 16 Code of Federal Regulations § 295.4(g), (h), and (i) for claims within classes of vehicles, comparing different model types, and "up to" claims.

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### *Claims for vehicles that use any mixture of two or more different fuels (flexible-fueled vehicles)*

(j) Claims for flexible-fueled vehicles. Advertisements for flexible-fueled vehicles should not mislead consumers about the vehicle's fuel economy when operated with alternative fuel. If an advertisement for a flexible-fueled vehicle (other than a plug-in hybrid electric vehicle) mentions the vehicle's flexible-fuel capability and makes a fuel economy claim, it should clearly and prominently qualify the claim to identify the type of fuel used. Without such qualification, consumers are likely to take away that the stated fuel economy estimate applies to both gasoline and alternative fuel operation.

Example: An automobile advertisement states: "This flex-fuel powerhouse has a 30 MPG highway rating according to the EPA estimate." The advertisement likely implies that the 30 MPG rating applies to both gasoline and alternative fuel operation. In fact, the ethanol EPA estimate for this vehicle is 25 MPG. Therefore, the advertisement is deceptive. To address this problem, the advertisement could clearly and prominently qualify the claim or disclose the MPG ratings for both gasoline and alternative fuel operation.

### *General driving range claims*

(k) General driving range claims. General unqualified driving range claims, which do not reference a specific driving range estimate, are difficult for consumers to interpret and likely convey a wide range of meanings about a vehicle's range relative to other vehicles. Such claims, which inherently involve comparisons to other vehicles, can mislead consumers about the vehicle class included in the comparison as well as the extent to which the advertised vehicle's driving range differs from other models. Consumers may take away a range of reasonable interpretations from these claims. To avoid possible deception, advertisers making general driving range claims should disclose the advertised vehicle's EPA driving range estimate.

Example: An advertisement for an electric vehicle states: "This car has a great driving range." This claim likely conveys a variety of meanings, including that the vehicle has a better driving range than all or almost all other electric vehicles. However, the EPA driving range estimate for this vehicle is only slightly better than roughly half of all other electric vehicles on the market. Because the advertiser cannot substantiate that the vehicle's driving range is better than all or almost all other electric vehicles, the advertisement is deceptive. In addition, the advertiser may not be able to substantiate other reasonable interpretations of the claim. To address this problem, the advertisement should disclose the vehicle's EPA driving range estimate (e.g., "EPA-estimated range of 70 miles per charge").

### *Visual disclosures on television, audio disclosures, and print and internet disclosures*

(*l*)(2) Disclosure format. The Commission regards the following as constituting "substantially more prominence":

(i) For visual disclosures on television. If the fuel economy claims appear only in the visual portion, the EPA figures should appear in numbers twice as large as those used for any other estimate, and should remain on the screen at least as long as any other estimate. Each EPA figure should be broadcast against a solid color background that contrasts easily with the color used for the numbers when viewed on both color and black and white television.

(ii) For audio disclosures. For radio and television advertisements in which any other estimate is used only in the audio, equal prominence should be given to the EPA figures. The Commission will regard the following as constituting equal prominence: The EPA estimated city and/or highway MPG should be stated, either before or after each disclosure of such other estimate, at least as audibly as such other estimate.


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(iii) For print and Internet disclosures. The EPA figures should appear in clearly legible type at least twice as large as that used for any other estimate. The EPA figures should appear against a solid color, and contrasting background. They may not appear in a footnote unless all references to fuel economy appear in a footnote.

Example 1: An Internet advertisement states: "Independent driving experts took the QXT car for a weekend spin and managed to get 55 miles-per-gallon under a variety of driving conditions." It does not disclose the actual EPA fuel economy estimates, nor does it explain how conditions during the "weekend spin" differed from those under the EPA tests. This advertisement likely conveys that the 55 MPG figure is the same or comparable to an EPA fuel economy estimate for the vehicle. This claim is deceptive because it fails to disclose that fuel economy information is based on a non-EPA test, the source of the non-EPA test, the EPA fuel economy estimates for the vehicle, and all driving conditions or vehicle configurations simulated by the non-EPA test that are different from those used in the EPA test.

Example 2: An advertisement states: "The XZY electric car has a driving range of 110 miles per charge in summer conditions according to our expert's test." It provides no additional information regarding this driving range claim. This advertisement likely conveys that this 110-mile driving range figure is comparable to an EPA driving range estimate for the vehicle. The advertisement is deceptive because it does not clearly state that the test is a non-EPA test, it does not provide the EPA estimated driving range, and it does not explain how conditions referred to in the advertisement differed from those under the EPA tests. Without this information, consumers are likely to confuse the claims with range estimates derived from the official EPA test procedures.

### *Non-EPA test*

There are other rules in the guide for advertising fuel economy estimates derived from a non-EPA test.

## Discussion

The FTC will regard as an express or implied fuel economy representation one which an ordinary consumer, on considering the representation in the context of the entire advertisement, would understand as referring to the fuel economy performance of the vehicle or vehicles advertised.

## Reason for the law

The reason for the FTC Fuel Economy Guide is to make sure that fuel economy is accurately disclosed in advertising.

## Cross-references

Chapter 12: Qualifiers, Disclosures, and Disclaimers

## Example

See Example 5.

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# Chapter 48 - Made in the USA

## Basic rule

The Federal Trade Commission's position regarding claims of "Made in the USA," or similar claims, is that for a product to be called "Made in USA," or claimed to be of domestic origin without qualifications or limits on the claim, the product must be "all or virtually all" made in the U.S. According to the FTC "all or virtually all" means that all significant parts and processing that go into the product must be of U.S. origin. That is, the product should contain no, or negligible, foreign content.

Under California law quoted below it is unlawful to sell or offer for sale in California any merchandise on which the words, "Made in the USA," or similar words, appear on merchandise or the container for the merchandise if any part is made outside the United States, subject to some exceptions that there may be certain percentages of non-USA content.

## Text of the law

### California Business and Professions Code

**California Business and Professions Code § 11533.7:** (a) It is unlawful for any person, firm, corporation, or association to sell or offer for sale in this state any merchandise on which merchandise or on its container there appears the words “Made in U.S.A.,” “Made in America,” “U.S.A.,” or similar words if the merchandise or any article, unit, or part thereof, has been entirely or substantially made, manufactured, or produced outside of the United States.

(b) This section shall not apply to merchandise made, manufactured, or produced in the United States that has one or more articles, units, or parts from outside of the United States, if all of the articles, units, or parts of the merchandise obtained from outside the United States constitute not more than 5 percent of the final wholesale value of the manufactured product.

(c) (1) This section shall not apply to merchandise made, manufactured, or produced in the United States that has one or more articles, units, or parts from outside of the United States, if both of the following apply:

(A) The manufacturer of the merchandise shows that it can neither produce the article, unit, or part within the United States nor obtain the article, unit, or part of the merchandise from a domestic source.

(B) All of the articles, units, or parts of the merchandise obtained from outside the United States constitute not more than 10 percent of the final wholesale value of the manufactured product.

(2) The determination that the article, unit, or part of the merchandise cannot be made, manufactured, produced, or obtained within the United States from a domestic source shall not be based on the cost of the article, unit, or part.

(d) This section shall not apply to merchandise sold for resale to consumers outside of California.

(e) For purposes of this section, merchandise sold or offered for sale outside of California shall not be deemed mislabeled if the label conforms to the law of the forum state or country within which they are sold or offered for sale.


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### FTC rules on "Made in USA" claims

The FTC has broad jurisdiction to regulate deceptive advertising. A claim of "Made in the USA," or a similar claim, must be true. If not, the advertisement is deceptive and subject to FTC or other government action. The following FTC Publications explain the FTC position and answer questions a seller or advertiser might have:

Complying with the Made in USA Standard (to see, type this in browser: bit.ly/ftcusamade)

Selling 'American-Made' Products? What Businesses Need to Know About Making Made in USA Claims (to see, type this in browser: bit.ly/inusamade)

Enforcement Policy Statement on U.S. Origin Claim (to see, type this in browser: bit.ly/enforcementftc)

The following is from the FTC's Enforcement Policy Statement

"As set out in the Deception Policy Statement, the Commission will find an advertisement or label deceptive under Section 5, and therefore unlawful, if it contains a representation or omission of fact that is likely to mislead consumers acting reasonably under the circumstances, and that representation or omission is material. In addition, objective claims carry with them the implication that they are supported by valid evidence. It is deceptive, therefore, to make a claim unless, at the time the claim is made, the marketer possesses and relies upon a reasonable basis substantiating the claim. Thus, a "Made in USA" claim, like any other objective advertising claim, must be truthful and substantiated.

"A representation may be made by either express or implied claims. "Made in USA" and "Our products are American made" would be examples of express U.S. origin claims. In identifying implied claims, the Commission focuses on the overall net impression of an advertisement, label, or other promotional material. This requires an examination of both the representation and the overall context, including the juxtaposition of phrases and images, and the nature of the transaction. Depending on the context, U.S. symbols or geographic references, such as U.S. flags, outlines of U.S. maps, or references to U.S. locations of headquarters or factories, may, by themselves or in conjunction with other phrases or images, convey a claim of U.S. origin. For example, assume that a company advertises its product in an advertisement that features pictures of employees at work at what is identified as the company's U.S. factory, these pictures are superimposed on an image of a U.S. flag, and the advertisement bears the headline "American Quality." Although there is no express representation that the company's product is "Made in USA," the net impression of the advertisement is likely to convey to consumers a claim that the product is of U.S. origin."

## Discussion

The California statute discussed above was effective on January 1, 2016. That statute establishes certain safe harbors, one which is 5% of foreign content, and the other 10% of foreign content under the conditions in the statute.

Dealers should be aware of the American Automobile Labeling Act whereby automobiles have a label showing where the vehicle was assembled, the percentage of equipment that originated in the U.S. and Canada, and the country of origin of the engine and transmission.

California Civil Code Section 1770(27) of the California Legal Remedies Act makes the following unlawful: Representing that a product is made in California by using a Made in California label created pursuant to Section 12098.10 of the Government Code unless the product complies with Section 12098.10 of the Government Code.

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## Reason for the law

The goal of "Made in the USA" laws is that such claims be truthful so consumers can rely on them.


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# Chapter 49 - Satisfaction Guarantees

## Basic rule

If the dealer advertises that a vehicle may be returned if the customer is not satisfied, the advertisement must give the terms of the offer and the terms must be presented to the buyer in writing before the buyer signs a sales contract.

## Text of the law

### California regulation –satisfaction guarantees

**13 California Code of Regulations § 260.07:** If a dealer or lessor-retailer advertises that a vehicle may be returned if the purchaser is not satisfied, the advertisement must clearly state the terms and conditions of the offer. In addition, the dealer or lessor-retailer must furnish the buyer with a written copy of the terms and conditions of return before obtaining the purchaser's signature to a purchase order or sales contract.

### Federal law - satisfaction guarantees

**Part 239 of Title 16 of the Code of Federal Regulations, Guides for the Advertising of Warranties and Guarantees, § 239.3:** "Satisfaction Guarantees" and similar representations in advertising; disclosure in advertising that mentions "satisfaction guarantees" or similar representations.

(a) A seller or manufacturer should use the terms "Satisfaction Guarantee," "Money Back Guarantee," "Free Trial Offer," or similar representations in advertising only if the seller or manufacturer, as the case may be, refunds the full purchase price of the advertised product at the purchaser's request.

(b) An advertisement that mentions a "Satisfaction Guarantee" or a similar representation should disclose, with such clarity and prominence as will be noticed and understood by prospective purchasers, any material limitations or conditions that apply to the "Satisfaction Guarantee" or similar representation.

Examples: These examples are for both print and broadcast advertising. These examples are illustrative, not exhaustive.

Example A: (In an advertisement mentioning a satisfaction guarantee that is conditioned upon return of the unused portion within 30 days) "We guarantee your satisfaction. If not completely satisfied with Acme Spot Remover, return the unused portion within 30 days for a full refund."

Example B: (In an advertisement mentioning a money back guarantee that is conditioned upon return of the product in its original packaging) "Money Back Guarantee! Just return the ABC watch in its original package and ABC will fully refund your money."

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## Discussion

### Issues to consider

There are many pitfalls in allowing a vehicle to be returned if a customer is not satisfied. Issues such as damage, abuse of the vehicle, and insurance must be considered in the offer. Then, depending on how the offer is worded, the dealer may be required to refund all money the customer has paid.

### Single document rule

If the sale is made by using a conditional sale contract, then the rule that all terms of the sale must be stated in a "single document" may apply. It is consequently suggested that any dealer employing this type of advertising have the offer reviewed by the dealer's attorney.

### Car buyer's bill of rights

Note that Vehicle Code §11713.21 requires a dealer to offer the buyer of a used vehicle a contract cancellation option agreement which allows the buyer to return the vehicle without cause. See the statute for some exemptions from this law.

## Reason for the law

The law regarding satisfaction guarantees protects the consumer by requiring that the full details of the guarantee be in writing and delivered to the purchaser.

## Cross-references

Chapter 52: Warranty Advertising


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# Chapter 50 - Guaranteed Trade-in Allowances

## Basic rule

A dealer may not advertise a guaranteed trade-in allowance.

## Text of the law

### Guaranteed trade-in allowances prohibited

**California Vehicle Code § 11713.1 (*l*):** It is unlawful for a dealer to advertise a guaranteed trade-in allowance.

## Discussion

As the statute states, dealers cannot advertise a guaranteed trade-in allowance in any way.

If an advertisement states: "We'll pay off your trade-in, no matter how much you owe," or something similar, then the ad should also clearly and conspicuously state: "Any amount you owe which is more than the amount allowed on your trade-in will be added to the balance of your purchase loan," or some similar disclosure.

## Reason for the Law

The law prohibiting guaranteed trade-in allowances prevents the dealer from raising the price of a vehicle to compensate for the guaranteed trade-in allowance. The reason for this law is similar to the reason for the law prohibiting dealer rebates and cash back.

## Example

See Example 4.

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# Chapter 51 - Free Goods and Services

## Basic rule

It is unlawful for a dealer to offer free goods and services conditioned on the purchase of a vehicle. Federal Trade Commission guidelines also provide general rules for all merchants in the advertising of free goods and services, and in particular when the price of the item being purchased is subject to negotiation.

## Text of the law

### California statute regarding free advertising for vehicle purchase

**California Vehicle Code § 11713.1(h)**: It is unlawful for a dealer to advertise free merchandise, gifts, or services provided by a dealer contingent on the purchase of a vehicle. The term "free" includes merchandise or services offered for sale at a price less than the seller's cost of the merchandise or services.

### Federal law regarding free advertising

The Federal Trade Commission Guide at 16 Code of Federal Regulations § 251.1 gives further guidance on the use of the word "free" and similar representations. Section (g) focuses on the prohibition of the word "free" when the price of the merchandise is negotiated. It states:(g) Negotiated sales. If a product or service usually is sold at a price arrived at through bargaining, rather than at a regular price, it is improper to represent that another product or service is being offered "Free" with the sale. The same representation is also improper where there may be a regular price, but where other material factors such as quantity, quality, or size are arrived at through bargaining.

The full text of the FTC Guide Concerning Use of the Word "Free" and Similar Representations is at 16 Code of Federal Regulations § 251 (to see, type this in browser: bit.ly/ftcfree).

## Discussion

### Does not apply after process of negotiation has begun

According to a statement of Legislative Intent when this law was enacted, it was not intended to apply to the use of the word "free" after the process of negotiation in a specific transaction has begun. In other words, a dealer can offer a customer other accessories and equipment without further charge once negotiations have commenced. (See statement of Legislative Intent below.)

### Cannot offer goods or services at less than dealer's cost

The statute also defines the term "free" to include merchandise or services offered for sale at a price less than the seller's cost. Therefore, a dealer could not advertise that a customer can purchase a trip to Hawaii for $1 with the purchase of a vehicle.


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### Can offer free goods or services as incentive to visit dealership

Free merchandise or services can be offered for taking a test drive or for visiting the dealership. See Chapter 58, Incentives to Visit Dealership.

### Goods or services can be included with purchase

A dealer may also advertise that certain item are "included with the purchase" if there is no implication that the items offered are free. Thus, advertising which indicates that oil changes or a bed liner are included with the purchase should avoid the "no free goods or services" prohibition. However, dealers should be careful not to include items that have no reasonable relationship to a vehicle sale, such as television sets or trips to Hawaii, which would not be expected to be included in the purchase price of a vehicle.

### Does not apply to the service department if prices are not negotiated

Unlike with the purchase of a vehicle, a dealer may offer something free in connection with service and parts advertising. However, do not raise the price of the service and/or parts purchase to cover the cost of whatever is advertised as free.

### Statement of legislative intent

The statement of Legislative Intent written by AB 4020's authors in 1988 provided in part as follows:

Section 11713.3(h) is intended to apply to the full range of deceptive advertising practices involving the use of the term "free." However, it is not intended that the provision apply to the use of the term "free" after the process of price negotiations in a specific transaction has begun.

For example, it is not intended that subdivision (h) apply to the following hypothetical transaction: during price negotiations, a dealer offers to sell a vehicle without a particular accessory at a specific price, the prospective customer rejects the offer, and the dealer then offers to sell the vehicle at the previously quoted price and to supply the particular accessory for no additional charge. The offer of an item for no additional charge once the give-and-take of a price negotiation has begun in this example is not the advertising of "free" merchandise.

Note about free goods and services provided by third party: This prohibition only applies when the dealer offers the free goods or services. If a third party provides something free to a dealer's customers that the dealer does not purchase from a third party, then these rules do not apply. For example, a dealer could advertise a free ski lift pass with the purchase of a vehicle if the pass is provided by the ski lift operator at no charge to the dealer. In this type of advertisement, it would be best if the advertisement reflected that the pass is being provided by the ski lift operator.

## Reason for the law

The reason for this law is to prevent dealers from recouping the cost of merchandise or services advertised as free by increasing the price of the vehicle or negotiating a higher price than they would have if the goods or services were not being provided.

## Cross-references

Chapter 58: Incentives to Visit Dealership

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## Example

See Example 2.


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# Chapter 52 - Warranty Advertising

## Basic rule

When a warranty or guarantee is advertised, the advertisement must clearly disclose that prior to the sale, a prospective purchaser can inspect or review the written warranty where the product is sold. A warranty should be advertised as a "limited warranty" because it would be rare for a dealer or manufacturer to provide a "full warranty."

## Text of the law

### Detailed rules are in 16 Code of Federal Regulations §§ 239.1-239.5

The detail of the rules regarding warranty advertising are in Part 239 of Title 16 of the Code of Federal Regulations §§ 239.1-239.5, Guides for the Advertising of Warranties and Guarantees (to see, type this in browser: bit.ly/advertisingwarranty).

### Advertisement of warranty must disclose pre-sale availability of warranty

**16 Code of Federal Regulations § 239.2(a):** If an advertisement mentions a warranty or guarantee that is offered on the advertised product, the advertisement should disclose, with such clarity and prominence as will be noticed and understood by prospective purchasers, that prior to sale, at the place where the product is sold, prospective purchasers can see the written warranty or guarantee for complete details of the warranty coverage.

### Television and radio advertising

**16 Code of Federal Regulations § 239.2(a):** In television advertising, the Commission will regard any disclosure of the pre-sale availability of warranties as complying with this Guide if the advertisement makes the necessary disclosure simultaneously with or immediately following the warranty claim and the disclosure is made in the audio portion, or, if in the video portion, it remains on the screen for at least five seconds. [Author note: Although the regulation does not specifically mention radio advertising, this regulation indicates the disclosure should be right after the warranty claim.]

Note: Regulation § 239.2(a) gives examples of pre-sale warranty availability disclosures.

### "Satisfaction Guarantees" and similar representations in advertising; disclosure in advertising that mentions "satisfaction guarantees" or similar representations.

