

G. STEVEN ROWE
ATTORNEY GENERAL



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STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
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AUGUSTA, MAINE 04333-0006
May 8, 2003

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Nancy Desjardin, Clerk
KENNEBEC COUNTY SUPERIOR COURT
95 State Street
Augusta, Maine 04330

RE: State of Maine v. City Enterprises I, LLC, d/b/a/ Motor City Nissan

Dear Ms. Desjardin:

Please find enclosed the State's Unfair Trade Practice Act (UTPA) Complaint against City Enterprises I, LLC. The parties have negotiated a Consent Decree in this matter and I am also including the executed Consent Decree. Paragraph 5 requires the Defendant to pay a UTPA civil penalty of \$10,000.00 and Paragraph 7 requires the Defendant to pay attorney fees of \$1,000.00. Both of these payments have now been made to the State.

May I please request that you present this Consent Decree to the Court for its consideration. Of course, if the Court has any questions about signing this Consent Decree, I would be glad to appear at the Court's convenience. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "James McKenna".

JAMES A. MCKENNA
Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta ME 04333-0006
Tel: (207) 626-8842
Email: jim.mckenna@maine.gov

JAM/tlh

Enclosure

Pc: Bruce C. Gerrity, Esq. (P.O. Box 1058, Augusta, Maine 04332-1058)

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-_____

| | | |
|--------------------------|---|-------------------------------|
| STATE OF MAINE, |) | |
| |) | |
| Plaintiff |) | |
| |) | |
| v. |) | UNFAIR TRADE PRACTICE |
| |) | COMPLAINT |
| |) | (Injunctive Relief Requested) |
| CITY ENTERPRISES I, LLC |) | |
| D/B/A MOTOR CITY NISSAN, |) | |
| |) | |
| Defendant |) | |

INTRODUCTION

1. The Plaintiff, State of Maine, brings this action by and through the Attorney General pursuant to 5 M.R.S.A. § 209 to enjoin the Defendant from engaging in unfair and deceptive trade practices in connection with the advertising and sale of motor vehicles, in violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207. The State also seeks civil penalties for intentional violations of the Unfair Trade Practices Act.

PARTIES

2. Plaintiff, State of Maine, is a sovereign State and brings this action by and through its Attorney General pursuant to 5 M.R.S.A. §§ 191 and 209 and the powers vested in him by common law.

3. The Defendant is a limited liability company doing business as Motor City Nissan, it sells new motor vehicles at its sales lot at 860 U.S. Route One, Saco, ME.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to 4 M.R.S.A. § 105 and 5 M.R.S.A. § 209, the Maine Unfair Trade Practices Act.

5. Pursuant to 5 M.R.S.A. § 209, the Maine Unfair Trade Practices Act, this action is brought in the Superior Court for Kennebec County.

STATUTORY BACKGROUND

6. Pursuant to 5 M.R.S.A. § 207, unfair and deceptive acts or practices in trade or commerce are unlawful.

7. Pursuant to 5 M.R.S.A. § 209, whenever the Attorney General has reason to believe that any person is using or is about to use any method, act or practice declared by 5 M.R.S.A. § 207 to be unlawful, the Attorney General may bring an action against this person to restrain by temporary or permanent injunction the use of unfair and deceptive trade practices and to order the return of any illegally obtained money or property.

8. Pursuant to 5 M.R.S.A. § 207(2), the Attorney General is authorized to make rules and regulations interpreting the Maine Unfair Trade Practices Act. On November 8, 1982, the Attorney General issued the New Car Sale Rules (Chapter 105, Agency 262-39, Unit 4929). New Car Sale Rule 105.8 reads as follows:

It is *prima facie* evidence of an unfair trade practice if a dealer refuses to take orders, or unreasonably discourages orders, for motor vehicles advertised by it as generally available or refuses to take orders except at a price that is greater than the advertised price.

It is *prima facie* evidence of an unfair trade practice for a dealer to advertise a vehicle as available when it does not currently have such a vehicle in stock.

9. In addition, our official “Comment” to this Rule relates to “bait and switch” advertising:

Comment

A dealer can avoid violating this Rule by stating in its advertisements the exact number of vehicles in stock at the dealership. It would be improper to advertise vehicles as

“available” when the vehicles advertised are not in stock at the dealership but merely on order or expected as part of a delivery in the future.

