

SPECIAL REPORT

Prepared by:

Ian Christman, Director of Licensing/Deputy Registrar
Denis Savidan, Manager of Compliance and Investigations

VSA establishes ties to USA sister agencies

Washington State takes action against alleged false advertising by Washington State car dealers targeting British Columbians.

The VSA recently contacted Mary Lobdell, Assistant Attorney General Washington State, regarding cross border advertising emanating from her jurisdiction and targeting British Columbians. Ms. Lobdell confirmed to the VSA that the advertising was contrary to Washington State law and that she would attend to this issue. Ms. Lobdell requested information on the Goods and Services Tax (GST) and the VSA obtained and passed on that information. On February 20, 2008, Ms. Lobdell wrote a letter to the alleged offending Washington State dealers advising them they had 20 days to have their lawyers contact her. In that letter, Ms. Lobdell highlighted the alleged infractions of Washington State law, and the State Attorney General's concerns regarding the sales event. Some of those included:

- Advertising that the GST payable is free is deceptive in relation to Canadian consumers who must pay the GST and applicable duties upon importation.
- Fine print disclosures that the GST was free were also misleading.
- Concern that there was non-disclosure to buyers of new vehicles, that the manufacturer's warranty would be voided upon import of the new vehicle into Canada.
- A failure to obtain the necessary temporary permits for off-site sales by all dealers who participated in the sales event is an unfair and deceptive practice. Such a failure is subject to civil penalties.

Ms. Lobdell refers to Washington State's *Unfair Business Practices and Consumer Protection Act*. Ms. Lobdell highlights that under that act "the Office of the Attorney General is authorized to seek remedies for unfair business practices including civil penalties, costs, attorney fees and restitution as well as court ordered injunctions". These are similar remedies to those found in British Columbia's Business Practices and Consumer Protection Act. In her letter, Ms. Lobdell credited the VSA with bringing this issue to her attention and referred the Washington State dealers to the VSA's website.

The VSA will continue to monitor this situation and advise the industry as it becomes aware of any new developments. The B.C. industry may wish to visit the Washington State Attorney General's website on motor dealer advertising tips located at: <http://www.atg.wa.gov/dealers.aspx>

The VSA to meet Washington State Attorney General Rob McKenna on April 1, 2008.

The VSA has been invited to make a presentation to the Washington State Attorney General's Automobile Advisory Group, chaired by Attorney General Rob McKenna, on April 1, 2008. The Advisory Group is represented by various industry stakeholders. This will provide the VSA with an opportunity to convey who we are, what we do and our current concerns to all who are involved in the Washington State industry. It will also help solidify direct communications with Washington State's highest law enforcement officers. This invitation is a direct result of the VSA's recent dealings with Washington State's Assistant Attorney General, Mary Lobdell.

National Association of Motor Vehicle Boards and Commissions (NAMVBC).

Ian Christman (Director of Licensing/Deputy Registrar) and Denis Savidan (Manager of Compliance and Investigations) attended the February conference of the National Association of Motor Vehicle Boards and Commissions. There they met representatives of sister agencies from various USA States and our Ontario counterpart to exchange information and establish communication linkages. Alberta is also a member of NAMVBC but was not in attendance this February. The topic of this particular conference was internet sales. Senior executives from Manheim and eBay Motors, also members of NAMVBC, were on hand to discuss trends, processes and security issues related to internet sales of motor vehicles.

Apart from the key topic for discussion, the group also holds roundtable discussions on current issues and trends involving motor vehicle sales. Members work cooperatively and exchange ideas and experiences in dealing with issues regarding compliance and enforcement. Where a particular jurisdiction has or is changing legislation, the group is informed and discussion ensues on the impact it will have on the North American industry.

At the conference, the VSA was able to discuss certain cross-border issues with its Washington State counterpart – The Department of Licensing Dealer/Manufacturer Services. It was agreed that the VSA and Washington State will meet on a quarterly basis to discuss mutual areas of concern. Our first meeting will coincide with the April 1, 2008, meeting with Washington State's Attorney General. This will be an invaluable contact given the current parity of the Canadian and USA dollar and the increase in both advertising and the movement of vehicles across our mutual border.



Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

P.O. Box 2317 (1019 Pacific Ave-3rd Fl) • Tacoma WA 98401-2317

February 20, 2008

Denis Savidan
Senior Compliance Officer
MVSA of BC
6400 Roberts Street, Suite 150
Burnaby, British Columbia V5G 4C9
Canada

RE: Direct Mail Advertising

Dear Denis:

Enclosed please find an enforcement letter to Dewey Griffin Pontiac Buick GMC Subaru, Lee Johnson Chevrolet, Inc., and Speedway Chevrolet LLC.. I apologize for the delay in sending this letter. I have been engaged in multi-state litigation that has taken priority. If I can be of further service to you, please let me know.

I look forward to meeting you or your representative in April at the Dealer's Advisory Group meeting.

Sincerely,

MARY C. LOBDELL
Assistant Attorney General
Consumer Protection Division
(253) 593-2256

MCL:bn
Enclosures



Rob McKenna
ATTORNEY GENERAL OF WASHINGTON

P.O. Box 2317 (1019 Pacific Ave-3rd Fl) • Tacoma WA 98401-2317

February 20, 2008

Tod Johnson, President
Dewey Griffin Pontiac-Buick-GMC-Subaru
P.O. Box 847
Bellingham, Washington 98227-0847

Tod Johnson, President
Lee Johnson Chevrolet, Inc.
P.O. Box 819
Kirkland, Washington 98083-0819

Richard Meyer, President
Speedway Chevrolet, LLC
P.O. Box 687
Monroe, Washington 98272-0687

RE: Direct Mail Advertising

Dear Mr. Johnson and Mr. Meyer:

We recently reviewed your advertisement of a vehicle sales event held at the Birch Bay Outlet Mall, in Blaine, Washington, on November 29 through December 2, 2007. A review of your advertisement raises concerns of your compliance with state and federal laws. Please consult your attorney and have your attorney contact me. Your attorney is in the best position to advise you of your rights and responsibilities as well as to respond to our concerns about your compliance with Washington State laws. I look forward to hearing from your attorney within the next twenty (20) days in order to discuss these matters in detail.

A review of your advertisement raises several concerns. Firstly, your mailer states that "GST IS FREE." It is deceptive to advertise something as "free" when a product is sold at a price arrived through bargaining. *FTC Guide Concerning Use of the Word "Free" and Similar Representations; Better Business Bureau Code of Advertising 2(b)*. A reasonable consumer assumes that the term "free" means that they pay nothing for the "free" item and no more than the regular price of the product being purchased. In such a sale, the consumer believes the merchant will not directly and immediately recover, in whole or in part, the cost of the "free GST" through their purchase of a product. I question whether you can adequately establish through your records that the cost of the GST was truly "free" to the consumer.

ATTORNEY GENERAL OF WASHINGTON

Mr. Johnson and Mr. Meyer
February 20, 2008
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Your statement further creates the impression that a Canadian buyer has no responsibility to pay the GST because it is "free." Canadian purchasers who import vehicles into Canada are ultimately responsible for payment of the Government Sales Tax (GST) and responsible for paying any export costs related to any trade-in.

Finally, your offer is misleading because fine print disclosures contradict the statement that "GST is Free!*" The fine print limits the "Free" offer by restricting the offer to vehicles under \$15,000. In other words, the GST is not free to a significant portion of buyers. Under federal guidelines, it is misleading to contradict a statement in the body of the advertisement with fine print disclosures.

Your offer secondly states that consumers can save up to "40% off orig. MSRP.*" Using the manufactured suggested retail price (MSRP) to advertise used vehicles is false reference pricing. Any reference to MSRP is misleading because it is not the industry standard for pricing used vehicles. Referring to a savings from MSRP on a used vehicle creates a false discount that has no bearing to the true market price of the vehicle.

Thirdly, your statements about the price of the Subaru Outback were confusing. The body of the ad states "40 in Stock! 2008 Subaru Outback, \$22,475**." The fine print, on the other hand, references a sale price for the 2008 Subaru Outback at \$22,499. The ad leads a reasonable consumer to believe that (40) 2008 Subaru Outbacks are available at \$22,475. Given the fine print disclosure, I question the accuracy of this statement. It appears that the offer applied only to two Subaru Outbacks. If this assumption is correct, state law requires the clear and conspicuous disclosure of the number of vehicles available at the advertised price preferably in close proximity to the offered price. WAC 308-66-152(4)(i), (3)(a)(iii).

