



Phantom Discounts and Other Ad “Bads”

March 1st, 2017 | and [Thomas B. Hudson](#)

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I bought a new car about three years ago. Evidently the dealership I bought it from thinks it's time for me to buy another one.

Every few days, it seems, I get another offer in the mail from these folks. I don't want or need a new car, but I don't mind the offers. They are a good source of entertainment because I get to peruse them and count the advertising violations.

The most common violations involve the use of a “triggering term,” as defined in Regulation Z, without the disclosure of all the additional terms required when an advertisement uses a triggering term. A common triggering term is “0% APR.”

Another common advertising violation is ‘giving’ with big fonts and ‘taking back’ with small fonts. Evidently the ad agencies that dealerships employ don't know that the Federal Trade Commission has font size on its radar.

Those agencies, and the dealers they sell ad programs to, also seem to be blissfully unaware of the FTC's national crackdown on dealer ads. In “Operation Steer Clear” and “Operation Ruse Control” (someone at the FTC has fun with these names), the FTC has hammered dealers for advertising violations, most of them violations of basic rules. How can dealers and ad companies not know of these initiatives? Or do they know of them and just figure they will never be targeted?

But I digress. I wanted to tell you about a mailer I received that had a different sort of problem. The ad was one of these triple-play, take your choice deals. I could choose no payments for 90 days, 0% APR, or “up to” a \$5,000 discount.

The only come-on that even came close to tempting me was the \$5,000 discount. I thought for a moment about the “up to” qualifier and figured that the more expensive the car, the higher the discount, but nothing in the ad said anything about that. Then I thought about how the FTC would probably react to this option. I suspect the FTC would say that the “up to” limitation, apparently in the sole control of the dealer, was illusory and, therefore, deceptive.

But the real problem with the ad was in the fine print describing the \$5,000 discount. It said, “Non-negotiable, non-transferable. No cash value. One voucher per customer. Must be presented at time of arrival and cannot be combined with any other offers.” Hmmmmmm.

I'm not the savviest car buyer on the planet, but I didn't just fall off the turnip truck either. If the

dealership is requiring me to wave my coupon over my head when I walk through the door, I suspect I won't be able to negotiate the same bargain I might have negotiated had I not arrived with a coupon in hand. And if that is true, some part of that \$5,000 discount arguably isn't a discount at all. If I could have negotiated a \$4,000 savings without the coupon, and get a \$5,000 savings with the coupon, isn't the coupon worth only \$1,000?

And what happens if the FTC gets interested in an offer like this one? Investigators will demand and compare sales records that reflect both coupon deals and non-coupon deals. Will they find that coupon wavers paid \$5,000 less than those without coupons? If you think so, I have a bridge you might be interested in buying.

One of my partners, Joel Winston, was with the FTC for several decades, so when I write about the FTC, I usually ask him to look over my shoulder. Here's how he responded this time:

On the "discount" issue, you are right that the FTC would find that deceptive unless a substantial number of cars were actually sold at a price that resulted in the full discount, i.e., you can't compare the discounted price to a higher "regular" price when the "regular" price is routinely negotiated down. They would look to see if there's a discrepancy in their willingness to negotiate the price down depending on whether there was a coupon or not.

On the "up to" claims, note that the FTC has provided recent guidance on this issue stating that you can't use that term unless most consumers would achieve the "up to" result, i.e., you can't say "up to a \$5000 discount" unless most people would get \$5000 off, unless there is a very clear and prominent disclosure of what the average result would be (e.g., "average discount: \$3000").

Joel's critique reminds me to remind you that you are missing a valuable resource if you are not regularly checking the FTC's website for guidance on your ads. The material the FTC produces is very good, and it's free! Another resource that dealers should not miss is *A Dealer Guide to Federal Advertising Requirements*, published by the National Automobile Dealers Association. The *Guide* provides examples of "good" and "bad" ads and a discussion of 41 different federal advertising topics, such as the use of discount claims, email advertising, green marketing claims, Internet advertising, satisfaction guarantees, and trigger terms.

With all this help, dealerships that get into trouble for 'bad-vertising' duly deserve what they get.

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