FACTS

10. During the months of March, April and May, 2002, Defendant Motor City Nissan advertisements featured in each advertisement specific photographs of ten or eleven models, each promising a specific low price. In addition, the advertisements also made such general statements as:

- A. “\$1,000 under invoice on all Nissans!”
- B. “Plus, you keep the rebate!”
- C. “This has NEVER been done!”
- D. “Over 200 [or 150] Nissans available!”

See Appendix A for an example of the advertisements.

10. The pictured models at the advertised prices were rarely, if ever, on the Motor City Nissan sales lot when the advertisement was run.

11. As a result, the only way a customer responding to these advertisements could purchase one of the pictured models was to order it.

12. Other, similar models were available on the lot for immediate purchase, but their prices were significantly higher than the advertised prices.

13. During the months of March, April and May, 2002, few, if any, motor vehicles featured in an advertisement photograph were purchased at the advertised price. Instead, almost without exception, every pictured vehicle sold during that period was sold at a price significantly higher than the advertised price.

COUNT ONE

(Violation of the Unfair Trade Practices Act -- Deceptive Advertisements)

14. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

15. The Defendant advertised motor vehicles that were not present on the lot and could only be obtained if the customer were willing to order the vehicle and wait a significant amount of time.

16. When customers responded to the Defendant's advertisements, they were offered similar models that were on the lot but were differently equipped and selling at a significant higher price.

17. The Defendant rarely, if ever, sold at the advertised price one of the models featured in photographs in its advertisements in March, April and May, 2002.

18. Instead, consumers responding to the advertisements were sold vehicles at significantly higher prices than the advertised price.

19. The Defendant's advertisements in March, April and May, 2002 were both unfair and deceptive and constitute a violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

20. The Defendant's violation of 5 M.R.S.A. § 207 as described in this Count was intentional.

RELIEF REQUESTED

Plaintiff requests the following relief:

1. Declare that the conduct of the Defendant as described in this Complaint violates the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

2. Pursuant to 5 M.R.S.A. § 209, permanently enjoin the Defendant, its agents, servants, employees and those persons acting in concert or participation with the

Defendant from deceptive advertising, including advertising vehicles that are not present on its sales lot at the advertised price.

3. Order that the Defendant, whenever it advertises a specific vehicle, include the following information: the year, make, model, sub-model, series, price and number of such vehicles currently available for sale on the lot.

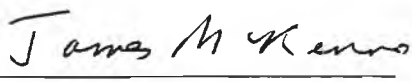
4. Order the Defendant to pay the Office of the Attorney General a civil penalty for each deceptive advertisement published during March, April and May, 2002.

5. Order such other and further relief, as may be necessary to remedy the effects of the Defendant's unfair and deceptive trade practices.

Respectfully submitted,

G. STEVEN ROWE
Attorney General

Dated: May 8, 2003



JAMES A. MCKENNA
Assistant Attorney General
Maine Bar No. 1735
Office of Attorney General
#6 State House Station
Augusta, Maine 04333
Tel: 626-8800

Attorney for State of Maine

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-03-_____

| | | |
|--------------------------|---|------------------------------------|
| STATE OF MAINE, |) | |
| |) | |
| Plaintiff, |) | |
| |) | CONSENT DECREE |
| v. |) | (Maine Unfair Trade Practices Act, |
| |) | 5 M.R.S.A. § 207) |
| CITY ENTERPRISES I, LLC |) | |
| D/B/A MOTOR CITY NISSAN, |) | |
| |) | |
| Defendant. |) | |

Plaintiff, State of Maine, filed its Complaint in the above-captioned matter on May 9, 2003. The Department of the Attorney General ("Attorney General"), on the State's behalf, and Defendant City Enterprises I, LLC d/b/a Motor City Nissan ("Motor City Nissan") have consented to the entry of this Consent Decree (the "Decree") without trial or adjudication of any issue of fact or law herein. This Decree does not constitute evidence against the Defendant or an admission by the Defendant of any of the allegations in the Plaintiff's Complaint.