A fourth area of concern deals with Washington's prizes and promotions laws. Your mailer offers a chance to go in the "Shower of Cash" and receive a "\$100 Referral Gift." This is a prize or promotion requiring a number of disclosures including the following: (a) the name and address of the promotion's sponsor; (b) the verifiable retail value of each prize (or giveaway) offered in immediate proximity of the prize listed; (c) the odds of being awarded any prize in immediate proximity of the prize and in type face at least as large as the typeface in the standard text of the offer; (d) any conditions to receive the prize in equal type-size or larger, including whether a participant needs to attend a presentation or spend *any* money to claim the prize; (e) all material limitations of an offer; (f) statements such as "no purchase necessary" and "a purchase will not increase your odds of winning" in a clear and conspicuous manner; and (g) official rules and reference such rules. All of these required disclosures are lacking from your advertisement.

In addition to the lack of disclosure, I fifthly found the fine print disclosures difficult to read. Department of Licensing rules require that all material disclosures be clear and conspicuous and in a type size that is sufficiently large enough to read with reasonable ease. WAC 308-66-152(3)(a)(iii). For any disclosures at the bottom of the ads, we recommend a type face of 10 pt or larger.

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Mr. Johnson and Mr. Meyer

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Finally, we discovered that your ads do not disclose that a documentary fee in an amount up to \$50 may be added to the sale price or capitalized cost of the vehicle. RCW 46.70.180(2)(b)(iv) (2006). A consumer may be charged a document fee only if “(a) the fee is disclosed in writing before the execution of a purchase or lease agreement; (b) the fee is not represented as a mandatory fee of the state or dealer; (c) the fee is separately designated from the selling price or capitalized cost and from other taxes, fees or charges; and (d) the dealer ‘disclose[s] in any advertisement that a documentary service fee in an amount up to . . . [fifty] dollars may be added to the sale price or the capitalized cost.’ ” RCW 46.70.180(2)(b). It is an unfair and deceptive practice to collect a documentary fee unless a dealer complies with the mandates of this statute.

We have additional concerns related to a number of other representations, including but not limited to the following:

- The ad creates a false sense of urgency or distress by using the “Fed-Ex” logo and using the statement “1st Time Ever! Can-Am Vehicle Mega Sales Event.”
- The number of asterisks led me to believe the fine print disclosures further limited the offer, however, there were no further limitations in the fine print. Asterisks can mislead consumers if used in a manner that contradicts, confuses, or limits the principal message.
- Your ad does not display the VIN or license plate number for each vehicle advertised nor includes a statement that vehicle identification numbers or license plate numbers are available at the dealership. WAC 308-66-152(4)(i)(i-ii).
- The ad does not list the industry pricing standard, (i.e. Blue Book) used to value used vehicles.
- Whether you adequately disclosed to buyers of new vehicles that the manufacturer’s warranty would be voided upon import of the vehicle into Canada.

Deceptive or misleading advertisements and practices are prohibited by RCW 46.70.180(1). Businesses that violate the statutes are subject to legal action under the Unfair Business Practices and Consumer Protection Act, chapter 19.86 RCW. The Office of the Attorney General is authorized to seek remedies for unfair business practices including civil penalties, costs, attorney fees and restitution as well as court ordered injunctions. Civil penalties of \$2,000 for each violation may be imposed.

Failure to obtain necessary licensing permits may also subject you to civil penalties. A temporary permit must be acquired by each business conducting an off-site sale and by any sub-agency that may bring a vehicle to the location. RCW 46.70.023(4) and (7); RCW 46.70.011(12). After checking with the Department of Licensing (DOL), I discovered that DOL issued a permit to Dewey Griffin Pontiac-Buick-GMC-Subaru for the off-site sales event, but did

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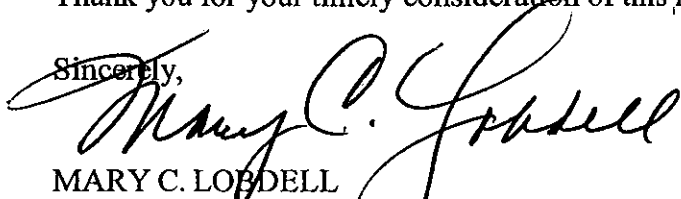
not issue a permit to Lee Johnson Chevrolet or to Speedway Chevrolet. Failure to obtain the necessary permits is also an unfair and deceptive practice.