**16 Code of Federal Regulations § 239.3(a):** A seller or manufacturer should use the terms "Satisfaction Guarantee," "Money Back Guarantee," "Free Trial Offer," or similar representations in advertising only if the seller or manufacturer, as the case may be, refunds the full purchase price of the advertised product at the purchaser's request.

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(b) An advertisement that mentions a "Satisfaction Guarantee" or a similar representation should disclose, with such clarity and prominence as will be noticed and understood by prospective purchasers, any material limitations or conditions that apply to the "Satisfaction Guarantee" or similar representation.

Both Regulation §§ 239.3 and 239.4 give examples of proper disclosures.

## "Lifetime" and similar representations.

**16 Code of Federal Regulations § 239.4:** If an advertisement uses "lifetime," "life," or similar representations to describe the duration of a warranty or guarantee, then the advertisement should disclose, with such clarity and prominence as will be noticed and understood by prospective purchasers, the life to which the representation refers.

The following is from those parts of 15. U.S.C. §2302 (b) regarding the requirement that warranty terms be made available to consumers prior to the sale of the product:

## The FTC has rule-making authority regarding pre-sale availability of warranties.

(1)(A) The Commission shall prescribe rules requiring that the terms of any written warranty on a consumer product be made available to the consumer (or prospective consumer) prior to the sale of the product to him.

(B) The Commission may prescribe rules for determining the manner and form in which information with respect to any written warranty of a consumer product shall be clearly and conspicuously presented or displayed so as not to mislead the reasonable, average consumer, when such information is contained in advertising, labeling, point-of-sale material, or other representations in writing.

## The warranty terms can be made available in digital format on the internet.

(4)(A) Except as provided in subparagraph (B), the rules prescribed under this subsection shall allow for the satisfaction of all requirements concerning the availability of terms of a written warranty on a consumer product under this subsection by-

(i) making available such terms in an accessible digital format on the Internet website of the manufacturer of the consumer product in a clear and conspicuous manner; and

(ii) providing to the consumer (or prospective consumer) information with respect to how to obtain and review such terms by indicating on the product or product packaging or in the product manual-

(I) the Internet website of the manufacturer where such terms can be obtained and reviewed; and

(II) the phone number of the manufacturer, the postal mailing address of the manufacturer, or another reasonable non-Internet based means of contacting the manufacturer to obtain and review such terms.

## If the internet is used for warranty disclosure, the seller must make terms available at the location of the sale.

(B) With respect to any requirement that the terms of any written warranty for a consumer product be made available to the consumer (or prospective consumer) prior to sale of the product, in a case in which a consumer product is offered for sale in a retail location, by catalog, or through door-to-door sales, subparagraph (A) shall only apply if the seller makes available, through electronic or other means, at the location of the sale to the consumer purchasing the consumer product the terms of the warranty for the consumer product before the purchase.


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## Duties of seller and warrantor in 16 Code of Federal Regulations §§ 702.1- 702.3 regarding pre-sale availability of warranties whether or not warranties are advertised

The following are parts of 16 Code of Federal Regulations §§ 702.1-702.3 applicable to sellers and those who give warranties (warrantors).

Pre-sale duties of seller to make warranties available to prospective buyer

**16 Code of Federal Regulations § 702.3(a):** The following requirements apply to consumer products actually costing the consumer more than $15.00:

(a) Duties of seller. Except as provided in paragraphs (c) through (d) of this section, the seller of a consumer product with a written warranty shall make a text of the warranty readily available for examination by the prospective buyer by:

(1) Displaying it in close proximity to the warranted product (including through electronic or other means, if the warrantor has elected the option described in paragraph (b)(2) of this section), or

(2) Furnishing it upon request prior to sale (including through electronic or other means, if the warrantor has elected the option described in paragraph (b)(2) of this section) and placing signs reasonably calculated to elicit the prospective buyer's attention in prominent locations in the store or department advising such prospective buyers of the availability of warranties upon request.

## Pre-sale duties of person giving warranties (warrantor) to make warranties available

**16 Code of Federal Regulations § 702.3(b):** Duties of the warrantor. (1) A warrantor who gives a written warranty warranting to a consumer a consumer product actually costing the consumer more than $15.00 shall:

(i) Provide sellers with warranty materials necessary for such sellers to comply with the requirements set forth in paragraph (a) of this section, by the use of one or more of the following means:

(A) Providing a copy of the written warranty with every warranted consumer product;

(B) Providing a tag, sign, sticker, label, decal or other attachment to the product, which contains the full text of the written warranty;

(C) Printing on or otherwise attaching the text of the written warranty to the package, carton, or other container if that package, carton or other container is normally used for display purposes. If the warrantor elects this option a copy of the written warranty must also accompany the warranted product; or

(D) Providing a notice, sign, or poster disclosing the text of a consumer product warranty. If the warrantor elects this option, a copy of the written warranty must also accompany each warranted product.

(ii) Provide catalog, mail order, and door-to-door sellers with copies of written warranties necessary for such sellers to comply with the requirements set forth in paragraphs (c) and (d) of this section. [Author note: (c) and (d) deal with catalog, mail order, and door-to-door sales.]

(2) As an alternative method of compliance with paragraph (b)(1) of this section, a warrantor may provide the warranty terms in an accessible digital format on the warrantor's Internet Web site. If the warrantor elects this option, the warrantor must:

(i) Provide information to the consumer that will inform the consumer how to obtain warranty terms by indicating, in a clear and conspicuous manner, in the product manual or on the product or product packaging:

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(A) The Internet Web site of the warrantor where such warranty terms can be reviewed, and

(B) The phone number, the postal mailing address of the warrantor, or other reasonable non-Internet based means for the consumer to request a copy of the warranty terms;

(ii) Provide a hard copy of the warranty terms promptly and free of charge upon request by a consumer or seller made pursuant to paragraph (b)(2)(i)(B) of this section;

(iii) Ensure that warranty terms are posted in a clear and conspicuous manner and remain accessible to the consumer on the Internet Web site of the warrantor; and

(iv) Provide information with the consumer product or on the Internet Web site of the warrantor sufficient to allow the consumer to readily identify on such Internet Web sites the warranty terms that apply to the specific warranted product.

## Discussion

### FTC Guides for the advertising of warranties and guaranties

If a warranty or guarantee is advertised, the advertisement must disclose that prior to the sale, where the product is sold, so the prospective buyer can see the written warranty or guarantee for complete details of the warranty coverage.

Regulation § 239.2(a) of the FTC Guide gives examples of the disclosures for TV, radio, and print media that comply with the Guides.

The following should be acceptable in advertising a vehicle warranty. "See dealer for copy of limited warranty." Because it is rare that "full" warranties are provided, you almost always will be advertising "limited" warranties.

The Guides also cover “satisfaction guarantees,” which are discussed in Chapter 49, Satisfaction Guarantees.

### Pre-sale availability of warranties whether or not they are advertised

Although state and federal warranty law does not require that a dealer give any written warranty, it does require that a dealer make the terms of the manufacturer’s written warranty available to potential buyers prior to the sale for consumer products costing more than $15. Under 15 United States Code § 2302(b), the terms and conditions of any written consumer warranty must conspicuously be made available to a prospective customer prior to the sale of the product. The federal regulations discussed below give the details about how they are to be made available.

### Pre-sale duties of seller and person giving the warranty (warrantor)

The duties of a seller and the one who is giving the warranty are explained in 16 Code of Federal Regulations § 702.3(a) and (b).

### Duties of seller

The seller of a vehicle or product with a written warranty must make it available to a prospective buyer by:

- Displaying it in close proximity to the warranted product, including through electronic or other means, or


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- furnishing the warranty upon request prior to sale, including through electronic or other means,
- and placing signs reasonably calculated to elicit the prospective buyer's attention in prominent locations in the store or department advising such prospective buyers of the availability of warranties upon request.

If products can be ordered online, then the notice of pre-sale warranty availability must be in close proximity to the warranted product. In November 2013 the FTC issued a compliance letter which said in part: "For online sales, the requirement to make warranties available at the point of purchase can be accomplished easily by, for example, using a clearly-labeled hyperlink, in close proximity to the description of the warranted product, such as "get warranty information here" to lead to the full text of the warranty.

Note: Display of the warranty by electronic means can only be used if the warrantor has elected that option and complied with 16 Code of Federal Regulations § 702.3(b)(2) above.

## Duties of person giving the warranty (the warrantor)

Anyone giving a warranty (the warrantor) must provide the seller of the product with warranty materials by:

- Providing the seller with a written copy for every warranted vehicle or product; or
- providing the warranty terms in an accessible digital format on the warrantor's internet website if the warrantor has elected this option and complied with 16 Code of Federal Regulations § 702.3(b)(2) above; or
- providing the seller with the warranty terms in the other ways allowed by 16 Code of Federal Regulations § 702.3(b)(2) above.

## FTC's Businessperson's Guide to Federal Warranty Law

See the FTC publication Businessperson's Guide to Federal Warranty Law (to see, type this in browser: bit.ly/guidewarr) for a brief explanation of warranty law. Some of the areas discussed are understanding the Magnuson-Moss warranty act, making warranties available prior to sale, and advertising warranties.

Important: This FTC publication does not consider requirements of state laws areas such as terms required in warranties and other state warranty requirements.

## Pre-sale availability of warranties on used vehicles

The dealer also has an obligation to make available to prospective purchasers of used vehicles the terms of any written warranty provided in connection with used vehicle sales. Thus, if a dealer offers a 90 day/50-50 used vehicle limited warranty, or a similar warranty in connection with used vehicle sales, it should be made available as described in Duties of person giving the warranty (the warrantor) above. Any unexpired manufacturer's warranty on a used vehicle should also be available prior to the sale.

## Pre-sale availability of warranties on parts

The same rules discussed above apply to parts sales for which there is a warranty. The warranty must be available in the same way that warranties on vehicles are available.

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Important: See Chapter 55, Service and Parts Advertising, for a discussion of more rules that apply to service and parts advertising.

### Questions and answers

**Question:** Do these laws apply to leases of vehicles?

**Answer:** Yes. In the context of these laws, a lessee would be considered as a buyer.

**Question:** When is a dealer a warrantor?

**Answer:** A dealer is a warrantor if the dealer provides a warranty with the sale of used vehicles or any other product the dealer sells. The dealer would be the warrantor in the sale of a certified pre-owned vehicle under a dealer-certified preowned program, and the manufacturer would be the warrantor in a manufacturer-certified preowned program.

**Question:** Do the pre-sale warranty availability rules apply to online sales?

**Answer:** If products can be ordered online, then a notice of pre-sale warranty availability must be in close proximity to the warranted product. See FTC November 2013 letter discussed above. Also see Chapter 55, Service and Parts Advertising.

## Reason for the law

The laws regarding pre-sale availability of warranties and warranty advertising are designed to provide consumers with detailed information regarding the warranty before purchase.

## Cross-references

Chapter 55: Service and Parts Advertising

Chapter 12: Qualifiers, Disclosures, and Disclaimers

Chapter 49: Satisfaction Guarantees

## Examples

See Example 11.


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# Chapter 53 - Buyers Guide (Used Car Sticker)

## Basic rule

A Buyers Guide, in the form required by federal law, must be displayed on any used vehicle displayed or offered for sale.

## Text of the law

### California law

**California Vehicle Code § 11713.1(t):** It is unlawful for a dealer to display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.

### Federal law

**16 Code of Federal Regulations § 455.2(a):** "(a) General duty. Before you offer a used vehicle for sale to a consumer, you must prepare, fill in as applicable and display on that vehicle the applicable "Buyers Guide" illustrated by Figures 1-2 at the end of this part."

"(1) The Buyers Guide shall be displayed prominently and conspicuously in any location on a vehicle and in such a fashion that both sides are readily readable. You may remove the form temporarily from the vehicle during any test drive, but you must return it as soon as the test drive is over."

For more information: See Part 455 of Title 16 of the Code of Federal Regulations, Section 455.2 (to see, type this in browser: bit.ly/stickerused).

## Discussion

### Dealerships audits

Periodically the FTC conducts audits of dealers to see if they are posting the Buyers Guide on all used vehicles displayed. When there is a failure to comply, the fines imposed are sometimes substantial.

### Proper placement of the guide

In the past, the FTC gave these examples of proper display locations: hanging from the rear-view mirror; resting under the windshield wiper; or hanging from an exterior side view mirror. Examples of improper locations given were inside glove compartments; on the floor; or in the trunk.

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### When sale conducted in Spanish

If a used car sale is conducted in Spanish, both the Buyer's Guide and the statement regarding the Guide required in the sales contract must be in Spanish. Before any sales efforts are conducted in Spanish, a Spanish version of the Buyer's Guide must be posted. See 16 Code of Federal Regulations 455.5 ( to see, type this in browser: bit.ly/stickerused).

Note on both sides must be readable: While the "both sides are readily readable" provision is somewhat ambiguous, based upon the FTC's published comments and on a discussion between the authors and an FTC attorney in charge of enforcement, it appears that this requirement will be satisfied if customers can see that the Guide has two sides, and, even if customers have to be in the vehicle and/or handle the Guide to do so, can then read both sides.

## Reason for the law

The FTC Buyers Guide is designed to give consumers basic information regarding used vehicles, a list of major defects that may occur in used vehicles, and to make clear whether the vehicle is being purchased "as is" or with a warranty.

## Cross-references

Chapter 52: Warranty Advertising

Part 455—Used Motor Vehicle Trade Regulation Rule of Title 16 of the Federal Code of Regulations (to see, type this in browser: bit.ly/stickerused)


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# Chapter 54 - Simulated Checks

## Basic rule

A dealer may not use a simulated check in an advertisement for the sale or lease of a vehicle. Further, the California Business and Professions Code prohibits the use of a simulated check for any purpose.

## Text of the law

### Simulated checks prohibited

**California Vehicle Code § 11713.1 (w):** It is unlawful for a dealer to use a simulated check, as defined in subdivision (a) of Section 22433 of the Business and Professions Code, in an advertisement for the sale or lease of a vehicle.

### Definition of simulated check and prohibition of use

**Business and Professions Code § 22433:** Definition; violations; penalties

(a) As used in this section, "simulated check" means any document that is not currency or a check, draft, note, bond, or other negotiable instrument but that, because of its appearance, has the tendency to mislead or deceive any person viewing it into believing that it, in fact, represents any of the following: (1) currency or a negotiable instrument that can be deposited in a bank or used for third party payments; (2) a prize, gift, or monetary benefit that the recipient has won or is entitled or guaranteed to receive; or (3) an actual check or other item of value that can be claimed or redeemed. "Simulated check" does not include a nonnegotiable check, draft, note, or other instrument that is used for soliciting orders for the purchase of checks, drafts, notes, bonds, or other instruments, and that is clearly marked as a sample, specimen, or nonnegotiable. "Simulated check" also does not include any document indicating in a truthful and nonmisleading manner that a person, in fact, unconditionally has won or is entitled or guaranteed to receive a specific prize, gift, or amount of money or credit.

(b) No person shall produce, advertise, offer for sale, sell, distribute, or otherwise transfer for use in this state any simulated check.

(c) The Attorney General may bring an action to enjoin a violation of this section, and to recover a civil penalty of not more than one hundred dollars ($100) for each violation of this section. A violation of this section may be enjoined without proof that any person has, in fact, been injured or damaged by the violation.

## Discussion

The prohibition against the use of simulated checks not only applies to advertising the sale or lease of a vehicle, but their use for any purpose is prohibited in California. Typically, discount coupons are not simulated checks. Sometimes, however, rebates are shown in the form of a simulated check. This is not allowed both because of the simulated check rule and the rule prohibiting dealer rebates.

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## Reason for the law

The laws regarding simulated checks prevent consumers from being led to believe that the simulated check is an actual negotiable check. The following is a statement of Legislative Intent in connection with the total ban on simulated checks in the year 2000 legislation:

Section 1 of Stats.2000, c. 185 (A.B.1816), provides: "The Legislature finds and declares that the use of simulated checks is inherently misleading to many members of the public who believe that they have won a prize or gift or received a monetary benefit represented by the simulated check and that the simulated check itself either has the value represented on its face or represents an actual check or other item of value that can be claimed or redeemed with the simulated check. The Legislature further finds and declares that disclosures, such as an indication that the simulated check is not a real check, have not been effective in curing the misleading impact created by the bogus checks. It is, therefore, the intent of the Legislature to prevent the deception inherent in simulated checks by prohibiting their use."

## Cross-references

Chapter 62: Direct Mail and Offers to Select Groups

Chapter 51: Free Goods and Services

Chapter 29: Rebates and Cash Back

Chapter 25: Savings/Discount Claims


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# Chapter 55 - Service and Parts Advertising

## Basic rule

Just as with any dealership advertising, service and parts department advertising must be truthful and non-deceptive in all respects. There should always be full disclosure of all charges that will be incurred by the customer so there will be no surprises. The details of California and federal regulations for automotive repair dealer advertising are shown below.

## Text of the law

### California law

#### *Definition of automotive repair dealer*

**16 California Code of Regulations 3371.1:** Presumption as Automotive Repair Dealer.

A person shall be deemed to be an automotive repair dealer as defined by subdivision (a) of section 9880.1 of the Business and Professions Code when such person:

(a) Solicits or advertises the repair of motor vehicles by telephone directory, newspaper, periodical, airwave transmission, the Internet, printed handbill, printed business card, printed poster, lettering on motor vehicles, or painted or electric sign, and repairs motor vehicles, or

(b) maintains an establishment for the repair of motor vehicles where within or outside the establishment is a sign, poster, or other representation which might reasonably lead a member of the public to believe that such establishment performs the repair of motor vehicles, or

(c) holds a retail sellers permit when such permit has been acquired for the purpose of, or has been used for, obtaining parts for the repair of motor vehicles, or

(d) holds himself or herself out to the public as an automotive repair dealer and receives a motor vehicle from the public and transmits or renders control of the motor vehicle to another for repair.

A person will be deemed to be holding himself or herself out to the public as an automotive repair dealer within the meaning of subdivision (d) above when such person solicits such business in a manner which might reasonably lead the public to believe that such person is an automotive repair dealer, or when the person receiving the service is billed on such person's own invoice.

#### *False or misleading defined*

**16 California Code of Regulations § 3372:** False or Misleading Defined. In determining whether any advertisement, statement, or representation is false or misleading, it shall be considered in its entirety as it would be read or heard by persons to whom it is designed to appeal. An advertisement, statement, or representation shall be considered to be false or misleading if it tends to deceive the public or impose upon credulous or ignorant persons.

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### *Prohibition of untrue or misleading advertising; identification of repair dealer in advertisement*

**16 California Code of Regulations § 3371:** Untrue or Misleading Statements or Advertising.

No dealer shall publish, utter, or make or cause to be published, uttered, or made any false or misleading statement or advertisement which is known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading. Advertisements and advertising signs shall clearly show the following:

(a) Firm Name and Address. The dealer's firm name and address as they appear on the State registration certificate as an automotive repair dealer; and

(b) Telephone Number. If a telephone number appears in an advertisement or on an advertising sign, this number shall be the same number as that listed for the dealer's firm name and address in the telephone directory, or in the telephone company records if such number is assigned to the dealer subsequent to the publication of such telephone directory.