NOW THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby ORDERED and decreed as follows:

1. This Court has jurisdiction over the subject matter of this action and over the parties consenting to this Decree. The Plaintiff's Complaint states a claim against the Defendant under the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 206-214 (1989 & Pamph. 2003).
2. The Defendant, its agents, employees, assigns or other persons acting for it or under its control or guidance are permanently enjoined and restrained from:

A. Knowingly or negligently making or causing to be made a false statement of material fact in any advertisement or other communication to the public with respect to Defendant's sale of new motor vehicles;

B. Offering to sell new motor vehicles by means of advertising or other communication to the public as part of a scheme or plan with the intent not to sell or provide the advertised new motor vehicle;

1. At all;

2. At the price or of the quantity offered; or

3. In a quantity sufficient to meet the reasonably expected public demand unless the advertisement or communication states the approximate quantity available.

C. Advertising for sale, with a price, any specific new motor vehicle without disclosing the vehicle's year (*e.g.*, 2003), make (*e.g.*, Nissan), carline (*e.g.*, Altima), and model (*e.g.*, SE).

D. Advertising the price, exclusive of federal, state, or local taxes, title and documentation fees, of any specific new motor vehicle for sale without disclosing:

1. The dollar amount for which the vehicle will be sold; **and**

2. *Either* of the following:

a. The number of units available at the advertised price, either by way of:

i. Identification by stock number; or

ii. Identification by stating the total number of units covered by the advertisement actually on the Defendant's lot at the time the advertisement was prepared;

or

b. That the units covered by the advertisement must be ordered.

3. The Defendant may use in its advertisements terms such as "starting at," "priced from," or "while supplies last" to inform the public that the Defendant has other vehicles of the advertised model available at different prices. In addition, the Defendant may use in its advertisements photographs of vehicles so long as they are of vehicles available on the Defendant's lot or the advertisements contain a general disclaimer indicating that the photographs are for illustrative purposes only.

4. Notwithstanding any language to the contrary contained herein, this Decree, and the injunction contained herein, will expire of its own terms upon the adoption by the Attorney General of rules or regulations governing the advertising practices of new car dealers that contain advertising standards differing from or inconsistent with those set forth in the New Car Sale Rules (Chapter 105, Agency 262-39, Unit 4929) issued by the Attorney General on November 8, 1982, that are currently in effect.

5. As of the date of entry of this Decree the Defendant shall, pursuant to 5 M.R.S.A. §§ 203-A and 209, pay to the Attorney General \$10,000, which funds are to be used for consumer education, litigation, or consumer protection purposes at the discretion of the Attorney General.

6. Any violation by the Defendant of the injunction set forth in Paragraph 2 above shall subject the Defendant to the imposition of a civil penalty as provided in 5 M.R.S.A. § 209.

7. Pursuant to 5 M.R.S.A. § 209, the Defendant shall pay to the Department of the Attorney General the costs of this suit, including its attorney's fees, in the amount of \$1,000.

RETENTION OF JURISDICTION

Jurisdiction is retained by this Court pursuant to 5 M.R.S.A. § 209 for the purpose of enabling any party to this Decree to apply to this Court at any time for such further orders as may be necessary for the construction, modification, or enforcement of any provision of this Decree.

The undersigned acknowledge the terms of this Decree and agree to these terms and to the entry of this Decree.

The Clerk is directed to incorporate this Decree in the docket by reference pursuant to M.R.Civ.P. 79(a).

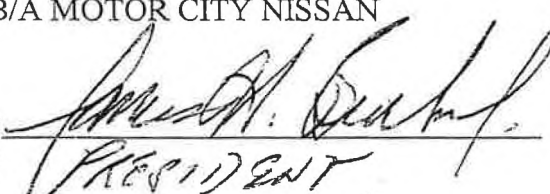
Dated: May ___, 2003

Justice, Superior Court

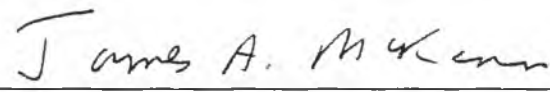
WE CONSENT:

CITY ENTERPRISES I, LLC
D/B/A MOTOR CITY NISSAN

Dated: May ___, 2003

By: 
Its: PRESIDENT
STATE OF MAINE

Dated: May 9, 2003



James A. McKenna, Bar No. 1735
Assistant Attorney General
#6 State House Station
Augusta, ME 04333

SUPERIOR COURT
CIVIL ACTION
RECEIVED DOCKET NO. CV-03- 102
KENNEBEC SUPERIOR COURT

NANCY DESJARDIN
CLERK OF COURTS

CONSENT DECREE
(Maine Unfair Trade Practices Act,
5 M.R.S.A. § 207)

Defendant.