In closing, your mailer was brought to our attention by the Canadian Compliance and Investigations Department of the Motor Vehicle Sales Authority of British Columbia. They administer and enforce regulations and business practices as it relates to motor vehicle sales in Canada. Since your advertisements were mailed into Canada, I would recommend that you visit their website www.mvsabc.com and review their advertising requirements.

We encourage you to discuss your compliance with state and federal laws with your attorney and have your attorney contact me with a response. I look forward to discussing this matter with your counsel.

Thank you for your timely consideration of this matter.

Sincerely,



MARY C. LOBDELL
Assistant Attorney General
Consumer Protection Division
(253) 593-2256

MCL:bn

Enclosures: Mailer Ad (November 29-December 2, 2007 Sales Event)

cc: Denis Savidan, Motor Vehicle Sales Authority of BC

URGENT NOTICE! EXCLUSIVE SAVINGS!

FIRST EVER CAN-AM VEHICLE SALES EVENT

**THE CANADIAN DOLLAR IS HIGH & U.S. PRICES ARE
AT AN ALL-TIME LOW! BUY NOW IN THE U.S. & SAVE!**

BLAINE, WASHINGTON, BIRCH BAY OUTLET MALL, NOV. 29 - DEC. 2

TAKE EXIT 270 OFF I-5 (PEACE ARCH CROSSING) PRESENTED BY: DEWEY GRIFFIN PONTIAC BUICK GMC SUBARU, LEE JOHNSON CHEVROLET MAZDA, AND SPEEDWAY CHEVROLET



**THE
CANADIAN
DOLLAR
IS HIGH**

**BUY
NOW**

**350+ VEHICLES
TO CHOOSE FROM!
REFER A FRIEND & GET \$100!***

Due to recent market conditions, there has never been a better time to purchase a new or previously-owned vehicle. The Canadian dollar is high, which makes U.S. prices an exceptional value to Canadian shoppers. Join thousands of your fellow Canadians who have already saved millions buying their vehicles in the U.S. For 4 days only, come to Birch Bay Outlet Mall, in Blaine, Washington, for 40% off orig. MSRP* - and GST is FREE.* Virtually every make and model of vehicle will be available.

**SAVE
UP TO
40% OFF
MSRP**

**GST
IS
FREE!**

SAVE BIG. 4 DAYS ONLY!

**AND
TAKE
YOUR
TURN**



**IN THE
SHOWER
OF CASH!**



2006 HUMMER H3
Stock #209263 **\$27,250***



2004 CHEVY TAHOE
Stock #209019 **\$19,582***



2006 YUKON DENALI
Stock #209478 **\$38,199***



2006 PONTIAC SOLSTICE
Stock #209213 **\$24,850***

**OFFICIAL SITE:
BIRCH BAY
OUTLET MALL**

**EXIT 270
Peace Arch Crossing**

TAKE EXIT 270 OFF I-5 (PEACE ARCH CROSSING)
3400 BIRCH BAY-LYNDEN RD.