### *Automotive repair dealer price advertising*

**16 California Code of Regulations § 3372.1:** Price Advertising.

An automotive repair dealer shall not advertise automotive service at a price which is misleading. Price advertising is misleading in circumstances which include but are not limited to the following:

(a) The automotive repair dealer does not intend to sell the advertised service at the advertised price but intends to entice the consumer into a more costly transaction; or

(b) The advertisement for service has the capacity to mislead the public as to the extent that anticipated parts, labor or other services are included in the advertised price; or

(c) The advertisement for service or repair has the capacity to mislead the public as to the need for additional related parts, labor or other services; or

(d) The automotive repair dealer knows or should know that the advertised service cannot usually be performed in a good and workmanlike manner without additional parts, services or labor; provided, however, that an advertisement which clearly and conspicuously discloses that additional labor, parts or services are often needed will, to that extent, not be regarded as misleading. Any such disclosure statement shall indicate that many instances of performance of the service involve extra cost and, if the automotive dealer reasonably expects that the extra cost will be more than 25% of the advertised costs, that the extra cost may be substantial. The type size of the disclosure statement shall be at least 1/2 the type size used in the advertised price and the statement shall either be shown near the price or shall be prominently footnoted through use of an asterisk or similar reference.

### *New, rebuilt, reconditioned, or used parts and components*

**16 California Code of Regulations § 3374:** New, Rebuilt, Reconditioned, or Used Parts and Components. No dealer shall advertise, represent, or in any manner imply that a used, rebuilt or reconditioned part or component is new unless such part and all of the parts of any component are in fact new.

### *No misleading representation regarding warranties*

**California Code of Regulations 16 § 3375:** Guarantees and Warranties. For the purpose of this Act and of these regulations the term “guarantee” and “warranty” have like meanings. No advertisement shall contain any


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false or misleading representation concerning the nature, extent, duration, terms or cost of a guarantee of a motor vehicle part or component or repair service subject to the provisions of the Act.

### *Required content of warranties; delivery of warranties with invoice*

**16 California Code of Regulations § 3376:** Disclosure of guarantee. All guarantees shall be in writing and a legible copy thereof shall be delivered to the customer with the invoice itemizing the parts, components, and labor represented to be covered by such guarantee. A guarantee shall be deemed false and misleading unless it conspicuously and clearly discloses in writing the following:

(a) The nature and extent of the guarantee including a description of all parts, characteristics or properties covered by or excluded from the guarantee, the duration of the guarantee and what must be done by a claimant before the guarantor will fulfill his obligation (such as returning the product and paying service or labor charges).

(b) The manner in which the guarantor will perform. The guarantor shall state all conditions and limitations and exactly what the guarantor will do under the guarantee, such as repair, replacement or refund. If the guarantor or recipient of the guarantee has an option as to what may satisfy the guarantee, this must be clearly stated.

(c) The guarantor's identity and address shall be clearly revealed in any documents evidencing the guarantee.

### *Duty to disclose adjustment of warranties on a pro-rata basis both in the warranty and the advertising of the warranty*

**16 California Code of Regulations § 3377:** Pro-Rata Guarantee. Any guarantee or any advertisement of a guarantee which provides for adjustment on a pro-rata basis shall be deemed false and misleading unless the guarantee and/or the advertisement conspicuously and clearly discloses this fact and the basis on which the guarantee will be pro-rated, e.g., the time or mileage the part, component, or item repaired has been used and in what manner the guarantor will perform. If adjustments are based on a price other than that paid by the customer, clear disclosure must be made of the amount. However, a fictitious price must not be used even where the sum is adequately disclosed.

### *Use of coupons*

**California Business and Professions Code § 17537.11:**

(a) It is unlawful for any person to offer a coupon that is in any manner untrue or misleading.

(b) It is unlawful for any person to offer a coupon described as “free,” or as a “gift,” “prize,” or other similar term if (1) the recipient of the coupon is required to pay money or buy any goods or services to obtain or use the coupon, and (2) the person offering the coupon or anyone honoring the coupon made the majority of his or her sales in the preceding year in connection with one or more “free,” “gift,” “prize,” or similarly described coupons.

(c) For purposes of this section:

(1) “Coupon” includes any coupon, certificate, document, discount, or similar matter that purports to entitle the user of the coupon to obtain goods or services for free or for a special or reduced price.

(2) “Sale” includes lease or rent.

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### *Proposition 65 warning for parts sales*

If a dealer is selling parts and accessories which require a Proposition 65 warning, see 27 California Code of Regulations 25602. See also the Proposition 65 and parts sales discussion below.

## Federal regulations

### *Federal FTC Guides*

The FTC's Guides for the Rebuilt, Reconditioned, and other Used Automobile Parts Industry are found in Part 20 of 16 Code of Federal Regulations. Section 20.0(a) states:

The Guides in this part apply to the manufacture, sale, distribution, marketing and advertising (including advertising in electronic formats, such as on the internet) of parts that are not new, and assemblies containing such parts, that were designed for use in automobiles, trucks, motorcycles, tractors, or similar self-propelled vehicles, regardless of whether such parts or assemblies have been cleaned, repaired, reconstructed, or reworked in any other way (industry product or product). Industry products include, but are not limited to, airbags, alternators and generators, anti-lock brake systems, brake cylinders, carburetors, catalytic converters, differentials, engines, fuel injectors, hybrid drive systems and hybrid batteries, navigation and audio systems, power steering pumps, power window motors, rack and pinion units, starters, steering gears, superchargers and turbochargers, tires, transmissions and transaxles, and water pumps.

Important: Anyone advertising or selling parts described in § 20.0 which are not new must read Part 20 and not advertise or sell the parts as new.

# Discussion

Here are key points to consider in advertising parts and service:

## No misleading statements.

Do not make any false or misleading statements in advertising, An advertisement, statement, or representation is considered to be false or misleading if it tends to deceive the public or impose upon credulous or ignorant persons.

## Dealer identifying information.

All advertising and advertising signs must have the dealer's name and address as shown in the Bureau of Automotive Repair's records, together with the dealer's telephone number as shown in the telephone company records.

## End date.

Have an end date in all advertisements.

## Free offers.

Unlike with the purchase of a vehicle, a dealer may offer something free in connection with service and parts advertising. However, do not raise the price of the service and/or parts purchase to cover the cost of whatever is advertised as free. See Chapter 51, Free Goods and Services.


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## Price advertising.

With regard to price advertising, review 16 California Code of Regulations § 3372.1 quoted in the Text of the law section above for the rules on price advertising and what is considered to be false or misleading. These include:

Baiting with a low price with the intent of enticing the customer to a more expensive transaction;

Not clearly letting the customer know what parts, labor, or other services are included in the advertised price;

An advertisement which is misleading concerning the need for additional parts, labor or other services; and

Advertising a price knowing that there will usually be additional costs without the disclosure required by section (d) of the regulation and without the type size requirement of the disclosure.

## Parts that are not new.

Do not advertise as new any part which is not new. Describe parts that are not new as rebuilt, reconditioned, used parts and components, or whatever description best describes them.

## Additions to price.

Disclose what will be added to the price such as taxes, hazardous waste fees, and the like.

## Warranty advertising.

Do not make false or misleading statements concerning the nature, extent, duration, terms or cost of a part or service warranty. See Chapter 52, Warranty Advertising, for more rules of warranty advertising.

## Content and delivery of warranties.

Review 16 California Code of Regulations § 3376 quoted in the Text of the law section above regarding the content and delivery of warranties to the customer.

## Warranty pro-rata adjustment.

Review 16 California Code of Regulations § 3377 quoted in the Text of the law section above for the advertising and sale requirement of a clear and conspicuous disclosure of any warranty that provides for an adjustment on a pro-rata basis and the basis on which the warranty will be pro-rated.

## Use of coupons.

See California Business and Professions Code § 17537.11 quoted in the Text of the law section above for the rules regarding the use of coupons.

## Ordered products.

It is unlawful to accept payment from a buyer, for the purchase or lease of goods or services ordered by mail, telephone, internet, or other electronic means, without complying with specific rules in California Business and Professions Code §§ 17538- 17538.3.

## Disclose terms and conditions.

Provide a clear and conspicuous disclosure of any terms or conditions that apply to any advertisement.

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### Online parts sales.

If products can be ordered online, then a notice of pre-sale warranty availability must be in close proximity to the warranted product. See FTC November 2013 letter discussed above, and see Chapter 52, Warranty Advertising.

### Proposition 65 warning and parts sales.

- As stated above, If a dealer is selling parts and accessories that require a Proposition 65 warning, see 27 California Code of Regulations § 25602.
- For such parts sold through the internet or by catalog, see subsections (b) and (c) of this regulation.
- If parts subject to the warning are sold by email, telephone, or fax, consult with Proposition 65 legal counsel for compliance advice to ensure that you are in compliance with the warning requirements.

Even though it is the manufacturer's responsibility to provide Proposition 65 information to retailers of its products, it is not inconceivable that dealers could be brought into a "failure to warn" action as someone in the chain of distribution. Consequently, it would be a good idea for dealers to ensure that manufacturers are providing the necessary warning materials. A dealer can request that parts and accessories manufacturers provide the dealer with a list of all products that require a Proposition 65 warning and request that the list be updated when necessary. In making that request, dealers should also request that they be provided with the actual warning label for parts and accessories that require it. Under the Proposition 65 regulations, manufacturers must provide the warning materials to retailers for posting on the affected products or for putting the warning on product packaging if the packaging does not already have the Proposition 65 warning.

The California New Car Dealers Association has a Proposition 65 handbook available in the CNCDA Comply section at www.cncda.org which contains Proposition 65 compliance guidance for California new motor vehicle dealers. The handbook has compliance information for the parts department as well as other dealership departments.

## Reason for the law

The parts and service advertising rules are designed to prevent false or misleading statements and require appropriate disclosures about the advertisement.

## Cross-references

Chapter 52: Warranty Advertising

Chapter 51: Free Goods and Services

Chapter 1: Advertising Law Basics

Chapter 12: Qualifiers, Disclosures, and Disclaimers

## Examples

See Example 15 and Example 16.


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# Part F – Sweepstakes, contests, lotteries, and incentives



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# Chapter 56 - Sweepstakes and Contests

## Basic rule

Dealership advertising that features sweepstakes or contests is subject to extensive restrictions and disclosure requirements under both federal and California law. A "sweepstakes" generally means any promotional activity that involves the distribution of something of value (a prize) to a participant by random selection. A sweepstakes is different from a lottery because a person does not pay money or other consideration to participate.

The term "contest" is very generic in meaning but is a term that may be used to describe a promotional activity that involves the distribution of something of value (a prize) to a participant based upon a demonstration of skill by that person. A person may be required to pay money or provide other consideration to participate in such a contest.

The key concern regarding any advertising involving sweepstakes or contests is that the content is not misleading in any manner including, but not limited to, the description of the rules or conditions of participation, the likelihood or the odds of a participant winning a prize, the nature of any prizes and the timing of the prizes being awarded.

## Text of the law

### Definition of a sweepstakes

**California Business and Professions Codes § 17539.1(b)**

(b) For the purposes of this section, "sweepstakes" means a procedure, activity, or event, for the distribution, donation, or sale of anything of value by lot, chance, predetermined selection, or random selection that is not unlawful under other provisions of law, including, but not limited to, Chapter 9 (commencing with Section 319) and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code.

39 United State Code § 3001(k)(1)(D)

(D) the term "sweepstakes" means a game of chance for which no consideration is required to enter.

### Requirements for sweepstakes solicitation materials

**See California Business and Professions Code § 17539.15**

### Definition of official rules

**California Business and Professions Code § 17539.15(k)(2)**

(2) "Official rules" means the formal printed statement, however designated, of the rules for the promotional sweepstakes appearing in the solicitation materials. The official rules shall be prominently identified and all references thereto in any solicitation materials shall consistently use the designation for the official rules that appears in those materials. Each sweepstakes solicitation shall contain a copy of the official rules.


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### Definition of sweepstakes sponsor

**California Business and Professions Code § 17539.15(l)(2)(A)**

(2) (A) For the purposes of this section, "sweepstakes sponsor" means either of the following:

(i) A person or entity that operates or administers a sweepstakes as defined in paragraph (12) of subdivision (a) of Section 17539.5.

(ii) A person or entity that offers, by means of a notice, a prize to another person in conjunction with any real or purported sweepstakes that requires or allows, or creates the impression of requiring or allowing, the person to purchase any goods or services, or pay any money, as a condition of receiving, or in conjunction with allowing the person to receive, use, or obtain a prize or information about a prize.

(B) A person or entity that merely furnishes a prize in connection with a sweepstakes that is operated or administered by another person or entity shall not be deemed to be a sweepstakes sponsor.

### Unfair acts or prohibited practices

**See California Business and Professions Code § 17539.15**

### Sweepstakes that require dealership visit

**See California Business and Professions Code § 17537.1**

### Advertising sweepstakes by mail

**See 39 United States Code §§ 3001 et. seq.**

### Deceptive acts prohibited under federal law

**See Section 5 of the FTC Act**

The following is from **15 United State Code § 45:**

"Unfair methods of competition or affecting commerce, and unfair or deceptive acts or practices in, or affecting commerce, are hereby declared unlawful."

## Discussion

### Not misleading

Under California Business and Professions Code § 17539.15, solicitation materials that contain sweepstakes entry materials must not be misleading in terms of the following:

1. That a person has already won a prize or any particular prize (even the advertising content visible through an envelope cannot be misleading in this respect)
2. The description of the rules or conditions of participation
3. The likelihood or odds of a participant winning a prize
4. The nature of any prize
5. The timing of a prize being awarded

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6. That a person has been specifically selected in connection with a sweepstakes
7. That a person receiving the solicitation has received any special treatment from the sweepstakes sponsor or its representatives
8. That a person is being notified a second or final time of an opportunity to receive or compete for a prize
9. That a prize notice is urgent by use of any description or phrasing on a mail envelope or other parts of the materials, unless there is a limited time period for the recipient to take action (if so, the expiration date must be clearly and conspicuously disclosed in the materials)
10. That the documentation involved is authorized or approved by any court, official, or agency of the United States or any state, or by any lawyer, law firm, or insurance or brokerage company, or otherwise gives a false impression as to the source of the documentation

## Official rules

Under California Business and Professions Code § 17539.15, solicitation materials must clearly and conspicuously disclose the official rules of the sweepstakes and those rules must include a statement that reads "NO PURCHASE OR PAYMENT IS NECESSARY TO ENTER OR WIN THIS SWEEPSTAKES" or similar words. This statement must be made in a separate paragraph in the rules and printed in capital letters and contrasting typeface not smaller than the largest typeface used in the text of the rules.

The rules should also include the dates of the promotion, eligibility requirements for a participant, how prize winners are selected, how a participant is notified he or she has won, a description of any prizes and their estimated value, the name and address of the sweepstakes sponsor, how a winners list may be obtained, and the odds of a participant winning.

Other items typically included in the rules are a statement that the sweepstakes is "void where prohibited," a reservation of publicity rights, disclaimers/releases of liability, a reference to a privacy policy that is applicable to information received from participants, a statement that winners are responsible for taxes, and various administrative provisions (for instance, permitting sponsor to modify the promotion and stating how contest disputes are handled).

## Incentive to visit dealership

Dealers conducting an advertising campaign with materials (usually a mailer) that includes a sweepstakes-type contest with multiple prizes that are awarded when the recipient brings the mailer to the dealership to claim a prize (the actual prize is determined by matching the recipient's winning numbers or symbols to predetermined prize list) are subject to California Business and Professions Code §§17537.1 and 17537.2.

The requirements of Business and Professions Code statutes are similar to those that apply to sweepstakes solicitation materials, with some distinctions relating to the size and location of disclosures in a mailer or other offer materials. Specifically, the front or first page of the offer materials should include the dealership's name and street address, the odds of winning each prize in whole Arabic numbers, or a statement describing where the odds are disclosed in the materials (the odds or a statement of their location must be printed in type size at least equal to the standard text used on the front or first page of the offer). Also included in the offer materials should be a statement that indicates the prize offer is subject to restrictions (e.g. rules) and describes their location (this statement should also be printed in type-size at least equal to that of the standard text).


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Additionally, the offer materials should include a reservation of the right of the dealership to provide a raincheck if applicable (note it is unlawful to offer a prize when the dealership knows a sufficient quantity will not be available based on the reasonable anticipated response) and a statement that "a recipient who receives an offered incentive may request and will receive evidence showing that the incentive provided matches the incentive randomly or otherwise selected for distribution to that recipient." A dealer utilizing an advertising campaign of this type must maintain records for one year that show the winning numbers were mailed out and such records must be made available to the state attorney general within thirty days of a request. Note that California Business and Professions Code § 17537.2 basically prohibits the recipient of a prize under this kind of advertising campaign from being required to pay any money to the advertising party to utilize the prize. There are certain limited exceptions to this prohibition regarding payments to third parties when a prize is a certificate or coupon redeemable for transportation, accommodations, or other vacation services.

### Advertising sweepstakes by mail

Sweepstakes that are advertised by mail must comply with the requirements of the federal Deceptive Mail Prevention and Enforcement Act (39 U.S.C. § 3001 et seq.). To comply, a dealer (or promoter hired by the dealer to handle such promotions) must include certain key disclosures regarding the sweepstakes in the mailed materials. The required disclosures are similar to those required by California law with some notable distinctions. Conspicuous statements that "NO PURCHASE IS NECESSARY" and "A PURCHASE WILL NOT IMPROVE AN INDIVIDUAL'S CHANCES OF WINNING" must be included in the mailer, the official rules, and any entry form provided (the required statements could therefore be disclosed three times).

### Notification requirements

A person originating and mailing an advertisement of a sweepstakes is required, regardless of whether entry materials are included, to conspicuously display a notification system (showing an address or toll-free number) which allows the individual receiving the advertisement to notify the promoter of the contest to exclude his or her name from the mailing list used to mail such advertising. Persons who mail advertisements that are not in compliance with this requirement may be subject to significant civil penalties.

### California Business and Professions Code – no purchase necessary

California Business and Professions Code §17539.15, which also applies to solicitation materials involving sweepstakes, prohibits certain misrepresentations regarding a recipient's prize-winning status and requires disclosure of a "no purchase necessary" message in a technically specified manner.

Tip: Dealers involved in advertising sweepstakes or other giveaways should carefully review their advertising and consult legal counsel when needed because of the detail of California and federal law governing this type of advertising.

## Reason for the law

The laws regarding the advertising of sweepstakes and contests are designed to protect consumers from being solicited to enter misleading promotions.

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## Cross-references

Chapter 57: Lotteries

Chapter 51: Free Goods and Services

Chapter 62: Direct Mail and Offers to Select Groups

Chapter 26: Incentives – Dealer Participation


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# Chapter 57 - Lotteries

## Basic rule

A lottery is a game of chance for people to win something by paying money or other consideration. With certain exceptions such as the state-run lottery, the conducting of lotteries in California constitutes a crime.

## Text of the law

### California lottery law

#### *Definition*

**California Penal Code § 319:** Lottery Defined. A lottery is any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share or any interest in such property, upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle, or gift enterprise, or by whatever name the same may be known.

#### *Prohibitions*

**California Penal Code § 320:** Punishment for Drawing Lottery. Every person who contrives, prepares, sets up, proposes, or draws any lottery, is guilty of a misdemeanor.

**California Penal Code 321:** Every person who sells, gives, or in any manner whatever furnishes or transfers to or for any other person any ticket, chance, share, or interest, or any paper, certificate, or instrument purporting or understood to be or to represent any ticket, chance, share, or interest in, or depending upon the event of any lottery, is guilty of a misdemeanor.

**California Penal Code § 322:** Every person who aids or assists, either by printing, writing, advertising, publishing, or otherwise in setting up, managing, or drawing any lottery, or in selling or disposing of any ticket, chance, or share therein, is guilty of a misdemeanor.

### Federal lottery law

**18 United States Code § 1302:** Mailing lottery tickets or related matter. Whoever knowingly deposits in the mail, or sends or delivers by mail:

Any letter, package, postal card, or circular concerning any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance;

Any lottery ticket or part thereof, or paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance;

Any check, draft, bill, money, postal note, or money order, for the purchase of any ticket or part thereof, or of any share or chance in any such lottery, gift enterprise, or scheme;

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Any newspaper, circular, pamphlet, or publication of any kind containing any advertisement of any lottery, gift enterprise, or scheme of any kind offering prizes dependent in whole or in part upon lot or chance, or containing any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes;

Any article described in section 1953 of this title shall be fined under this title or imprisoned not more than two years, or both; and for any subsequent offense shall be imprisoned not more than five years.