2. The Defendant, its agents, employees, assigns or other persons acting for it or under its control or guidance are permanently enjoined and restrained from:

A. Knowingly or negligently making or causing to be made a false statement of material fact in any advertisement or other communication to the public with respect to Defendant's sale of new motor vehicles;

B. Offering to sell new motor vehicles by means of advertising or other communication to the public as part of a scheme or plan with the intent not to sell or provide the advertised new motor vehicle;

1. At all;

2. At the price or of the quantity offered; or

3. In a quantity sufficient to meet the reasonably expected public demand unless the advertisement or communication states the approximate quantity available.

C. Advertising for sale, with a price, any specific new motor vehicle without disclosing the vehicle's year (*e.g.*, 2003), make (*e.g.*, Nissan), carline (*e.g.*, Altima), and model (*e.g.*, SE).

D. Advertising the price, exclusive of federal, state, or local taxes, title and documentation fees, of any specific new motor vehicle for sale without disclosing:

1. The dollar amount for which the vehicle will be sold; **and**

2. *Either* of the following:

a. The number of units available at the advertised price, either by way of:

i. Identification by stock number; or

ii. Identification by stating the total number of units covered by the advertisement actually on the Defendant's lot at the time the advertisement was prepared;

or

b. That the units covered by the advertisement must be ordered.

3. The Defendant may use in its advertisements terms such as "starting at," "priced from," or "while supplies last" to inform the public that the Defendant has other vehicles of the advertised model available at different prices. In addition, the Defendant may use in its advertisements photographs of vehicles so long as they are of vehicles available on the Defendant's lot or the advertisements contain a general disclaimer indicating that the photographs are for illustrative purposes only.

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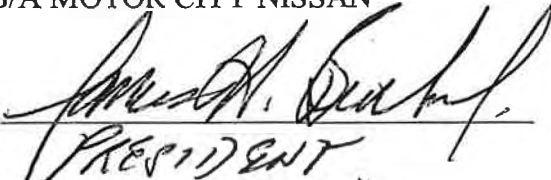
Dated: May 12, 2003


Justice, Superior Court

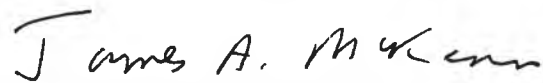
WE CONSENT:

CITY ENTERPRISES I, LLC
D/B/A MOTOR CITY NISSAN

Dated: May __, 2003

By: 
Its: PRESIDENT
STATE OF MAINE

Dated: May 9, 2003


James A. McKenna, Bar No. 1735
Assistant Attorney General
#6 State House Station
Augusta, ME 04333

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-_____

| | | |
|--------------------------|---|-------------------------------|
| STATE OF MAINE, |) | |
| |) | |
| Plaintiff |) | |
| |) | |
| v. |) | UNFAIR TRADE PRACTICE |
| |) | COMPLAINT |
| |) | (Injunctive Relief Requested) |
| CITY ENTERPRISES I, LLC |) | |
| D/B/A MOTOR CITY NISSAN, |) | |
| |) | |
| Defendant |) | |

INTRODUCTION

1. The Plaintiff, State of Maine, brings this action by and through the Attorney General pursuant to 5 M.R.S.A. § 209 to enjoin the Defendant from engaging in unfair and deceptive trade practices in connection with the advertising and sale of motor vehicles, in violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207. The State also seeks restitution for persons injured by these practices and civil penalties for intentional violations of the Unfair Trade Practices Act.

PARTIES

2. Plaintiff, State of Maine, is a sovereign State and brings this action by and through its Attorney General pursuant to 5 M.R.S.A. §§ 191 and 209 and the powers vested in him by common law.

3. The Defendant is a limited liability company doing business as Motor City Nissan, it sells new motor vehicles at its sales lot at 860 U.S. Route One, Saco, ME.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to 4 M.R.S.A. § 105 and 5 M.R.S.A. § 209, the Maine Unfair Trade Practices Act.

5. Pursuant to 5 M.R.S.A. § 209, the Maine Unfair Trade Practices Act, this action is brought in the Superior Court for Kennebec County.

