



## **Nova Scotia Automobile Dealers Association Guidelines for Advertising**

*NSADA provides these guidelines for the general advice of its members. These guidelines do not constitute legal advice, and members should consult their legal advisors with respect to any questions relating to specific advertisements.*

Advertising in Canada is subject to a number of rules. Violation of these rules can lead to criminal convictions or to civil penalties imposed under the *Competition Act*. This memo identifies some general principles and issues which will apply in advertisements for automobile dealers. It is intended to help dealers recognize when there are issues which need to be considered carefully.

### *False and Misleading Statements*

It is an offence to publish an advertisement which is false or misleading in a material respect. A statement will be “material” if it might reasonably affect the decision of the consumer. What is false or misleading will be judged based on the overall impression of the advertisement. It is not enough that the ad is “technically correct”, or that a small footnote explains a way an apparent claim in the main body of the ad. If the overall impression created by the ad is untrue, a prosecution may result.

### *Substantiating claims*

If the advertisement makes any statements about the performance or life of a product, these must be based on adequate or proper testing done before the statement is made. For instance, fuel consumption claims should be based on proper tests done in accordance with established standards. In the automotive industry, most such claims will be made by the manufacturers, who should have testing to back them up. Similarly, statements about accessories<sup>1</sup> should be based on tests by the manufacturer. A statement on the original package will be considered to be made by the manufacturer or distributor, but if you, as a retailer, repeat the statement you must be sure that there are tests to back it up.

### *Ordinary price/sale price*

You cannot claim a price savings if that savings does not actually exist. Before advertising a “discount” price, you must establish the “ordinary” price, either by selling a reasonable volume of the product at this price or by offering it at this price for a reasonable period of time. (There are some specific guidelines about this.) If the product is always offered at a “sale” price, that will become the ordinary price<sup>2</sup>.

### *Bait and switch*

The classic trick is to attract customers with a very low price, and upsell them on the basis that the advertised product is sold out. However, the legal offence does not require that there be any effort to upsell – the rule is that you cannot advertise a bargain price unless you have a reasonable quantity of the product available. If only limited quantities are available, the ad should indicate this.

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<sup>1</sup> There have been a number of prosecutions for unsubstantiated statements about devices and additives which were claimed to increase gas mileage.

<sup>2</sup> There was a high-profile prosecution of Sears for improperly advertising “discount” prices for its tires, on the basis that most tires were sold at the “discount” price.

### *Contests and promotions*

The rules governing contests and promotions are complicated and this area is highly regulated. The risk is that you might be operating an illegal lottery. Any contest or promotion including a sweepstakes, scratch-and-win game, or other contest involving chance should be addressed on a case by case basis with your legal advisor to minimize your risk.

### *Credit advertising*

The *Consumer Protection Act* of Nova Scotia prohibits false, misleading or deceptive statements regarding the provision of credit (including leases), and require the cost to be disclosed in very specific ways. Any statement of a charge for credit must disclose the full cost of borrowing, stated as an annual percentage rate and as one sum expressed in dollars and cents. You must include this information in any print or broadcast ad, and can be very difficult to do so in a broadcast ad. For that reason, it is better to avoid statements about finance rates in broadcast ads.

### *Misappropriation of personality*

You may be challenged if you use a recognizable famous personality in your ad – even one who is dead. Eventually, a famous person's identity ceases to be controlled by his or her heirs, and becomes in the public domain. However, there is no clear line as to when this occurs. You must be very careful in using the identity of a person who has been dead for less than 50 years.

### *General guidelines*

Media guidelines would not permit any advertisement that might be interpreted as encouraging unsafe or dangerous driving.

You should ensure that the overall impression of your ad does not violate the spirit of gender equality or condone any form of personal discrimination.

### *Summary*

It is not easy to ensure that advertisements comply with all of the applicable laws, regulations, codes and guidelines that govern advertising in Nova Scotia. The information provided in this memo generally outlines some of the principal areas of concern to new car dealers in Nova Scotia. Particularly when an advertisement includes reference to a contest, to a "sale" or "discount" price, or to lease or other financing, you should get legal advice if you have any questions or concerns.