**THURS.
NOV. 29
9AM
TO
7PM**

**SUN.
DEC. 2
9AM
TO
7PM**

**VIRTUALLY EVERY MAKE &
MODEL WILL BE AVAILABLE**

First come, first served. Must present invitation to an authorized dealer representative and register. (1) Get a chance to go in the Shower of Cash if you register for the late A/C take a bath by 5:00 p.m. and enter into the Shower of Cash for the opportunity to win a new vehicle. (2) Must be a legal Canadian resident. (3) A year or more old. (4) Must be 18 or older. (5) Must be present for the entire duration of the event. (6) Offer ends December 2, 2007 at 7pm. (7) No vehicles presented after this time are cash. (8) Offer ends December 2, 2007 at 7pm. (9) Must be present for the entire duration of the event. (10) Offer ends December 2, 2007 at 7pm. (11) Offer ends December 2, 2007 at 7pm. (12) Offer ends December 2, 2007 at 7pm. (13) Offer ends December 2, 2007 at 7pm. (14) Offer ends December 2, 2007 at 7pm. (15) Offer ends December 2, 2007 at 7pm. (16) Offer ends December 2, 2007 at 7pm. (17) Offer ends December 2, 2007 at 7pm. (18) Offer ends December 2, 2007 at 7pm. (19) Offer ends December 2, 2007 at 7pm. (20) Offer ends December 2, 2007 at 7pm. (21) Offer ends December 2, 2007 at 7pm. (22) Offer ends December 2, 2007 at 7pm. (23) Offer ends December 2, 2007 at 7pm. (24) Offer ends December 2, 2007 at 7pm. (25) Offer ends December 2, 2007 at 7pm. (26) Offer ends December 2, 2007 at 7pm. (27) Offer ends December 2, 2007 at 7pm. (28) Offer ends December 2, 2007 at 7pm. (29) Offer ends December 2, 2007 at 7pm. (30) Offer ends December 2, 2007 at 7pm. (31) Offer ends December 2, 2007 at 7pm. (32) Offer ends December 2, 2007 at 7pm. (33) Offer ends December 2, 2007 at 7pm. (34) Offer ends December 2, 2007 at 7pm. (35) Offer ends December 2, 2007 at 7pm. (36) Offer ends December 2, 2007 at 7pm. (37) Offer ends December 2, 2007 at 7pm. (38) Offer ends December 2, 2007 at 7pm. (39) Offer ends December 2, 2007 at 7pm. (40) Offer ends December 2, 2007 at 7pm. (41) Offer ends December 2, 2007 at 7pm. (42) Offer ends December 2, 2007 at 7pm. (43) Offer ends December 2, 2007 at 7pm. (44) Offer ends December 2, 2007 at 7pm. (45) Offer ends December 2, 2007 at 7pm. (46) Offer ends December 2, 2007 at 7pm. (47) Offer ends December 2, 2007 at 7pm. (48) Offer ends December 2, 2007 at 7pm. (49) Offer ends December 2, 2007 at 7pm. (50) Offer ends December 2, 2007 at 7pm. (51) Offer ends December 2, 2007 at 7pm. (52) Offer ends December 2, 2007 at 7pm. (53) Offer ends December 2, 2007 at 7pm. (54) Offer ends December 2, 2007 at 7pm. (55) Offer ends December 2, 2007 at 7pm. (56) Offer ends December 2, 2007 at 7pm. (57) Offer ends December 2, 2007 at 7pm. (58) Offer ends December 2, 2007 at 7pm. (59) Offer ends December 2, 2007 at 7pm. (60) Offer ends December 2, 2007 at 7pm. (61) Offer ends December 2, 2007 at 7pm. (62) Offer ends December 2, 2007 at 7pm. (63) Offer ends December 2, 2007 at 7pm. (64) Offer ends December 2, 2007 at 7pm. (65) Offer ends December 2, 2007 at 7pm. (66) Offer ends December 2, 2007 at 7pm. (67) Offer ends December 2, 2007 at 7pm. (68) Offer ends December 2, 2007 at 7pm. (69) Offer ends December 2, 2007 at 7pm. (70) Offer ends December 2, 2007 at 7pm. (71) Offer ends December 2, 2007 at 7pm. (72) Offer ends December 2, 2007 at 7pm. (73) Offer ends December 2, 2007 at 7pm. (74) Offer ends December 2, 2007 at 7pm. (75) Offer ends December 2, 2007 at 7pm. (76) Offer ends December 2, 2007 at 7pm. (77) Offer ends December 2, 2007 at 7pm. (78) Offer ends December 2, 2007 at 7pm. (79) Offer ends December 2, 2007 at 7pm. (80) Offer ends December 2, 2007 at 7pm. (81) Offer ends December 2, 2007 at 7pm. (82) Offer ends December 2, 2007 at 7pm. (83) Offer ends December 2, 2007 at 7pm. (84) Offer ends December 2, 2007 at 7pm. (85) Offer ends December 2, 2007 at 7pm. (86) Offer ends December 2, 2007 at 7pm. (87) Offer ends December 2, 2007 at 7pm. (88) Offer ends December 2, 2007 at 7pm. (89) Offer ends December 2, 2007 at 7pm. (90) Offer ends December 2, 2007 at 7pm. (91) Offer ends December 2, 2007 at 7pm. (92) Offer ends December 2, 2007 at 7pm. (93) Offer ends December 2, 2007 at 7pm. (94) Offer ends December 2, 2007 at 7pm. (95) Offer ends December 2, 2007 at 7pm. (96) Offer ends December 2, 2007 at 7pm. (97) Offer ends December 2, 2007 at 7pm. (98) Offer ends December 2, 2007 at 7pm. (99) Offer ends December 2, 2007 at 7pm. (100) Offer ends December 2, 2007 at 7pm.