**18 United States Code § 1304:** Broadcasting lottery information. Whoever broadcasts by means of any radio or television station for which a license is required by any law of the United States, or whoever, operating any such station, knowingly permits the broadcasting of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes, shall be fined under this title or imprisoned not more than one year, or both. Each day's broadcasting shall constitute a separate offense.

## Discussion

Under lottery law, it would be illegal for a dealer to engage in a sales promotion offering prizes or gifts to customers who must make purchases in order to qualify for the chance of becoming a winner of such prizes or gifts whether by way of a contest, raffle, lottery, or whatever the promotion might be called. Lottery law, however, does not prohibit a dealer from making gifts to prospective purchasers if no purchase is required as a condition for entry in a game of chance.

Example: Sometimes people are prompted to visit a dealership or take a test drive by a promotion whereby their names are entered into a drawing for the purpose of winning prizes. There may be a question of whether the requirement of a dealership visit or taking a test drive is "payment of consideration" under state and federal lottery laws. By allowing persons to also enter the promotion by mail might avoid any lottery “consideration” problems. A dealership contemplating this type of promotion should consult with their legal counsel to see if the facts of the particular promotion run the risk of violating lottery laws.

For more information on California lottery laws, see California Penal Code §§ 319-329.

### Charitable raffles

A dealer may on occasion be recruited by a charitable organization to sponsor a raffle with prizes that may include a vehicle supplied by the dealer. A dealer considering participation in this type of lottery should verify that the organization is eligible for “charitable status” as defined by California Penal Code § 320.5 and that the raffle will be conducted in compliance with the requirements of that statute.

## Cross-references

Chapter 51: Free Goods and Services

Chapter 58: Incentives to Visit Dealership

Chapter 56: Sweepstakes and Contests


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## Examples

See Example 10 and Example 11.

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# Chapter 58 - Incentives to Visit Dealership

## Basic rule

There are detailed rules when an incentive is offered as an inducement to a recipient to visit a location, attend a sales presentation, or contact a sales agent in person, by telephone, or by mail

The rules are quite detailed and some of them may not apply to typical dealership's promotions. However, any dealership planning this type of advertising should review the two statutes immediately below

## Text of the law

This area is governed by **California Business and Professions Code §§ 17537.1 and 17537.2.**

California Business and Professions Code § 17537.1 provides in part: (a) It is unlawful for any person, or an employee, agent, or independent contractor employed or authorized by that person, by any means, as part of an advertising plan or program, to offer any incentive as an inducement to the recipient to visit a location, attend a sales presentation, or contact a sales agent in person, by telephone, or by mail, unless the offer clearly and conspicuously discloses in writing, in readily understandable language, all of the information required in paragraphs (1) and (2). If the offer is not initially made in writing, the required disclosures shall be received by the recipient in writing prior to any scheduled visit to a location, sales presentation, or contact with a sales agent. For purposes of this section, the term "incentive" means any item or service of value, including, but not limited to, any prize, gift, money, or other tangible property.

The remainder of the statute provides what must be disclosed for the promotion.

California Business and Professions Code § 17537.2 lists what acts are deceptive and constitute unfair trade practices when used as a part of an advertising plan or program as defined in Business and Professions Code § 17537.1 above.

## Discussion

### Gifts for visiting dealership

Most of the provisions in the Business and Professions Code on this subject apply to letters sent out to the public inviting them to come to a sales presentation for a vacation home, or something similar, with the promise of a substantial gift for attending the presentation. As noted above, however, some of the provisions of the statutes could apply to dealership promotions.

### You have been specially chosen

Business and Professions Code § 17537.2(b) contains a prohibition of a practice sometimes seen in dealership promotions. The statute makes it a deceptive and unfair trade practice to state or imply in the offer that the individual is one of a selected group to receive a particular incentive, without clearly and conspicuously disclosing in close proximity to the statement, the total number of persons in that select group or the odds of receiving that incentive.


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### Advertising sweepstakes by mail

Sweepstakes that are advertised by mail must comply with the requirements of the federal Deceptive Mail Prevention and Enforcement Act (39 U.S.C. § 3001 et seq.). To comply, a dealer (or promoter hired by the dealer to handle such promotions) must include certain key disclosures regarding the sweepstakes in the mailed materials. The required disclosures are similar to those required by California law with some notable distinctions. Conspicuous statements that "NO PURCHASE IS NECESSARY" and "A PURCHASE WILL NOT IMPROVE AN INDIVIDUAL'S CHANCES OF WINNING" must be included in the mailer, the official rules, and any entry form provided (the required statements could therefore be disclosed three times).

### Notification requirements

A person originating and mailing an advertisement of a sweepstakes is required, regardless of whether entry materials are included, to conspicuously display a notification system (showing an address or toll-free number) which allows the individual receiving the advertisement to notify the promoter of the contest to exclude his or her name from the mailing list used to mail such advertising. Persons who mail advertisements that are not in compliance with this requirement may be subject to significant civil penalties.

### California Business and Professions Code – no purchase necessary

California Business and Professions Code §17539.15, which also applies to solicitation materials involving sweepstakes, prohibits certain misrepresentations regarding a recipient's prize-winning status and requires disclosure of a "no purchase necessary" message in a technically specified manner.

Tip: Dealers involved in advertising sweepstakes or other giveaways should carefully review their advertising and consult legal counsel when needed because of the detail of California and federal law governing this type of advertising.

## Reason for the law

These laws prevent members of the public from being enticed into promotions by unscrupulous sellers.

## Cross-references

Chapter 62: Direct Mail and Offers to Select Groups

Chapter 51: Free Goods and Services

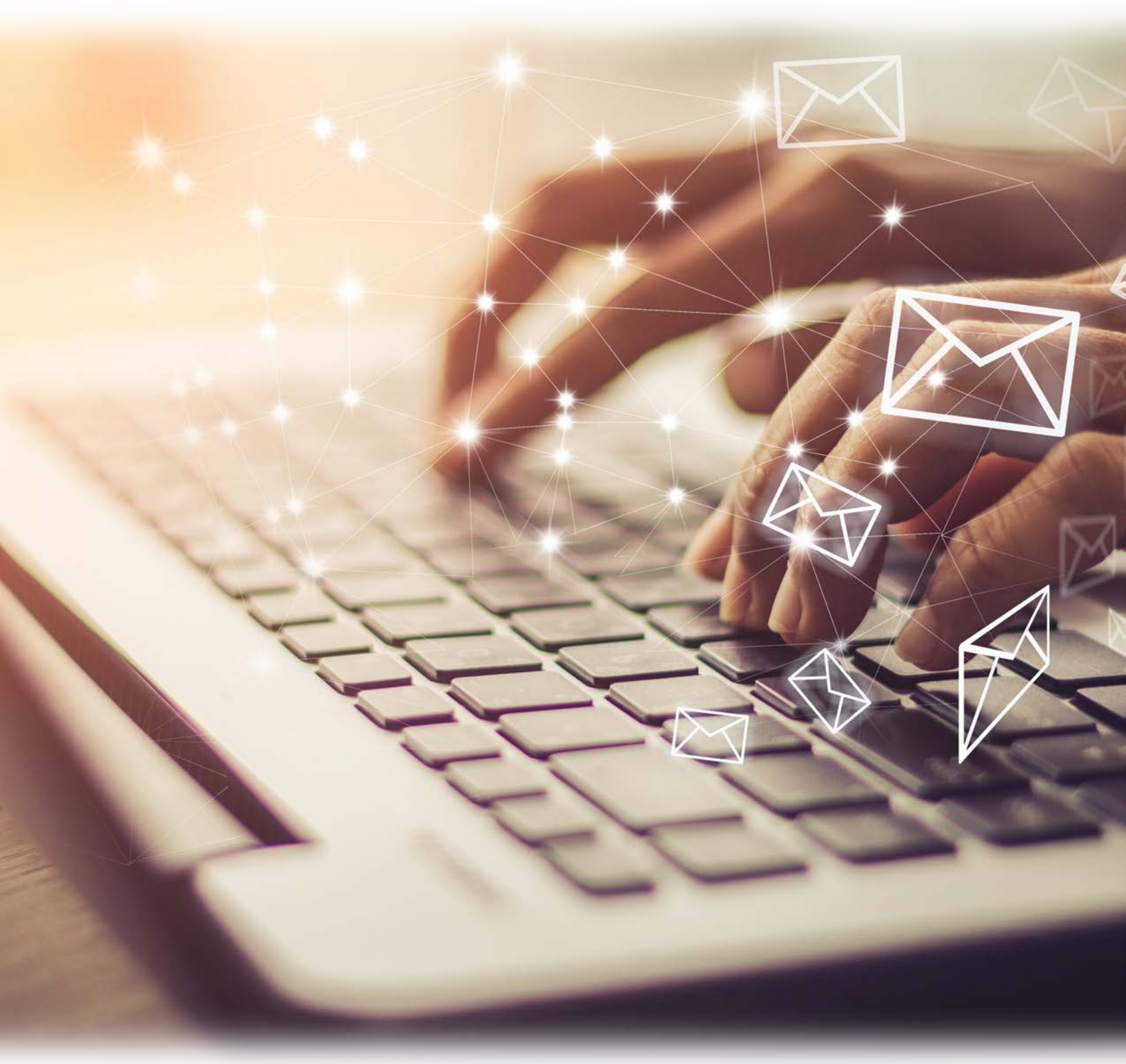
Chapter 56: Sweepstakes and Contests

## Example

See Example 2.

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# Part G – Email, fax, telemarketing, and direct mail advertising





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# Chapter 59 - Email Advertising

## Basic rule

For the most part email advertising is controlled by federal law which provides that a person sending unsolicited email advertisements must meet the requirements of the CAN-SPAM Act of 2003 discussed below. There are some exceptions where California law may apply as discussed in Federal versus California law below.

## Summary of rules

The CAN-SPAM Act contains detailed requirements which are applicable to unsolicited advertisements communicated by email. Dealerships doing this type of advertising should carefully comply with the requirements of the CAN-SPAM Act. As discussed below, California law is also applicable to the extent emails contain certain false or deceptive information. Generally, the CAN-SPAM Act requirements that dealerships should follow are as follows:

### Accurate headers

Have accurate and non-misleading sender, header, origination, and transmission information. The term "header information is defined as "... the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message."

### No spoofing

Do nothing to disguise the account or computer used to initiate the message.

### Truthful subject line

Do not permit subject lines that would be false or misleading as to the content of the message.

### Contain postal address

Include the sender's valid physical postal address.

### Opt-out notice

Include a notice that the recipient may "opt out" of receiving further unsolicited commercial email.

### Opt-out address

Include a functioning return e-mail address or another internet-based mechanism valid for at least 30 days through which the recipient can "opt out." Requests must be processed within 10 days of receipt. A menu of choices to only opt out of certain types of e-mail is permitted, as long as one choice is to opt out of receiving all commercial e-mail messages.

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### Advertising notice

Include a "clear and conspicuous" notice that the message is an advertisement or solicitation, but it is not necessary that this appear in the subject line and can be in the message body instead. If these requirements are met, a dealership may send an unsolicited commercial email to anyone who has not provided the dealership with an opt-out request or requested that no emails be sent. If a dealership obtains the consent of a person to receive a commercial e-mail, the primary purpose of which is a commercial advertisement or promotion of a commercial product or service, the dealership must still comply with all of the requirements discussed above except that the email does not have to contain a notice that it is an advertisement. See discussion below, Commercial Advertising Content Combined with Transactional Message. The FTC publication CAN-SPAM Act: A Compliance Guide for Business is a helpful resource and has an informative question and answer discussion (to see, type this in browser: bit.ly/ftcspam).

## Text of the law

**15 United States Code §§ 7701-7713** are the federal CAN-SPAM Act statutes (to see, type this in browser: bit.ly/unlawfulemail).

**16 Code of Federal Regulations §§ 316.1-316.6** are the federal CAN-SPAM Act regulations (to see, type this in browser: bit.ly/regsemail).

**47 Code of Federal Regulations § 64.3100** contains restrictions on mobile service commercial messages. (to see, type this in browser: bit.ly/messmobile)

**California Business and Profession Code §§ 17529-17529.9** are the California email advertising statutes (to see, type this in browser: bit.ly/emailca).

## Discussion

### Commercial advertising content combined with transactional message

In certain instances, an email message may have commercial advertisement content combined with other content of a transactional or relationship nature. The definition of a "commercial electronic mail message" is in 15 United States Code §7702(2) and the definition of a "transactional or relationship message" is at 15 United States Code § 7702(17). In 16 Code of Federal Regulations § 316.3 there are criteria for determining the "primary purpose" of the email which is key to knowing which CAN-SPAM Act requirements apply. These criteria generally focus on the email recipient's likely reasonable interpretation of the subject line of the email or the body of the message, considering such factors as:

the placement of the commercial content at the beginning of the message;

the proportion of the message dedicated to commercial content;

and how colors, graphics, type size, and style are used to highlight the commercial content.

If there is any question about what the primary of the email is, read § 316.3 and the FTC publication CAN-SPAM Act: A Compliance Guide for Business (to see, type this in browser: bit.ly/canthespam).


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## Restrictions on mobile service commercial messages

There are additional requirements and restrictions on sending mobile service commercial messages. With limited exceptions, no person or entity may initiate any mobile service commercial message unless (i) that person or entity has the express prior authorization of the addressee, which prior authorization must meet the requirements of 64 CFR 64.3100(d), or (ii) the address to which that message is sent or directed does not include a reference to a domain name that has been posted on the FCC's wireless domain names list for a period of at least 30 days before that message was initiated, provided that the person or entity does not knowingly initiate a mobile service commercial message. 64 CFR 64.3100(a).

34 CFR 61.3100 contains additional detailed requirements applicable to a person or entity initiating any mobile service commercial message, which are similar to the requirements for unsolicited emails under the CAN SPAM Act.

“Mobile service commercial message” means a commercial electronic mail message that is transmitted directly to a wireless device that is utilized by a subscriber of a commercial mobile service in connection with such service. A commercial message is presumed to be a mobile service commercial message if it is sent or directed to any address containing a reference, whether or not displayed, to an Internet domain listed on the FCC's wireless domain names list.

The FCC's wireless domain names list is available on the FCC's website and may be accessed by typing this in browser: bit.ly/dndload.

“Commercial electronic mail message” means the term as defined in the CAN–SPAM Act, 15 U.S.C 7702 and as further defined under 16 CFR 316.3. The term is defined as “an electronic message for which the primary purpose is commercial advertisement or promotion of a commercial product or service (including content on an Internet Web site operated for a commercial purpose).” For purposes of this regulation, the term “commercial electronic mail message” does not include a transactional or relationship message. 64 CFR 64.3100(c).

## Third-party providers

If a dealership contracts with a third-party provider to conduct advertising campaigns by email, the dealership should make sure the third-party provider follows the law and gives the dealership indemnification regarding any violation. Because of the potential for substantial monetary damages, a dealership should also make sure the third-party provider will name the dealership as an additional insured on the provider’s insurance policy and that policy has enough coverage for any possible violations. A dealership considering such advertising campaigns should also review the dealership insurance policies to determine if any coverage is provided in the event of violations.

## Federal versus California law

15 United States Code § 7707(b)(l) provides: "This chapter supersedes any statute, regulation, or rule of a State or political subdivision of a State that expressly regulates the use of electronic mail to send commercial messages, except to the extent that any such statute, regulation, or rule prohibits falsity or deception in any portion of a commercial electronic mail message or information attached thereto." This means that federal law supersedes (preempts) California law which prohibits all unsolicited commercial email unless the recipient consented to receive it or there was a preexisting or current business relationship between sender and recipient. Federal law allows unsolicited email advertising, but requires an opt-out notice and process for the recipient. Those sections of the California email law in California Business and Professions Code §§ 17529-

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17529.9 dealing with falsity or deception are not superseded by federal law. Courts might also find that California penalties apply when there has been falsity or deception in the email.

### Penalties for failure to comply

California law allows for recovery of actual damages and $1,000 for each unsolicited email advertisement up to $1,000,000 per incident, plus attorney fees and costs. Under federal law, the penalties for violations can be $250 per email up to $2,000,000, or even in some circumstances up to three times these amounts when there has been willful and knowing or aggravated violations, plus attorney fees and costs.

## Reason for the law

This law protects persons from being overwhelmed with unsolicited email advertising and provides for appropriate disclosures in email advertising.

## Example

See Example 17.


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# Chapter 60 - Fax Advertising

## Basic rule

There is a California statute, plus federal statutes and regulations, dealing with fax advertising. For the most part, California law must be followed over federal law because, with a few exceptions discussed below, it is more restrictive than federal law. Here is a summary of what California and federal law require, giving effect to the principle that where California or federal law is stricter, the stricter law applies.

### California law:

If the sender or recipient is located in California, an unsolicited fax may not be transmitted to any person or entity without express invitation of that person or entity.

Any fax communicated by a fax machine from a sender in California, or to a recipient in California, must have at the top or bottom of each page, or on the first page, the date and time sent, and identification of the sender, and telephone number of the sender's machine. The same information is required if a computer or other electronic device is used to transmit to a telephone fax machine. California and federal law are the same with regard to this requirement.

### Federal law:

See the detailed requirements of federal law in those parts of 47 Code of Federal Regulations § 64.1200 (a)(4)quoted below in the section "Federal Law Requires Opt-Out Language and Method; Liability of Fax Broadcasters," which require that the recipient of a fax be notified by the sender that the recipient may make a request to the sender of the advertisement not to send any future advertisements to a fax machine or machines, that the notice sets forth the requirements for an opt-out request, and that the notice complies with the requirements of 47 Code of Federal Regulations § 64.1200 (a)(4)below.

The telephone and fax numbers and cost-free mechanism identified in the notice must permit an individual or business to make an opt-out request 24 hours a day, 7 days a week.

A fax advertisement that is sent to a recipient that has provided prior express invitation or permission to the sender must include an opt-out notice that complies with the requirements of 47 Code of Federal Regulations § 64.1200 (a)(4) below.

## Text of the law

### California fax law

**California Business and Professions Code § 17538.43:**

#### *Unlawful faxing*

(b) (1) It is unlawful for a person or entity, if either the person or entity or the recipient is located within California, to use any telephone facsimile machine, computer, or other device to send, or cause another person or entity to use such a device to send, an unsolicited advertisement to a telephone facsimile machine.

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### *Required Information on Faxes*

(c) It is unlawful for a person or entity, if either the person or entity or the recipient is located in California, to do either of the following:

(1) Initiate any communication using a telephone facsimile machine that does not clearly mark, in a margin at the top or bottom of each transmitted page or on the first page of each transmission, the date and time sent, an identification of the business, other entity, or individual sending the message, and the telephone number of the sending machine or of the business, other entity, or individual.

(2) Use a computer or other electronic device to send any message via a telephone facsimile machine unless it is clearly marked, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and the identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of the business, other entity, or individual.

### *Definitions of "telephone facsimile machine" and "unsolicited advertisement"*

(a) As used in this section, the following terms have the following meanings:

(1) "Telephone facsimile machine" means equipment that has the capacity to do either or both of the following:

(A) Transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line.

(B) Transcribe text or images, or both, from an electronic signal received over a regular telephone line onto paper.

(2) "Unsolicited advertisement" means any material advertising the commercial availability or quality of any property, goods, or services that is transmitted to any person or entity without that person's or entity's prior express invitation or permission. Prior express invitation or permission may be obtained for a specific or unlimited number of advertisements and may be obtained for a specific or unlimited period of time.

### *Faxes to tax-exempt nonprofit organization members*

(d) This section shall not apply to a facsimile sent by or on behalf of a professional or trade association that is a tax-exempt nonprofit organization and in furtherance of the association's tax-exempt purpose to a member of the association, provided that all of the following conditions are met:

(1) The member voluntarily provided the association the facsimile number to which the facsimile was sent.

(2) The facsimile is not primarily for the purpose of advertising the commercial availability or quality of any property, goods, or services of one or more third parties.

(3) The member who is sent the facsimile has not requested that the association stop sending facsimiles for the purpose of advertising the commercial availability or quality of any property, goods, or services of one or more third parties.

Note: There does not appear to be a similar federal exemption for nonprofit organization faxing, so the federal law is stricter, and this exemption would not apply.


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## Federal fax law

Federal statute and regulations dealing with fax advertising include: 47 United States Code § 227; 47 Code of Federal Regulations § 64.1200; and 47 Code of Federal Regulations § 68.318. Because California law is generally more restrictive than federal law with regard to fax advertising, only those sections of the federal regulations that are the same as, or require more than, California law are shown below.

### *Federal opt-out requirements; liability of fax broadcasters*

**47 Code of Federal Regulations § 64.1200 (a) (4):** No person or entity may—Use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine, unless—

(iii) The advertisement contains a notice that informs the recipient of the ability and means to avoid future unsolicited advertisements. A notice contained in an advertisement complies with the requirements under this paragraph only if—

(A) The notice is clear and conspicuous and on the first page of the advertisement;

(B) The notice states that the recipient may make a request to the sender of the advertisement not to send any future advertisements to a telephone facsimile machine or machines and that failure to comply, within 30 days, with such a request meeting the requirements under paragraph (a)(4)(v) of this section is unlawful;

(C) The notice sets forth the requirements for an opt-out request under paragraph (a)(4)(v) of this section;

(D) The notice includes—

(1) A domestic contact telephone number and facsimile machine number for the recipient to transmit such a request to the sender; and

(2) If neither the required telephone number nor facsimile machine number is a toll-free number, a separate cost-free mechanism including a Web site address or email address, for a recipient to transmit a request pursuant to such notice to the sender of the advertisement. A local telephone number also shall constitute a cost-free mechanism so long as recipients are local and will not incur any long distance or other separate charges for calls made to such number; and

(E) The telephone and facsimile numbers and cost-free mechanism identified in the notice must permit an individual or business to make an opt-out request 24 hours a day, 7 days a week.

Note: A facsimile advertisement that is sent to a recipient that has provided prior express invitation or permission to the sender must include an opt-out notice that complies with the requirements in paragraph (a)(4)(iii) [see above] of this section.

(iv) A request not to send future unsolicited advertisements to a telephone facsimile machine complies with the requirements under this subparagraph only if—

(A) The request identifies the telephone number or numbers of the telephone facsimile machine or machines to which the request relates;

(B) The request is made to the telephone number, facsimile number, Web site address or email address identified in the sender's facsimile advertisement; and

(C) The person making the request has not, subsequent to such request, provided express invitation or permission to the sender, in writing or otherwise, to send such advertisements to such person at such telephone facsimile machine.

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(v) A sender that receives a request not to send future unsolicited advertisements that complies with paragraph (a)(4)(v) of this section must honor that request within the shortest reasonable time from the date of such request, not to exceed 30 days, and is prohibited from sending unsolicited advertisements to the recipient unless the recipient subsequently provides prior express invitation or permission to the sender. The recipient's opt-out request terminates the established business relationship exemption for purposes of sending future unsolicited advertisements [California does not have a business relationship exemption]. If such requests are recorded or maintained by a party other than the sender on whose behalf the unsolicited advertisement is sent, the sender will be liable for any failures to honor the opt-out request.

(vi) A facsimile broadcaster will be liable for violations of paragraph (a)(4) of this section, including the inclusion of opt-out notices on unsolicited advertisements, if it demonstrates a high degree of involvement in, or actual notice of, the unlawful activity and fails to take steps to prevent such facsimile transmissions.

(f) Definitions

(f) As used in this section:

(1) The term *advertisement* means any material advertising the commercial availability or quality of any property, goods, or services.

(3) The term *clear and conspicuous* means a notice that would be apparent to the reasonable consumer, separate and distinguishable from the advertising copy or other disclosures. With respect to facsimiles and for purposes of paragraph (a)(4)(iii)(A) of this section, the notice must be placed at either the top or bottom of the facsimile.

(7) The term *facsimile broadcaster* means a person or entity that transmits messages to telephone facsimile machines on behalf of another person or entity for a fee.

(10) The term *seller* means the person or entity on whose behalf a telephone call or message is initiated for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(11) The term *sender* for purposes of paragraph (a)(4) of this section means the person or entity on whose behalf a facsimile unsolicited advertisement is sent or whose goods or services are advertised or promoted in the unsolicited advertisement.

(14) The term *telephone facsimile machine* means equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(16) The term *unsolicited advertisement* means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission, in writing or otherwise.

### *Required language on faxes; Who is fax broadcaster and when broadcaster information is necessary*

**47 Code of Federal Regulations § 68.378:** (d) Telephone facsimile machines; Identification of the sender of the message. It shall be unlawful for any person within the United States to use a computer or other electronic device to send any message via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the message


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and the telephone number of the sending machine or of such business, other entity, or individual. If a facsimile broadcaster demonstrates a high degree of involvement in the sender's facsimile messages, such as supplying the numbers to which a message is sent, that broadcaster's name, under which it is registered to conduct business with the State Corporation Commission (or comparable regulatory authority), must be identified on the facsimile, along with the sender's name. Telephone facsimile machines manufactured on and after December 20, 1992, must clearly mark such identifying information on each transmitted page.

## Discussion

### California and federal law

California law prohibits the faxing of unsolicited advertisements which are defined to be advertisements about the commercial availability or quality of property, goods, or services that are transmitted to a person or entity without that person's or entity's prior express invitation or permission. Federal law (the Junk Fax Prevention Act of 2005) does allow the faxing of unsolicited advertisements to a recipient with whom the sender has an established business relationship, but California law does not allow this exception. However, federal law does have additional requirements for opt-out notices as shown in 47 Code of Federal Regulations § 64.1200 (a)(4) above.

### Recipient permission

Because of California law, a dealer should not fax advertising materials to anyone, including existing customers, without first obtaining the express permission of the recipient. This permission should be documented by a written agreement signed by the intended recipient which specifies the telephone number to which faxes may be sent and clearly states that the person wishes to receive faxes from the dealership. This permission may be for a specific or unlimited number of advertisements and may be for a specific or unlimited period of time.

### Faxes without any advertising

Note that the prohibition concerning transmission of faxes does not apply to faxes without any advertising message.

### Penalties

Penalties and enforcement remedies applicable to violations of California law regarding unlawful faxes include injunctive relief and/or actual or statutory damages of $500 per violation, whichever amount is greater, as well as other remedies provided by law. A willful or knowing violation may increase these damages up to three times.

Federal Communications Commission ("FCC") rules which could also apply provide for substantial penalties.

### Third-party providers

If a dealership contracts with a third-party provider to conduct advertising campaigns by fax (commonly known as fax broadcasters), the dealership should make sure the third-party provider follows the law and gives the dealership indemnification regarding any violation. Because of the potential for substantial damages to be involved, a dealership should also make sure the third-party provider will name the dealership as an additional insured on the provider's insurance policy and that the policy has enough coverage for any

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possible violations. A dealership considering such advertising campaigns should also review the dealership insurance policies to determine if any coverage is provided in the event of a violation.

## Reason for the law

These laws prevent persons from being inundated with unsolicited fax advertising and impose restrictions on fax advertisers.

## Cross-references

Chapter 12: Qualifiers, Disclosures, and Disclaimers


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# Chapter 61 - Telemarketing and Text Messages

## Basic rule

Like other forms of dealer advertising, telemarketing (typically involving telephone calls or text messages to cellphone or residential numbers of individuals to promote the sale of goods or services) may not include false or misleading content. In addition, because of their intrusive nature, such communications may only be made if they comply with a wide array of federal and California laws and regulations. In general, to help avoid compliance problems, dealers should not authorize or conduct telemarketing campaigns unless the written consent of those individuals to receive such calls or texts has been previously obtained.

## Text of the law

### Federal law

Federal statutes regulating telemarketing include The Telephone Consumer Protection Act of 1991 ("TCPA") at **47 United States Code § 227**, and the Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 ("Telemarketing Act") at **15 United States Code §§ 6101-6108**. To see these federal statutes, type bit.ly/FedCode in your browser and navigate to the title and section. The Federal Communications Commission (FCC) implements and enforces the TCPA and the Federal Trade Commission (FTC) implements and enforces the Telemarketing Act.

Federal regulations dealing with telemarketing are at **47 Code of Federal Regulations §§ 64.1200-1202** and **64.1601(e)** and **16 Code of Federal Regulations, Part 310**. To see these federal regulations, type bit.ly/RegsFederal in your browser and navigate to the title and section.

### California law

To see the text of California law, type this in browser: bit.ly/CAcodes. Then either use the drop-down option to the right to select the code and enter the section number or click the code and navigate to the applicable part and chapter.

#### *Telemarketing*

**See California Business & Professions Code §§ 17590-17594** for California statutes that regulate telemarketing.

#### *Definition of text message advertisement; transmission prohibited; opt-out requirement*

**See California Business and Professions Code § 17538.41**

#### *Express written agreement to receive calls*

**See California Business and Professions Code § 17592(e)(1)**

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### *Telephonic sellers*

**See California Business & Professions Code §§ 17511-17514**. These statutes regulate telephonic sellers. These are very detailed laws and generally would not apply in the automobile sales situation where the deal is consummated in person. For example, the law regulating telephonic sellers does not apply to a person soliciting by telephone where the sales transaction is later completed in a face-to-face meeting between the telephone solicitor and the prospective purchaser.

## Discussion

Telemarketing rules are significantly complicated by the existence of the three separate sources of regulation which include the FTC and FCC rules and California law. As most California dealerships generally have no occasion to make telemarketing calls outside of California, dealers should be most concerned with compliance with California law and the FCC regulations which are applicable to intrastate telemarketing calls.

For more information: Dealerships involved in making telemarketing calls to persons residing out of state (interstate telemarketing) should review the FTC regulations at 16 Code of Federal Regulations, Part 310.

Tip: In general, federal law is controlling when it is more restrictive than California law. However, when California law is more restrictive than federal law, California law should be followed.

### Definition of a telemarketing call (or text message)

The definition of a telemarketing call varies under California and federal law. Generally, any call, including any text message, which meets the following criteria should be considered a telemarketing call and subject to the FCC regulations or California law:

The call is initiated by the dealership or on its behalf and the dealership does any of the following during the call:

- encourages the rental, lease, exchange or purchase of (or investment in) goods or services or offers to sell, lease, or otherwise provide goods or services;
- promotes any product or service;
- offers any extension of consumer credit;
- collects marketing information that may be used to make a solicitation at some future time;
- offers any gift of goods or services; or
- offers a prize or opportunity to receive a prize.

### Do-not-call rules

The telemarketing rules and regulations recognize two do-not-call lists: the national do-not-call list and a company's (i.e., a dealership's) specific list. Unless an exception clearly applies, no dealership employee or agent should place telemarketing calls to residential or wireless telephone numbers listed on either do-not-call list. Dealership employees or agents should not call individuals on the dealership's internal do-not-call list


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for telemarketing purposes unless there has been a request by the individual for removal from that list that is confirmed in writing.

## Exceptions and exclusions

Certain exceptions and exclusions are recognized by federal and California law which allow a dealership to make live calls to individuals even if they are on the national do-not-call list. These exceptions and exclusions are generally described as follows:

Calls that are not for telemarketing purposes (i.e., calls not for purposes of encouraging sales, promoting a product or service, gathering marketing information to use for solicitations, or offering a prize or a gift).

Calls to non-residential, non-wireless numbers.

Calls to individuals who have given written permission to receive such calls. This permission should be documented by a written agreement signed by the individual which states the name of the dealership, the telephone number to be called, and that the individual wishes to be called. For further information see discussion under "Prior express written consent" later in this chapter.

Calls to individuals with whom a dealership has an established business relationship (i.e., the individual has voluntarily made a purchase, rental, or lease of the dealership's goods or services) within the last 18 months.

Calls to individuals who have made an express request or inquiry to the dealership for information within the last 30 business days.

Calls to individuals not on the national do-not-call list (it should be verified that such individuals are not on the dealership do-not-call list).

Note: The foregoing exceptions and exclusions may in certain circumstances be overridden if an individual has requested that no further telephone calls be made to him or her, and some of these exceptions and exclusions may not apply in all instances.

## Basic requirements for making telemarketing calls

Telemarketing calls should not be made (even to numbers not on the national do-not-call list) unless all of the following conditions are met by a dealership:

Have a written telemarketing compliance policy and training program on internal do-not-call requests, and implement the means to record and honor those requests.

Take advantage of safe harbor protections through written policies and training on the national do-not-call list and other telemarketing rules and implement the means to comply with those rules, including the downloading and saving of numbers from the national list, the checking thereof before numbers are dialed, and the creation and maintenance of documentation establishing that these steps were accomplished.

Honor the national and dealership-specific rules.

Ensure the dealership Caller I.D. information transmitted when calls are made is accurate and not blocked.

Have calls made no earlier than 8 a.m. and no later than 9 p.m. Autodialed calls should not be made before 9:00 a.m. pursuant to California Public Utilities Code § 2872.

Let phones ring at least 4 rings or 15 seconds before hanging up.

Have dealership employees/contractors give the proper identifying information and contact numbers when calling.

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## Safe harbor protection

A failure to comply with the FCC rules can expose a dealership to a variety of legal consequences, including fines of up to $500 per call ($1,500 if the violation is willful) for each violation or each day of a continuing violation. The FCC regulations, however, do provide that businesses (including dealerships) can be relieved from liability for accidental violations of the national do-not-call list rules if the following "safe harbor" requirements are met:

Have written procedures to comply with national do-not-call list.

Provide each employee and contractor engaged in any aspect of telemarketing with training on dealership telemarketing policies and procedures.

Maintain and record the dealership's specific (internal) do-not-call list.

Use a process to prevent calls to numbers on the national do-not-call list.

Register to purchase (avoid cost-sharing arrangements) and check data downloaded from the national do-not-call list maintained by the FCC no more than 30 days prior to the date of any call.

Use a process to ensure registry data is not sold, shared, etc.

Maintain records documenting the above.

Important: A dealership's compliance with these safe harbor requirements could also put it in a position to benefit from the affirmative defense protection recognized by California law if a violation is an inadvertent accident. This is important since violations of the applicable California laws also potentially give rise to significant legal consequences.

## Messages to cellular telephones

Text message advertisements are regulated by both federal and California state law.

California law regarding text messages. California Business & Professions Code § 17538.41 prohibits text message advertisements from being transmitted to cellular telephones or pagers, except where there is an established business relationship with the subscriber and the subscriber is offered an option not to receive the text message advertisements. Moreover, if an affiliate of the business with the established business relationship is going to send a text message advertisement on the business's behalf, then in addition to the established business relationship, the subscriber's consent to receive such text messages from affiliates is required. Under California law, a "text message advertisement" includes any message whose main purpose is "to promote the sale of goods or services" and contains "advertising material for the lease, sale rental, gift offer, or other disposition of any realty, goods, services, or extension of credit."

Federal law regarding text messages. Different federal rules apply depending on whether the text message advertisements are sent to a phone number (SMS) or to an email address (SMTP).

SMTP Text messages to email addresses. A SMTP text message is sent to an email address and received as a text message on the recipient's mobile device. SMTP text messages are regulated by the federal CAN-SPAM Act of 2003 and the CAN-SPAM Rule, just like commercial emails. The federal CAN-SPAM Act regulates mobile service commercial messages which are basically defined under 15 United States Code §§ 7702(2)(A) and 7712(d) as electronic mail messages that primarily include commercial advertisements or promotions of commercial products or services which are transmitted directly to a wireless device. For more information on the CANSPAM Act, see Chapter 59, Email Advertising including the discussion under the heading "Restrictions on mobile service commercial messages."


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Text messages to phone numbers. Other forms of text messages, including SMS, are sent to the recipient's phone number directly. These are more commonly used than SMTP messages. Courts have upheld the FCC's interpretation that text messages are regulated like telemarketing calls under the TCPA. See, for example, Van Patten v. Vertical Fitness Group, LLC (2017) 847 F.3d 1037, 1041-42 (acknowledging the FCC's interpretation of the TCPA to encompass both voice calls and text calls to wireless numbers, which are usually referred to as text messages). When sending text messages to phone numbers, the rules regarding telemarketing calls should be followed.

## Telemarketing with automatic dialing systems or artificial or Prerecorded voices

The laws and regulations that apply to telemarketing communications that utilize automatic telephone dialing systems or artificial or prerecorded voices, (including autodialed text messages known as "robotexts" as they are considered calls under the TCPA) are extremely restrictive. The FCC's interpretation of the applicable federal laws and regulations (including for example, what constitutes an "automatic telephone dialing system"), has been the subject of extensive litigation.

The laws and regulations that apply to telemarketing communications that utilize automatic telephone dialing systems or artificial or prerecorded voices, (including autodialed text messages known as "robotexts" as they are considered calls under the TCPA) are extremely restrictive. The FCC's interpretation of the applicable federal laws and regulations (including for example, what constitutes an "automatic telephone dialing system"), has been the subject of extensive litigation. In 2021, the Supreme Court stepped in and clarified that the TCPA's definition of an "automatic telephone dialing system" only applies to systems that use a random or sequential number generator to either store or produce telephone numbers to be called, as opposed to systems that merely have the ability to store and produce telephone numbers, such as a cell phone. Facebook, Inc. v. Duguid (2021) 141 S.Ct. 1163, 1168-73.

California law adds an additional level of complexity. Although as a practical matter there appears to be limited enforcement of this law, under California Civil Code § 1770(a)(22), telephone calls using a prerecorded message are prohibited if they are being made to individuals not having an established relationship with the business making the call, unless certain requirements are met. Specifically, such calls must be introduced by a natural voice first informing the individual answering of the name of the caller or business being represented, either the address or telephone number of the caller, and additionally the consent of the individual to listen to the prerecorded message must be obtained. Because of the compliance challenges involved, dealers should not engage in telemarketing campaigns that utilize automatic dialing systems or artificial or prerecorded voices unless the written consent of those individuals to be called or texted has been previously obtained and not revoked. See discussion below under heading Prior express written consent.

For more information: See FTC publication: Stop Unwanted Robocalls and Texts (to see, type this in browser: bit.ly/callingstop).

## Prior express written consent

Even for telephone calls or texts that do not involve automatic dialing systems or artificial prerecorded voices, the best practice for dealers to avoid compliance problems is to obtain the prior express written consent of the individual to be contacted. To be effective, a written consent must be an agreement signed (electronic signatures are acceptable) by the individual that clearly and conspicuously discloses that the individual is agreeing to receive telemarketing calls/texts (including calls from automatic telephone dialing systems and calls that use prerecorded messages) from the dealership identified in the agreement and at the telephone number(s) specified in the agreement. The agreement should also disclose that the individual is not required

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to give consent to receive telemarketing calls or texts as a condition of purchasing any goods or services. For an example of a consent form available from The Reynolds and Reynolds Company see the online version of this manual in the CNCDA Comply section at www.cncda.org.

Dealers should be aware that an individual may revoke the consent given to receive telemarketing calls/texts by any reasonable means. If there is a challenge regarding consent, the dealer has the burden to show an individual's written consent was obtained and not revoked. For that reason, such consent agreements should be retained by a dealer for at least five years.

Tip: Because of the significant penalties that can be imposed for violating the applicable laws, dealers should not initiate a telemarketing campaign (including a text messaging campaign) without having it reviewed by legal counsel.

## Reason for the law

These laws protect consumers from intrusive telemarketing and are intended to protect the consumer's privacy rights.

## Cross-references

Chapter 59: Email Advertising

Chapter 60: Fax Advertising


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# Chapter 62 - Direct Mail and Offers to Select Groups

## Basic rule

All statements made in connection with direct mail and closed sale advertising must comply with all of the advertising laws and regulations applicable to dealers. Some unique issues come up in direct mail advertising. These issues include the following:

- Deceptive formats on envelopes
- Offers made to select groups
- Simulated checks and discount coupons
- Prescreened offers of credit
- Advertising sweepstakes

## Text of the law

### Misleading appearance

**California Business and Professions Code § 17537.1 (g):** It is unlawful for any person making an offer subject to subdivision (a), or any employee, agent, or independent contractor employed or authorized by that person, to:

(1) Use any printing styles, graphics, layouts, text, colors, or formats on envelopes or on the offer that imply, create an appearance, or would lead a reasonable person to believe, that the offer originates from or is issued by or on behalf of a government or public agency, public utility, public organization, insurance company, credit reporting agency, bill collecting company, or law firm, unless the same is true.

(2) Misrepresent the size, quantity, identity, value, or qualities of any incentive.

(3) Misrepresent in any manner the odds of receiving any particular incentive.

(4) Represent directly or by implication that the number of participants has been significantly limited or that any person has been selected to receive a particular incentive unless that is the fact.

(5) Label any offer a notice of termination or notice of cancellation.

(6) Misrepresent, in any manner, the offer, plan, or program or the affiliation, connection, association, or contractual relationship between the person making the offer and the owner or provider, if they are not the same.

### One of a select group

**California Business and Professions Code § 17537.2 (b):** The following, when used as part of an advertising plan or program defined in Section 17537.1, are deceptive and constitute unfair trade practices: (b) Stating or implying in the offer that the recipient is one of a selected group to receive a particular incentive or one or more of a group of incentives, without clearly and conspicuously disclosing in close proximity to the

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statement or implied statement of selection the total number of persons in that select group or the odds of receiving the incentive or incentives. Statements of selection which require such disclosure include such phrases as "you are a finalist," "we are sending this to a limited number of people," "either you or another named person has won the major prize," "if you do not respond, your incentive will be given to someone else."

## Coupons

**California Business and Professions Code § 17537.11:**

(a) It is unlawful for any person to offer a coupon that is in any manner untrue or misleading.

(b) It is unlawful for any person to offer a coupon described as “free,” or as a “gift,” “prize,” or other similar term if (1) the recipient of the coupon is required to pay money or buy any goods or services to obtain or use the coupon, and (2) the person offering the coupon or anyone honoring the coupon made the majority of his or her sales in the preceding year in connection with one or more “free,” “gift,” “prize,” or similarly described coupons.

(c) For purposes of this section:

(1) “Coupon” includes any coupon, certificate, document, discount, or similar matter that purports to entitle the user of the coupon to obtain goods or services for free or for a special or reduced price.

(2) “Sale” includes lease or rent.

## Simulated checks prohibited

**California Vehicle Code § 11713.1 (w):** It is unlawful for a dealer to] use a simulated check, as defined in subdivision (a) of Section 22433 of the Business and Professions Code, in an advertisement for the sale or lease of a vehicle.

## Definition of simulated check

**Business and Professions Code § 22433:** Definition; violations; penalties

(a) As used in this section, "simulated check" means any document that is not currency or a check, draft, note, bond, or other negotiable instrument but that, because of its appearance, has the tendency to mislead or deceive any person viewing it into believing that it, in fact, represents any of the following: (1) currency or a negotiable instrument that can be deposited in a bank or used for third party payments; (2) a prize, gift, or monetary benefit that the recipient has won or is entitled or guaranteed to receive; or (3) an actual check or other item of value that can be claimed or redeemed. "Simulated check" does not include a nonnegotiable check, draft, note, or other instrument that is used for soliciting orders for the purchase of checks, drafts, notes, bonds, or other instruments, and that is clearly marked as a sample, specimen, or nonnegotiable. "Simulated check" also does not include any document indicating in a truthful and nonmisleading manner that a person, in fact, unconditionally has won or is entitled or guaranteed to receive a specific prize, gift, or amount of money or credit.

(b) No person shall produce, advertise, offer for sale, sell, distribute, or otherwise transfer for use in this state any simulated check.

(c) The Attorney General may bring an action to enjoin a violation of this section, and to recover a civil penalty of not more than one hundred dollars ($100) for each violation of this section. A violation of this section may be enjoined without proof that any person has, in fact, been injured or damaged by the violation.


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### Prescreened credit offers—California law

**California Civil Code § 1785.20.1:** a) Except as provided in subdivision (b), any person who uses a consumer credit report in connection with any credit transaction not initiated by the consumer and which consists of a firm offer of credit shall provide with any solicitation made to the consumer a clear and conspicuous statement as to all of the following:

(1) Information contained in the consumer's prequalifying report was used in connection with the transaction.

(2) The consumer received the offer of credit, because the consumer satisfied the criteria for creditworthiness under which the consumer was selected for the offer.

(3) Where applicable, the credit may not be extended if, after the consumer responds to the offer, the consumer does not meet the criteria used to select the consumer for the offer.

(4) The consumer has a right to prohibit use of information contained in the consumer's file with any consumer credit reporting agency in connection with any credit transaction that is not initiated by the consumer. The consumer may exercise this right by notifying the notification system or joint notification system established under subdivision (d) or (e) of Section 1785.11.

(b) Subdivision (a) does not apply to any person using a prequalifying report if all of the following conditions are met:

(1) The person using the prequalifying report is affiliated by common ownership or common corporate control with the person who procured the report.

(2) The person who procures the prequalifying report from the consumer credit reporting agency clearly and conspicuously discloses to the consumer to whom the report relates, before the prequalifying report is provided to the person who uses the report, that the prequalifying report might be provided to, and used by, persons affiliated in the manner specified in paragraph (1) with the person that procured the report.

(3) The consumer consents in writing to this provision and use of the prequalifying report.

(c) No person shall be denied credit on the basis of the consumer's refusal to provide consent pursuant to paragraph (3) of subdivision (b), unless that consent is necessary for the extension of credit, related to that transaction, by an affiliate.

### Prescreened Credit offers—federal law

The FTC Prescreen Opt-Out Disclosure Rule regarding unsolicited offers of credit, enacted in 2005, can be found in **16 Code of Federal Regulations, Parts 642 and 698**.

Federal law disclosure requirements when making a firm offer of credit not initiated by the consumer are very similar to California law above. **See 15 United States Code section 1681m (d)**.

## Discussion

### Deceptive formats on envelope or offer

The use of any deceptive formats on an envelope or the offer that creates an appearance or leads the recipient to believe the offer originates from a government agency, bill collecting agency, and other specified businesses, is prohibited. See California Business and Professions Code § 17537.1(g)(1). Examples of deceptive format are showing "IRS" as the sender (meaning "Inventory Reduction Service"); showing the

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bald eagle with an implication that the sender is the U.S. Government; and graphics showing the Washington Capitol building, implying the sender is the U.S. Government.

## Offers made to select groups

If a special offer is made to a select group, those to whom the offer is communicated are the only ones who can take advantage of the offer. However, if after making the special offer to the select group, the dealer makes the offer to customers who come into the dealership and who are not part of the select group, the offer may then be deemed to be an offer to the public generally so that any customer may claim that he or she is entitled to the benefits of the special offer. If an offer is made to the public generally, it then must be made to customers whether or not they are aware of the offer. For more information: see Chapter 24, Duty to Sell at Advertised Price and Posting Rules.

Under California Business and Professions Code § 17537.2 (b), it is a deceptive and unfair trade practice to state that a person is one of a select group to receive an incentive (such as a discount coupon) without clearly disclosing close to the statement the number of persons in the select group or the odds of receiving the incentive.

## Simulated checks and discount coupons

Simulated checks or discount coupons are often a component of direct mail promotions. Simulated checks may not be used in California for any purpose. If a newspaper ad requires that a discount coupon be clipped and brought into the dealership, it would appear that the same discount would have to be allowed to any other customer, whether that customer was aware of the advertisement or not. This follows the rule that vehicles must be sold to customers as advertised, whether or not the customer knows of the advertisement. For more information, see Chapter 54, Simulated Checks. Discount coupons are an acceptable way of advertising, but the coupon must represent a true discount or savings. See Chapter 25, Savings and Discount Claims.

Under California Business and Professions Code § 17537.11, coupons may not in any way be untrue or misleading. And, as discussed above, California Business and Professions Code § 17537.2 (b) makes it a deceptive and unfair trade practice to state that a person is one of a select group to receive an incentive (such as a discount coupon) without clearly disclosing close to the statement the number of persons in the select group or the odds of receiving the incentive.

## Prescreened credit offers

The basic legal requirement for soliciting consumers (whose credit information has been accessed) regarding credit offers is that the solicitation include a "firm offer of credit." This means the offer will be honored if the consumer meets the pre-established criteria. The Federal Trade Commission (FTC) describes prescreening as working in one of two ways: 1. A creditor or insurer establishes criteria, like a minimum credit score, and asks a consumer reporting company for a list of people in the company's database who meet the criteria; or 2. A creditor or insurer provides a list of potential customers to a consumer reporting company and asks the company to identify people on the list who meet certain criteria.

## Disclosure Requirements

The written materials which solicit prescreened credit offers must under federal and California law contain certain disclosures that are summarized as follows:

i. that information in the consumer's credit report was used;


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ii. the consumer was selected because certain criteria were satisfied;

iii. the offer may not be extended if the consumer does not continue to meet the criteria; and

iv. the consumer has a right to prohibit use of the credit information and may exercise this right concerning future offers by contacting credit reporting agencies at specified toll-free numbers or addresses.

Important: Your legal counsel should review the language to be used for these disclosures.

## FTC opt-out notices

The FTC rule provides that when making pre-screened offers of credit, the consumer must be provided with an opt-out notice. The FTC rule covering how opt-out notices should be made in the documents promoting the prescreened credit offer follows a "layered" approach which basically involves using two different notices (one short and one long) with very technical requirements. See federal law referenced above.

## FTC short notice

The FTC example of the short notice reads as follows:

You can choose to stop receiving 'prescreened' offers of credit from this and other companies by calling toll free [toll-free number]; or visiting [prescreen opt-out website[. See PRESCREEN & OPT-OUT NOTICE on other side [or other location] for more information about prescreened offers.

This short notice must be located on the front side of the first page of the principal promotional document in the solicitation and be located on the page and in a format that is distinct from other text, such as inside a border. The type size for the short notice must be larger than the type size of the principal text on the same page, but in no event smaller than 12-point type, and the type style must be distinct from the principal type style used on the same page (for example, bolded, italicized, underlined, or a different color).

## FTC long notice

The FTC example of the long notice reads as follows:

PRESCREEN & OPT-OUT NOTICE: This 'prescreened' offer of credit is based on information in your credit report indicating that you meet certain criteria. This offer is not guaranteed if you do not meet our criteria [including providing acceptable property as collateral]. If you do not want to receive prescreened offers of credit from this and other companies, call the consumer reporting agencies [or name of consumer reporting agency] toll free at [toll-free number]; visit [prescreen opt-out website]; or write: [consumer reporting agency name and mailing address].

The long notice must appear in the solicitation and begin with the heading "PRESCREEN & OPT-OUT NOTICE" (this heading must be in capital letters and underlined) and be set apart from other text on the page (for example, by including a blank line above and below the statement, and by indenting both the left and right margins from other text on the page). The type size of the long notice must be no smaller than the type size of the principal text on the same page, and in no event be smaller than 8-point type. The type style must also be distinct from the principal type style used on the same page (for example, bolded, italicized, underlined, or in a contrasting color). The long notice must not include any other information that interferes with, detracts from, contradicts, or otherwise undermines the purpose of the notice.

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Tip: Dealers considering direct mail advertising campaigns involving prescreened credit offers should require the vendor providing the advertising materials to represent in writing that they are legally compliant and also to indemnify the dealer regarding any claims arising from the materials. Even if the vendor satisfies these requirements, a dealer should have the mailer reviewed by legal counsel. This is especially important because there is a difference of opinion among the federal courts regarding how specific the firm offer of credit must be in disclosing all the material terms. (See Cole v. U.S. Capital, 389 F.3d 719 (7th Cir. 2004) and Putkowski v. Irwin Home Equity Corp, 423 F. Supp. 2d 1053 (N.D. Cal. 2006.)

### Attorney review; reliance on others

To be on the safe side, have your ads reviewed by a competent attorney familiar with dealer advertising law. Do not rely on your advertising agency, newspaper, or other vendors for compliance with the advertising rules; this is the dealer's responsibility, not theirs, and they are not qualified to give legal advice. For an example of how a dealership group and their marketing company got into trouble with the Federal Trade Commission (FTC), go to the CNCDA Comply section at www.cncda.org to see a December 2018 bulletin article, Don't Blindly Follow Marketing Company Suggestions. To see the FTC case, type this in browser: bit.ly/passtoyota.

## Reason for the law

These laws are designed to protect consumers from false and misleading advertising in direct mail and offers to select groups advertising.

## Cross-references

Chapter 51: Free Goods and Services

Chapter 58: Incentives to Visit Dealership

Chapter 25: Saving and Discount Claims

Chapter 54: Simulated Checks

Chapter 56: Sweepstakes and Contests


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# Part H – Website and social media advertising



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# Chapter 63 - Website Advertising

## Basic rule

When advertising on a dealership website, or third-party websites, the dealership must generally follow all of the advertising rules applicable to dealers. There is sometimes a misconception that the advertising rules don't apply to websites, or that the rules don't need to be strictly followed on websites.

## Discussion

The following are some areas that should always be considered when advertising on a dealership website:

### Advertisements on a dealership website must comply with the advertising rules in this manual.

There is sometimes a misconception that there are different rules for website advertising. Advertising on the dealership website or on social media websites must follow the rules in this manual. There are no exceptions for advertisements on a dealership website. In addition to the areas highlighted below, use the advertising checklist in Chapter 65 to help with advertising compliance.

### Dealer has responsibility for website content created or supplied by third-party vendors and content on third-party websites.

The dealer is responsible for all advertising on its website or for advertising it does or allows on third-party websites. The fact that a dealer allows third-party vendors to create the website, or populate it with advertising, does not relieve the dealer from the responsibility of making sure that all the advertising is legally compliant.

### Information that must be on every webpage where a vehicle price is advertised

Any webpage of a dealer's website that displays the price of a vehicle offered for sale must have the following statutory language on the webpage in substantially the following form with no abbreviations: "Plus government fees and taxes, any finance charges, any dealer document processing charge, any electronic filing charge, and any emission testing charge." **See California Vehicle Code §11713.1**. This should appear clearly and conspicuously somewhere close to the price or prices. A webpage is a page on the website that has a top and bottom of the page. Some webpages are static (do not scroll); for others, you can scroll up to the top or bottom of the page.

### Advertisements to be withdrawn within 48 hours

**California Vehicle Code § 11713(c):** A holder of a license issued under this article shall not do any of the following: Fail, within 48 hours, to withdraw in writing an advertisement of a vehicle that has been sold or withdrawn from sale.

If the vehicle is sold or withdrawn from sale, the dealer must in writing withdraw the advertisement of the vehicle within 48 hours of the sale or withdrawal from sale. The notification should request that the ad be withdrawn, and the dealer should obtain a written acknowledgment from the website content provider of


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receipt of the request for withdrawal. The notice of withdrawal should be kept in the dealer's business records for further reference. There are no court cases or regulations that define when notification is deemed to have been given; however, it would not be prudent to rely on the postmark or date of the withdrawal notice. The notification should be in the hands of the content provider within the 48 hours. Stated expiration dates or use of "subject to prior sale" do not excuse the dealer's duty to notify the content provider of withdrawal within the 48 hours. Some regulators have taken the position that this statute means that the advertisement must actually be withdrawn within the 48 hours. If the dealer is providing or has control of the website advertising, any advertised vehicle which has been sold or withdrawn from sale should immediately be removed from the website.

## Pictures of vehicles and statements of vehicle condition must be accurate.

A California statute and regulation on the subject of pictures are below:

**California Vehicle Code § 11713(s):** [It is unlawful for a licensee to] use a picture in connection with an advertisement of the price of a specific vehicle or class of vehicles, unless the picture is of the year, make, and model being offered for sale. The picture shall not depict a vehicle with optional equipment, or a design not actually offered at the advertised price.

**13 California Code of Regulations § 260.03:** Statements of vehicle condition must accurately reflect the known condition, and pictures of vehicles must accurately depict their overall appearance.

## "Special" internet prices to be offered to all customers whether or not they saw the price on the internet

Some believe that if they advertise the price of an "internet special," this falls into a different category of advertising and the duty to sell at the advertised price does not apply to these "specials." If the price of a vehicle is advertised to the public on the internet, that price must be given to anyone who wants to purchase the vehicle, whether or not the advertisement was seen or known by the prospective purchaser. See Chapter 24, Duty to Sell at Advertised Price and Posting Rules. If on the other hand a dealer is emailing a price to a customer on a one-to-one basis, this would not be considered to be a price advertised to the public generally and there would be no duty to sell the vehicle to others at that price.

## A list of dealership vehicles advertised with a price, including those advertised on the internet, must be displayed in the dealership showroom.

See full discussion in Chapter 23, Duty to Sell at Advertised Price and Posting Rules.

## Advertisements on a dealership website are not exempt from the rule that there must be a clear and conspicuous disclosure of all qualifiers and disclaimers.

For a discussion about how to disclose qualifiers and disclaimers when advertising on a dealership website, see Chapter 64, Social Media Advertising; and Chapter 12, Qualifiers, Disclosures, and Disclaimers.

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### If a dealer advertises leases or credit sales on its website and there are any Regulation Z or Regulation M trigger terms, then the advertisement must comply with the Regulation M and Regulation Z disclosures.

See Chapter 39, Installment Sales and Regulation Z Trigger Terms, and Chapter 42, Leases and Regulation M for a full discussion of installment sale and lease advertising disclosure.

## Importance of reviewing and monitoring dealership website

Because dealership websites are usually created and populated by third-party vendors, it is important to have someone in the dealership review and monitor the website for compliance with advertising law. A periodic review by an attorney knowledgeable about vehicle advertising law would be a good practice.

## Proposition 65 warning on dealer website

See 27 California Code of Regulation § 25602 regarding when a Proposition 65 warning must appear on a dealer website in advertising vehicles. Note the following language of the regulation: "(b) For internet purchases, a warning that complies with the content requirements of Section 25603(a) must also be provided by including either the warning or a clearly marked hyperlink using the word "WARNING" on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase." For any purchase that can be completed without the customer coming to the dealership, it appears that a dealer would not have to have a Proposition 65 warning on its website provided that a Proposition 65 warning is shown to the customer before the customer signs the purchase documents. In that case, it would be a good practice to have the customer sign a copy of the warning and keep the copy in the deal file. The customer should be provided with a copy to keep with the customer's purchase documents. A conservative approach for dealers, however, would be to follow 27 California Code of Regulation § 25602 with regard to posting the Proposition 65 warning on the internet site when advertising vehicles on the internet. Dealers should consult with their Proposition 65 counsel for advice in this area. The California New Car Dealers Association has a Proposition 65 handbook available in the CNCDA Comply section at www.cncda.org which contains Proposition 65 compliance guidance for California new motor vehicle dealers. See Chapter 55, Service and Parts Advertising, for a discussion of the Proposition 65 warning that must be given when parts and accessories subject to Proposition 65 are sold on the internet.

## Dealership inventory on or accessed through third party websites

A dealer's strategy for selling and leasing vehicles typically involves advertising the dealership's vehicle inventory on its website and also on other third-party websites. In many instances, the content of these websites is developed by outside vendors, including vendors recommended and approved by the dealer's franchisor. Just as is the case with other types of dealer advertising, the content of these websites, including how it is formatted, needs to comply with the applicable advertising laws. Legal compliance concerns regarding website content include using accurate vehicle pictures, properly displaying vehicle price information (especially regarding vehicles having dealer added equipment), properly displaying vehicle status information (for example, used, demonstrator or prior rental designations), providing accurate factory rebate and financing offer details and deadlines, and the timely removal of content regarding previously sold vehicles. Because of these concerns, dealers should consider requiring the website vendor involved to represent that the content provided by the vendor is compliant with the applicable laws and also to commit to indemnifying the dealership regarding claims arising from that content (including errors) as part of the dealer's written agreement with the vendor.


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## Privacy policy on dealership website

California Business and Professions Code § 22575 provides that an operator of a commercial website or online service that collects personally identifiable information through the internet about individual consumers residing in California who use or visit the website or online service shall conspicuously post its privacy policy on its website. This stature also sets forth requirements for the privacy policy. The California Consumer Privacy Act contains further requirements for website privacy policies and disclosures that may be required on websites. The California New Car Dealers Association has a compliance guide, the CCPA Compliance Handbook, which has further information on this topic. The guide can be accessed by going to the CNCDA Comply section at www.cncda.org.

## Internet advertising applicable only to those in California

The dealership website should have a clear and conspicuous disclosure that the advertising on the website is intended only for those in California. The disclosure could read: "Advertising on this website is intended only for those in California." This is done to prevent claims that advertising on the website is subject to the advertising laws of other states when viewed by persons in those states

## Americans with Disabilities Act (ADA) applicability to websites

Whether the Americans with Disabilities Act (ADA) applies to websites is a gray area because of variations in court decisions throughout the country. In the January 2019 Ninth Circuit Court of Appeals case of Robles v. Domino's Pizza (2019) 913 F.2d 898 the court determined that the ADA did in certain circumstances apply to websites and that the ADA was not solely limited to physical locations. The issue may someday be decided by the U.S. Supreme Court, but unless the Robles case is reversed by the Supreme Court, those in California must follow the Robles case. Subsequent to the Domino's Pizza case, in September 2019 a California Court of Appeal said websites connected with a physical place of accommodation were subject to ADA accessibility. See Thurston v. Midvale Corporation (2019) 39 Cal.App.5th 634.

## Policies and procedures on website accessibility

The California New Car Dealers Association has a compliance guide, Policies and Procedures on Website Accessibility. The guide may be accessed by going to the CNCDA Comply section at www.cncda.org.

Below is a discussion of ADA website compliance from the July 2019 California New Car Dealers Association bulletin article "Dealership Websites and ADA Compliance The article can also be accessed by going to the CNCDA Comply section at www.cncda.org.

## Dealership websites and ADA Compliance

Have you considered whether your dealership's website is accessible by people who have limited or no vision or are hard of hearing? Plaintiff's attorneys tend to target businesses for Americans with Disabilities Act (ADA) violations in segments – they focus on one industry at a time and systematically target individual businesses for quick drive-by settlements one by one. Recently, CNCDA's legal hotline has noticed a marked uptick in dealers calling for advice regarding website accessibility claims under the ADA.

Title III of the ADA prohibits discrimination on the basis of disability in places of public accommodation. The law requires businesses to make "reasonable accommodations" to ensure that members of the disabled community have "full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations" of these businesses.

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The ADA has traditionally been associated with physical locations and accommodations. For example, many dealers have received complaints over the years alleging that a bathroom sink or checkout counter is too high, a parking lot grade is too steep, a parts department aisle is too narrow, or a public entrance door is not automatic. However, a series of U.S. court decisions (most recently the Ninth Circuit in Robles v. Domino's Pizza) have interpreted the ADA's protections covering "places of public accommodation" to apply to websites.

Many people with little or no vision use screen readers to access websites. These programs read text on webpages out loud to the user and read embedded code to verbally describe webpage images and pictures. People who are hard of hearing rely on descriptions and captions in video and other multimedia.

Since 2010, the federal Department of Justice has discussed issuing regulations to make clear what websites must include to be accessible under the ADA. At the time, the DOJ began developing accessibility guidelines for public websites. However, in December of 2017, the DOJ announced that those regulations were being officially withdrawn.

### *Since regulatory guidance is lacking, what best practices can be implemented to ensure that people with disabilities can enjoy full use of dealership websites and protect against ADA-related website accessibility claims?*

1) Speak to your website designer. Despite the lack of regulations in this area, U.S. courts and the DOJ frequently reference a set of guidelines developed by technology and accessibility experts called the Web Content Accessibility Guidelines 2.0 Level AA. Your website designer should be familiar with these standards (and the 38 separate requirements within the guidelines) and should be directed to incorporate them into your website design.

2) Conduct an initial review using a web accessibility evaluation tool. Although this does not take the place of talking to your website designer, it may be helpful to conduct an initial review of your website using a free web accessibility evaluation tool such as WAVE (https://wave.webaim.org/). If you enter your dealership website into the blank box, the tool will do a quick scan and identify areas of concern. Keep in mind that running a tool like this on your website homepage does not cover any webpage other than the main landing page – to do a scan of your whole website, you have to enter each separate http address into the tool individually.

3) Check your website for images, videos, and other media that do not have text descriptors. For example, some promotional photos will include text, but the text is unreadable because it is embedded within a photograph. An easy rule of thumb is that text that cannot be highlighted by itself cannot be read by a screen reader. If you have these kinds of images or other media, a line of simple HTML code can be embedded to provide a text equivalent of the image or descriptor for the content. Make sure every new picture added of a vehicle offered for sale is accessible.

4) Ensure that forms included on your website are correctly coded. Most dealerships have an option to invite people to express interest in a vehicle by entering their name, email address, and phone number into a short form next to a vehicle advertisement. Ensure that all forms have coded labels for all data fields (e.g. the "name" field is correctly coded as the "name" box; the "email address" field is correctly coded as the "email address" box) and include clear error indications.

5) Ensure that all documents available on your website also meet accessibility requirements. Many dealers include links on their websites to separate documents, including information on F&I products, financing applications, and career opportunities. Make sure that all documents and portals follow accessibility


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guidelines. The National Auto Dealers Association has also released a helpful FAQ on the subject, linked here. If your dealership has received notice from a plaintiff's attorney about an alleged ADA violation related to your website, you should contact the dealership's counsel for assistance. If your store has not been hit by a claim yet, do not wait – contact your website designer as soon as possible to ensure your website is compliant.

## Cross-references

Chapter 64: Social Media Advertising

Chapter 12: Qualifiers, Disclosures, and Disclaimers

Chapter 1: Advertising Basics

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# Chapter 64 - Social Media Advertising

## Basic rule

The rules regarding auto dealer advertising apply to advertising on the internet as well as to other media. The FTC has provided guidance for advertising on the internet, as discussed below.

Dealer advertising on social media internet sites such as Facebook, Twitter, and others, must comply with the dealership advertising rules in this manual.

It is important that this chapter be read with the following two chapters: Chapter 63, Website Advertising, and Chapter 12, Qualifiers, Disclosures, and Disclaimers.

## Text of the law

### Internet advertising disclosure when price advertised

**California Vehicle Code § 11713.1(c):** It is a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(1) Exclude from an advertisement of a vehicle for sale that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the California tire fee, the fee charged by the state for the issuance of a certificate of compliance or noncompliance pursuant to a statute, finance charges, a charge to electronically register or transfer the vehicle, and dealer document processing charge.

(2) The obligations imposed by paragraph (1) are satisfied by adding to the advertisement a statement containing no abbreviations and that is worded in substantially the following form: "Plus government fees and taxes, any finance charges, any dealer document processing charge, any electronic filing charge, and any emission testing charge."

(3) For purposes of paragraph (1), "advertisement" means an advertisement in a newspaper, magazine, or direct mail publication that is two or more columns in width or one column in width and more than seven inches in length, or on a Web page of a dealer's Internet Web site that displays the price of a vehicle offered for sale on the Internet, as that term is defined in paragraph (6) of subdivision (f) of Section 17538 of the Business and Professions Code.

See discussion in Chapter 63, Website Advertising, for what is meant by a dealer's Web page.

### Duty to display list of advertised vehicles in showroom

**California Vehicle Code § 11709.3:** (a) Every dealer shall clearly and conspicuously display in its showroom at its established place of business, in a place that is easily accessible to prospective purchasers, a clear and conspicuous listing of each vehicle that the dealer has advertised for sale if the vehicle meets all of the following requirements:

(1) The vehicle is advertised for sale in a newspaper or other publication of general circulation, or in another advertising medium that is disseminated to the public generally, including, but not limited to, radio, television, or the Internet.


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(2) The vehicle is advertised at a specific price and is required pursuant to subdivision (a) of Section 11713.1 to be identified in the advertisement by its vehicle identification number or license number.

(3) The vehicle has not been sold or leased during the time that the advertised price is valid.

(4) The vehicle does not clearly and conspicuously have displayed on or in it the advertised price.

(b) The listing required by subdivision (a) may be satisfied by clearly and conspicuously posting in the showroom a complete copy of any print advertisement that includes vehicles currently advertised for sale or by clearly and conspicuously displaying in the showroom a list of currently advertised vehicles described by make, model, model-year, vehicle identification number, or license number, and the advertised price.

(See Chapter 24, Duty to Sell at Advertised Price and Posting Rules, for how this law may be satisfied by posting the information digitally.)

### FTC.com rules

The Federal Trade Commission ("FTC") has published ".com Disclosures: How to Make Effective Disclosures in Digital Advertising" (to see, type this in browser: bit.ly/howtodisclose) which gives the FTC's position on the application of advertising law to internet marketing and advertising. Basically, the FTC takes the position that the rules and regulations which prohibit unfair or deceptive ads or practices are applicable to internet advertising, marketing and sales, and that existing rules and regulations which use such terms as "written" or "printed" are not limited to any particular medium.

## Discussion

### FTC.com Disclosures publication

It is very important that dealers utilizing the internet for advertising purposes review the FTC .com Disclosures publication. The following are some of the highlights of the publication, but the full text should be read by anyone who has responsibility for dealership internet advertising. The FTC publication also provides examples of good and bad internet ads.

### "Clear and conspicuous" manner

As emphasized in .com Disclosures, the FTC's primary concern is that internet advertising provides material information to consumers in a manner that is truthful and not misleading. As part of this concern, the FTC is focused on making sure that disclosures (which may be specifically required by law or provided to qualify information in an ad to prevent the ad from being misleading), must be made in a "clear and conspicuous manner." Whether this "clear and conspicuous" standard is complied with is determined based upon an overall impression of the ad from the perspective of a reasonable consumer.

### Determining factors

As discussed in the Dotcom Disclosures publication, factors which play a role in determining whether or not a disclosure is "clear and conspicuous" include the placement of the disclosure in the ad, its proximity to the relevant claim, the prominence of the disclosure, whether other parts of the ad distract attention from the disclosure, whether a disclosure needs to be repeated because of the length of an ad, whether an audio disclosure is properly presented in terms of adequate volume and cadence, whether a visual disclosure is displayed for a sufficient duration, whether the disclosure is unavoidable (consumers should not be able to

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proceed without scrolling through the disclosure), and whether the language used for a disclosure is understandable. When practical, advertisers should incorporate relevant limitations and qualifying information into the underlying claim, rather than having a separate disclosure qualifying the claim.

## Scrolling issues

Preferably, design advertisements so that scrolling is not necessary in order to find a disclosure. When advertisers are putting disclosures in a place where consumers might have to scroll in order to view them, they should use text or visual cues to encourage consumers to scroll and avoid formats that discourage scrolling.

## Key .com points regarding hyperlinks

Hyperlinks lead to information placed on a webpage separate from webpage on which the claim is made. In some cases, a hyperlink leads to bookmarked information on the same webpage that contains the hyperlink. Hyperlinks can be useful when the information linked to is or needs to be repeated because of multiple triggering claims. Some of the key points made by the FTC regarding using hyperlinks in internet advertising are the following:

Use a label on the hyperlink that indicates the link is relevant to a particular claim and indicate the nature of the information the link will lead to.

Hyperlinks that simply say "disclaimer," "more information," "terms and conditions," or "fine print" do not convey the importance, nature, and relevance of the information to which they lead and are likely to be inadequate.

Use hyperlink styles consistently to increase the likelihood that consumers will know it is a link to information.

The hyperlink should be noticeably placed near the claim that triggers the disclosure.

The hyperlink should take consumers directly to the disclosure without having to search through the page or go to other places to find the disclosure.

Disclosures should be incorporated in banner ads and communicated clearly and conspicuously on the page to which the banner ad links. Disclosures should be prominently displayed so that they are noticeable to consumers, taking into account the size, color, and graphic treatment of other information contained on the webpage.

When making disclosures, don't use pop-ups subject to pop-up blocking software.

Audio disclosures should be used when audio claims are made, and these disclosures should be given in a volume and cadence which is clear and understandable to consumers.

Disclosures should be displayed visually for a sufficient duration to allow them to be read and understood by consumers. When written claims are made, the disclosure should be written.

Teaser space-constrained ads, such as banner ads and tweets, often do not have space for the details of the ad. Incorporate the disclosure into the ad whenever possible. When it is not possible to make the disclosures in a space-constrained ad, in some circumstances it may be acceptable for a space-constrained ad to link to a webpage where the details of the ad are clearly and conspicuously shown.

See Chapter 63, Website Advertising, for a discussion, among other things, of how "special internet prices" must be offered to everyone whether or not they are aware of the internet ad, the requirement that a list of all vehicles advertised be posted in the dealership, and the notice that the advertisements are only for those in California.


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## Social media advertising

Advertising on social media websites, such as Facebook, Twitter, Instagram, YouTube, and others is a necessity in the internet age. It is tempting for some to forget about dealer advertising rules or believe that the internet is the Wild West where anything goes. However, this is not the case and the advertising rules discussed in this manual apply no matter where or in what medium a dealer is advertising.

## Importance of having a written internet and social media advertising policy

Because of all the pitfalls inherent in internet advertising and the increased scrutiny of dealer advertising by regulators, it is important that every dealership have a written advertising policy that includes internet and social media advertising. There should also be a person in the dealership who is responsible for monitoring adherence to the policy by dealership employees and outside vendors. Dealers should seek the assistance of an attorney with expertise in dealer advertising law for assistance in preparing the policy. An internet search of "examples of company social media policies" will show some companies' policies.

## Particular issues for social media advertising

If employees post anything positive about the dealership (an endorsement), there should be a disclosure of the fact that the poster is an employee of the dealership and whether the employee is receiving anything of value for the posting. If customers or anyone else, such as bloggers or social media influencers, post anything positive about the dealership and are paid money or are provided with anything of value, that fact should be disclosed with the posting. If vendors to the dealership, or their employees, post anything positive about the dealership, the fact of the vendor relationship and resulting benefit to the vendor should be disclosed. See Chapter 45, Endorsements and Testimonials for more information on this topic.

If anyone receiving anything of value from the dealership posts a link to the dealership, or has a link to the dealership on their own website or one they control, a description of the value received should be disclosed.

If there's a connection between an endorser and the marketer that consumers would not expect and it would affect how consumers evaluate the endorsement, that connection should be disclosed.

The FTC has provided specific guidance regarding Endorsements by Individuals on Social Media Websites and Social Media Contests. See the FTC's Endorsement Guides: What People Are Asking, to view, type this in browser: bit.ly/Endo guide.

All social media websites maintained by the dealership for advertising, such as a Facebook page, should give the name and address of the dealership and follow the posting disclosure rules above.

## Dealership inventory on or accessed through third party websites

A dealer's strategy for selling and leasing vehicles typically involves advertising the dealership's vehicle inventory on its website and also on other third-party websites. In many instances, the content of these websites is developed by outside vendors, including vendors recommended and approved by the dealer's franchisor. Just as is the case with other types of dealer advertising, the content of these websites, including how it is formatted, needs to comply with the applicable advertising laws. Legal compliance concerns regarding website content include using accurate vehicle pictures, properly displaying vehicle price information (especially regarding vehicles having dealer-added equipment or added mark-up. See Chapter 27, Supplemental Stickers, for more information), properly displaying vehicle status information (for example, used, demonstrator or prior rental designations), providing accurate factory rebate and financing offer details and deadlines, and the timely removal of content regarding previously sold vehicles. Because of these

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concerns, dealers should consider requiring the website vendor involved to represent that the content provided by the vendor is compliant with the applicable laws and also to commit to indemnifying the dealership regarding claims arising from that content (including errors) as part of the dealer's written agreement with the vendor.

## Additional resources

FTC publication, Advertising and Marketing on the Internet: Rules of the Road (to see, type this in browser: bit.ly/roadrulesftc)

FTC publication, Advertising FAQ's: A Guide for Small Business (to see, type this in browser: bit.ly/ftcadguide)

The FTC's Endorsement Guides: What People Are Asking (to see, type this in browser: bit.ly/endorguide)

## Cross-references

Chapter 14: Identification and Description of Vehicles

Chapter 19: Pictures of Vehicles

Chapter 23: Price Advertising

Chapter 12: Qualifiers, Disclosures, and Disclaimers

Chapter 63: Website Advertising

Chapter 45: Endorsements and Testimonials

Chapter 56: Sweepstakes and Contests

Chapter 27: Supplemental Stickers


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# Part I – Comprehensive dealer advertising checklist



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# Chapter 65 - Auto Dealer Advertising Checklist

Below is an advertising checklist with information about various elements of dealer advertising. The use of this checklist will provide guidance about what has to be included in your particular advertisement. In addition to the checklist items, advertisers should also be aware of the other advertising topics in this manual, including those in checklist item 19.

**1. Identity of dealer.** All dealer advertising must identify the dealer by the name on the dealer's license or any other name which readily identifies the dealer to the DMV and public. See Chapter 11, Identity of Dealer.

**2. Identifying the vehicle**. Properly identify the vehicle or vehicles you are advertising. See Chapter 14, Identification and Description of Vehicles.

a) **VIN or license plate number.** Provide the VIN or license plate number for specific vehicles advertised, except when advertising a class of vehicles (5 or more vehicles that are all of the same make, model, and model-year). See Chapter 14, Identification and Description of Vehicles.

b) **Model.** All advertisements of specific vehicles must include the name of the vehicle model the manufacturer applies to the vehicle. For example, simply advertising a "Mustang" or "Prius" will not suffice. A proper model description would be "Mustang GT Convertible" or "Toyota Camry XLE." See Chapter 14, Identification and Description of Vehicles.

c) **Model year.** Provide the model year of specific vehicles advertised, except when advertising a class of current model year vehicles. See Chapter 14, Identification and Description of Vehicles.

d) **Used vehicles**. Used vehicles of the current or prior model year must be advertised as used, preowned, or some similar term. See Chapter 16, New and Used Vehicles.

e) **History of used vehicles.** Provide the history of used vehicles if they have had certain prior uses (including, for example, demonstrator and loaner vehicles). See Chapter 18, History of Vehicles.

f) **Certified used vehicles.** If you are advertising a certified used vehicle, the vehicle must meet the requirements of Vehicle Code § 11713.18. See Chapter 18, History of Vehicles.

g) **Demonstrators.** Demonstrators are used vehicles. In advertising them you must follow the rules for used vehicle advertising. See Chapter 17, Demonstrators.

**3. Pictures of vehicles.** Pictures of advertised vehicles must accurately depict the vehicle. See Chapter 19, Pictures of Vehicles.

**4. Advertising the price of the vehicle.** Whenever advertising the price of a vehicle, the following statutory disclosure, or substantially similar disclosure, should show somewhere where it is clear that it relates to the advertised price: "Plus government fees and taxes, any finance charges, any dealer document processing charge, any electronic filing charge, and any emission testing charge." This is sometimes called the Plus Disclosure. See Chapter 23, Price Advertising.

a) **Type size of Plus Disclosure**. See Chapter 23, Price Advertising.

b) **Liner ads.** A liner advertisement is less than two columns in width, or one column in width and seven inches or less in length in a newspaper, magazine, or direct mail publication. See Chapter 23, Price Advertising, for no Plus Disclosure required for liner ads.


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c) **Radio and television.** The Plus Disclosure is technically not required for radio and television ads. See Chapter 23, Price Advertising.

d) **Internet ads.** The Plus Disclosure must be on a dealer's Web page. See Chapter 63, Website Advertising.

e) **Leases**. The Plus Disclosure is not required for leases that have their own disclosure rules. See Leases and Regulation M trigger terms in checklist item 8 below.

**5. Other price issues.**

a) **Savings and discount claims**. If you are advertising savings or discount claims, see Chapter 25, Savings/Discount Claims.

b) **Saving based on MSRP.** If you are showing a savings based on MSRP, see Chapter 25, Savings and Discount Claims.

c) **Dealer participation with manufacturer incentives.** If you are advertising a manufacturer incentive in which the dealer participates, see Chapter 26, Incentives – Dealer Participation.

d) **Use of the word "sale."** If you are using the word, "sale," see Chapter 25, Savings and Discount Claims.

e) **Coupons.** If you are using coupons, see Chapter 25, Savings and Discount Claims.

f) **Supplemental sticker**. If you are using a supplemental sticker, see Chapter 27, Supplemental Stickers.

g) **Used vehicle savings.** If you are advertising a savings on a used vehicle price, see Chapter 25, Savings and Discount Claims.

h) **Price leaders.** Are you (1) advertising vehicles for sale or lease with the intent not to supply a reasonably expected demand (for example, the price is so good that there will be more demand than supply), or (2) advertising prices with phrases such as "starting at," "from," "beginning as low as," or similar words? If so, see Chapter 28, Price Leaders Disclosure. The law requires disclosure of the number of vehicles available at the advertised price and has details about the format of the disclosure.

i) **Rebate advertising.** If you are advertising rebates, see Chapter 29, Rebates and Cash Back.

j) **Former price savings.** If you are advertising a savings based on a former price, see Chapter 31, Former Price Comparison.

k) **Option package discount.** If you are advertising savings based on an option package discount, see Chapter 32, Option Package Discounts.

l) **Below cost sales.** If you are advertising or selling vehicles below cost, see Chapter 34, Sales Below Cost, and Chapter 33, Invoice or Cost Advertising.

m) **Invoice or cost prohibition.** You may not use "invoice," "dealer's invoice," "wholesale price," or similar words in advertising a vehicle. See Chapter 33, Invoice or Cost Advertising.

n) **Underselling.** If you are using words such as "we have the lowest prices," or "we will beat any dealer's price," see Chapter 35, Underselling Claims.

o) **Sales tax.** If you are advertising "sales tax included," "we pay the sales tax," or similar words, see Chapter 36, Sales/Use Tax Included.

p) **Dealer preparation charges.** If you are charging the customer for dealer preparation charges, see Chapter 37, Dealer Preparation Charges.

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**6. Installment sales and Regulation Z trigger terms.** If you are advertising the amount of any downpayment, number of payments, amount of any payment, or any finance charge, see Chapter 39, Installment Sales and Regulation Z Trigger Terms, for the disclosures these trigger terms require.

**7. Downpayment in sale transactions.** If you are advertising the amount of any downpayment, or that no downpayment is required, see Chapter 41, Downpayments in Installment Sales.

**8. Leases and Regulation M trigger terms.** For lease advertising, if you are advertising the amount of any payment, capitalized cost reduction, start payment, or that no start payment is required, see Chapter 42, Leases and Regulation M for the required disclosures.

**9. Credit advertising.** If you are advertising anything dealing with credit, deferred or escalated payments, unpaid balance, balloon payments, or deferred downpayments, see Chapter 43, Credit Advertising; Chapter 30, Cash/Credit Rule; and Chapter 40, Annual Percentage Rate.

**10. Qualifiers, disclosures, and disclaimers.** If your advertising has any qualifiers, disclosures, or disclaimers, see Chapter 12, Qualifiers, Disclosures, and Disclaimers.

**11. Vehicles not available for sale on dealership premises.** If you are advertising vehicles for sale that are not on the dealership premises, see Chapter 15, Availability of Vehicles.

**12. Display of vehicles away from dealership premises**. If you are displaying a vehicle away from the dealership premises, see Chapter 21, Display of Vehicles For Sale.

**13. Certain claims.** If you are advertising any of the following, see the referenced chapter:

Chapter 44: **Comparison and Factual Claims**

Chapter 45: **Endorsements and Testimonials**

Chapter 46: **Environmental and Green Claims**

Chapter 47: **Fuel Economy Claims**

Chapter 48: **Made in the USA**

Chapter 49: **Satisfaction Guarantees**

Chapter 50: **Guaranteed Trade-In Allowances**

Chapter 51: **Free Goods and Services**

Chapter 52: **Warranty Advertising**

**14. Contests, lotteries, sweepstakes, and incentives to visit dealership.** If you are advertising any of the following, see the referenced chapter:

Chapter 56: **Sweepstakes and Contests**

Chapter 57: **Lotteries**

Chapter 58: **Incentives to Visit Dealership**

**15. Email, fax, telemarketing, text, and direct mail advertising.** If you are using any of these advertising methods, see the referenced chapter:

Chapter 59: **Email Advertising**

Chapter 60: **Fax Advertising**

Chapter 61: **Telemarketing and Text Messages**


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Chapter 62: **Direct Mail and Offers to Select Groups**

**16. Service and parts department.** If you are advertising the dealership service and parts department, see Chapter 55, Service and Parts Advertising.

**17. Dealer website advertising rules, including Americans with Disabilities Act compliance.** See Chapter 63, Website Advertising; and Chapter 64, Social Media Advertising.

**18. Social media advertising.** If you are advertising on social media, see Chapter 65, Social Media Advertising.

**19. Other advertising topics.** In addition to the topics above, advertisers should be aware of the following advertising topics in this manual:

Chapter 1: **Advertising Basics**

Chapter 2: **Bait and Switch**

Chapter 3: **Oral Statements as Advertising**

Chapter 4: **Penalties for Unlawful Advertising**

Chapter 5: **Persons Liable for Unlawful Advertising**

Chapter 6: **Consumers Legal Remedies Act**

Chapter 7: **Avoiding Advertising Violations**

Chapter 8: **Non-Franchised Dealers and Autobrokers**

Chapter 9: **Manufacturer Advertising**

Chapter 10: **Ad Association Advertising**

Chapter 13: **Lessor-Retailers**

Chapter 53: **Buyers Guide (Used Car Sticker)**

Chapter 54: **Simulated Checks**

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# Part J – Advertising examples





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# Example #1: Price, rebates, and price leaders

This ad shows basic price advertising, rebate and net cost advertising, and price leader disclosure advertising.

## Example #1 Problem Ad




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# Example #1: Price, rebates, and price leaders

This ad shows basic price advertising, rebate and net cost advertising, and price leader disclosure advertising.

## Example #1 Good Ad





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# Example #2: Free, factory equipped, and option discounts

This ad shows advertising of free goods and services, price, fully factory equipped, and option package discounts.

## Example #2 Problem Ad




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# Example #2: Free, factory equipped, and option discounts

This ad shows advertising of free goods and services, price, fully factory equipped, and option package discounts.

## Example #2 Good Ad





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# Example #3: Vehicle description, former price, and invoice ads

This ad shows the identification and description of the vehicle, former price comparisons, and invoice or cost advertising.

## Example #3 Problem Ad




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# Example #3: Vehicle description, former price, and invoice ads

This ad shows the identification and description of the vehicle, former price comparisons, and invoice or cost advertising.

## Example #3 Good Ad





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# Example #4: Demonstrators, price savings, and trade-ins

This ad shows advertising of demonstrators, credit, savings and discount claims, and guaranteed trade-in allowances.

## Example #4 Problem Ad




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# Example #4: Demonstrators, price savings, and trade-ins

This ad shows advertising of demonstrators, credit, savings and discount claims, and guaranteed trade-in allowances.

## Example #4 Good Ad





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# Example #5: Factual claims, availability, fuel economy, and price

This ad shows advertising of factual and comparison claims, availability of vehicles, fuel economy claims, and price.

## Example #5 Problem Ad




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# Example #5: Factual claims, availability, fuel economy, and price

This ad shows advertising of factual and comparison claims, availability of vehicles, fuel economy claims, and price.

## Example #5 Good Ad





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# Example #6: Dealer identity, APR, credit, downpayment

This ad shows advertising of identification of the dealer, annual percentage rate, credit, and downpayment in sale transactions.

## Example #6 Problem Ad




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# Example #6: Dealer identity, APR, credit, downpayment

This ad shows advertising of identification of the dealer, annual percentage rate, credit, and downpayment in sale transactions.

## Example #6 Good Ad





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# Example #7: Vehicle history, installment sales, ad expiration date

This ad shows advertising of the history of the vehicle, installment sales and Regulation Z trigger terms, and the expiration date of the ad.

## Example #7 Problem Ad




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# Example #7: Vehicle history, installment sales, ad expiration date

This ad shows advertising of the history of the vehicle, installment sales and Regulation Z trigger terms, and the expiration date of the ad.

## Example #7 Good Ad





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# Example #8: Rebates, credit, incentives, and installment sales

This ad shows advertising of rebates, credit, dealer participation with incentives, and installment sales and Regulation Z trigger terms.

## Example #8 Problem Ad




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# Example #8: Rebates, credit, incentives, and installment sales

This ad shows advertising of rebates, credit, dealer participation with incentives, and installment sales and Regulation Z trigger terms.

## Example #8 Good Ad





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# Example #9: Rebate advertising

This ad shows advertising of rebates.

## Example #9 Problem Ad




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# Example #9: Rebate advertising

This ad shows advertising of rebates.

## Example #9 Good Ad





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# Example #10: Vehicle description, former price, factory authorized, picture, expiration

This ad shows advertising of the identification and description of the vehicle, former price comparisons, factory authorized sales, picture of the vehicle, and the expiration date of the ad.

## Example #10 Problem Ad




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# Example #10: Vehicle description, former price, factory authorized, picture, expiration

This ad shows advertising of the identification and description of the vehicle, former price comparisons, factory authorized sales, picture of the vehicle, and the expiration date of the ad.

## Example #10 Good Ad





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# Example #11: Warranties, lotteries, and savings

This ad shows advertising of warranties, savings and discount claims, lotteries, and truthful claims.

## Example #11 Problem Ad




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# Example #11: Warranties, lotteries, and savings

This ad shows advertising of warranties, savings and discount claims, lotteries, and truthful claims.

## Example #11 Good Ad





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# Example #12: Leases and credit

This ad shows advertising of leases and credit.

## Example #12 Problem Ad




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# Example #12: Leases and credit

This ad shows advertising of leases and credit.

## Example #12 Good Ad





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# Example #13: Leases

This ad shows advertising of leases.

## Example #13 Problem Ad




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# Example #13: Leases

This ad shows advertising of leases.

## Example #13 Good Ad





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# Example #14: Lease and price leader disclosures

This ad shows advertising of lease and price leader disclosures.

## Example #14 Problem Ad




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# Example #14: Lease and price leader disclosures

This ad shows advertising of lease and price leader disclosures.

## Example #14 Good Ad





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# Example #15: Service and parts

This ad shows advertising of service and parts.

## Example #15 Problem Ad




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# Example #15: Service and parts

This ad shows advertising of service and parts.

## Example #15 Good Ad





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# Example #16: Service department coupon

This ad shows advertising of a service department coupon.

## Example #16 Problem Ad




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# Example #16: Service department coupon

This ad shows advertising of a service department coupon.

## Example #16 Good Ad



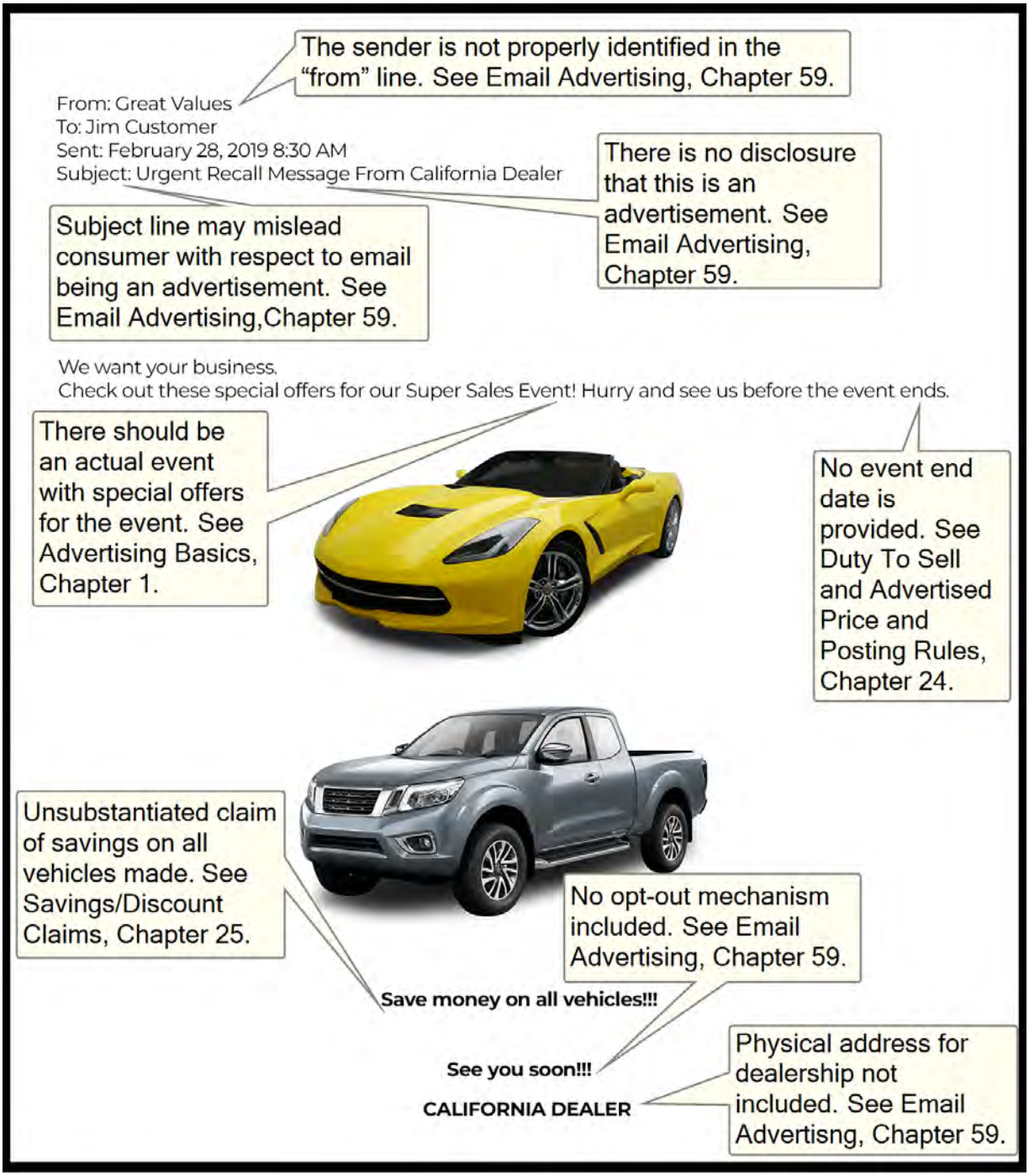


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# Example #17: Email advertising

This is an example of an email advertisement.

## Example #17 Problem Ad

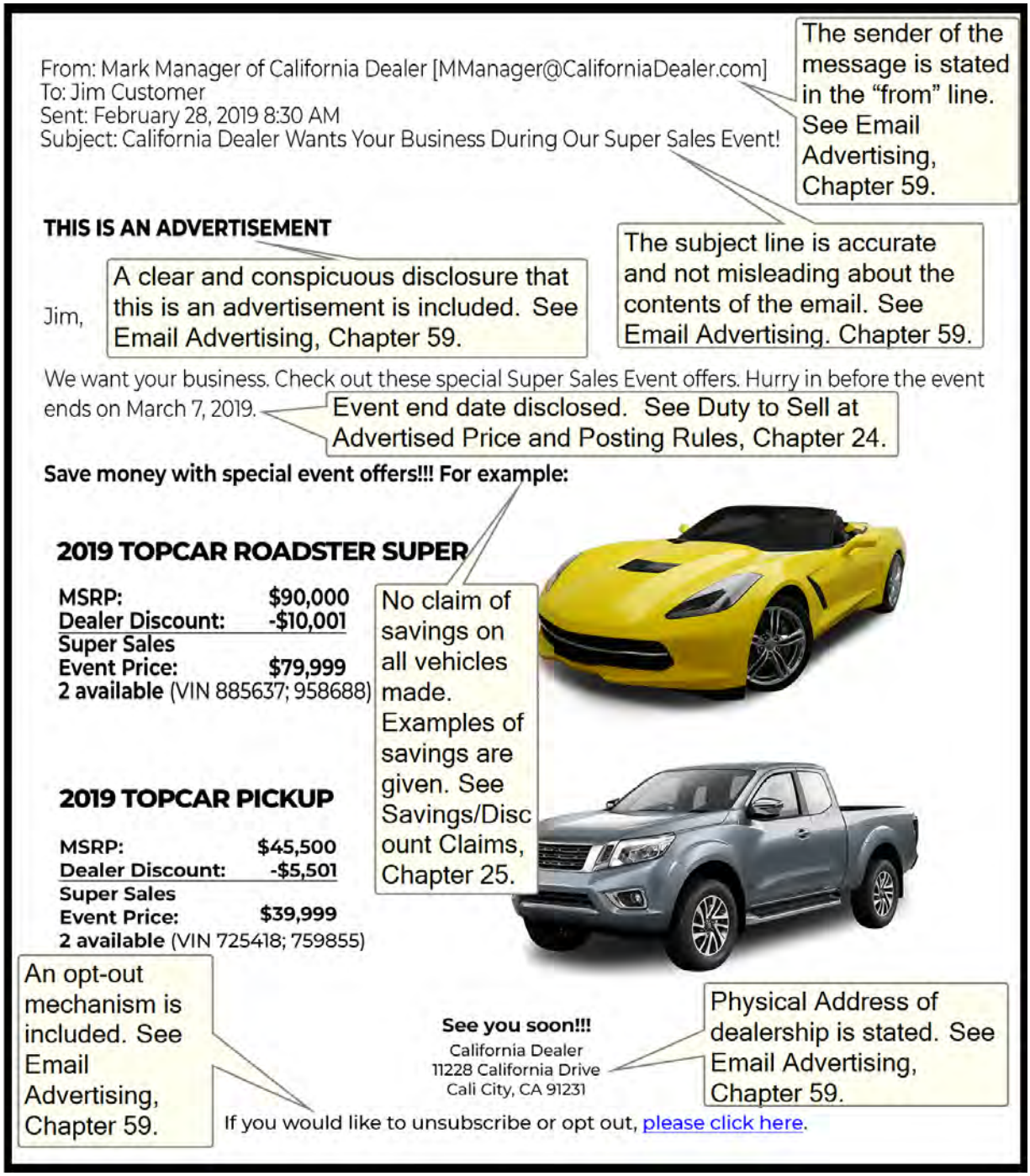



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# Example #17: Email advertising

This is an example of an email advertisement.

## Example #17 Good Ad





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