STATUTORY BACKGROUND

6. Pursuant to 5 M.R.S.A. § 207, unfair and deceptive acts or practices in trade or commerce are unlawful.

7. Pursuant to 5 M.R.S.A. § 209, whenever the Attorney General has reason to believe that any person is using or is about to use any method, act or practice declared by 5 M.R.S.A. § 207 to be unlawful, the Attorney General may bring an action against this person to restrain by temporary or permanent injunction the use of unfair and deceptive trade practices and to order the return of any illegally obtained money or property.

8. Pursuant to 5 M.R.S.A. § 207(2), the Attorney General is authorized to make rules and regulations interpreting the Maine Unfair Trade Practices Act. On November 8, 1982, the Attorney General issued the New Car Sale Rules (Chapter 105, Agency 262-39, Unit 4929). New Car Sale Rule 105.8 reads as follows:

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It is *prima facie* evidence of an unfair trade practice for a dealer to advertise a vehicle as available when it does not currently have such a vehicle in stock.

9. In addition, our official “Comment” to this Rule relates to “bait and switch” advertising:

Comment

A dealer can avoid violating this Rule by stating in its advertisements the exact number of vehicles in stock at the dealership. It would be improper to advertise vehicles as

“available” when the vehicles advertised are not in stock at the dealership but merely on order or expected as part of a delivery in the future.

FACTS

10. During the months of March, April and May, 2002, Defendant Motor City Nissan advertisements featured in each advertisement specific photographs of ten or eleven models, each promising a specific low price. In addition, the advertisements also made such general statements as:

- A. “\$1,000 under invoice on all Nissans!”
- B. “Plus, you keep the rebate!”
- C. “This has NEVER been done!”
- D. “Over 200 [or 150] Nissans available!”

See Appendix A for an example of the advertisements.

10. The pictured models at the advertised prices were rarely, if ever, on the Motor City Nissan sales lot when the advertisement was run.

11. As a result, the only way a customer responding to these advertisements could purchase one of the pictured models was to order it.

12. Other, similar models were available on the lot for immediate purchase, but their prices were significantly higher than the advertised prices.

13. During the months of March, April and May, 2002, few, if any, motor vehicles featured in an advertisement photograph were purchased at the advertised price. Instead, almost without exception, every pictured vehicle sold during that period was sold at a price significantly higher than the advertised price.

COUNT ONE

(Violation of the Unfair Trade Practices Act -- Deceptive Advertisements)

14. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

15. The Defendant advertised motor vehicles that were not present on the lot and could only be obtained if the customer were willing to order the vehicle and wait a significant amount of time.

16. When customers responded to the Defendant's advertisements, they were offered similar models that were on the lot but were differently equipped and selling at a significant higher price.

17. The Defendant rarely, if ever, sold at the advertised price one of the models featured in photographs in its advertisements in March, April and May, 2002.

18. Instead, consumers responding to the advertisements were sold vehicles at significantly higher prices than the advertised price.

19. The Defendant's advertisements in March, April and May, 2002 were both unfair and deceptive and constitute a violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

20. The Defendant's violation of 5 M.R.S.A. § 207 as described in this Count was intentional.

RELIEF REQUESTED

Plaintiff requests the following relief:

1. Declare that the conduct of the Defendant as described in this Complaint violates the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

2. Pursuant to 5 M.R.S.A. § 209, permanently enjoin the Defendant, its agents, servants, employees and those persons acting in concert or participation with the

Defendant from deceptive advertising, including advertising vehicles that are not present on its sales lot at the advertised price.

3. Order that the Defendant, whenever it advertises a specific vehicle, include the following information: the year, make, model, sub-model, series, price and number of vehicles available for sale.

4. Order the Defendant to pay the Office of the Attorney General a civil penalty of \$10,000 for each of the three months its deceptive advertisements were publicized.

5. Order such other and further relief, as may be necessary to remedy the effects of the Defendant's unfair and deceptive trade practices.

Respectfully submitted,

G. STEVEN ROWE
Attorney General

Dated: January ____, 2003

JAMES A. MCKENNA
Assistant Attorney General
Maine Bar No. 1735
Office of Attorney General
#6 State House Station
Augusta, Maine 04333
Tel: 626-8800

Attorney for State of Maine

★ MotorCity Nissan

MOTORCITY MAKES BUYING A PREMIER IMPORT AFFORDABLE!

\$1,000 UNDER INVOICE

on all nissans!

OVER 200
NISSANS
AVAILABLE!

Plus, You
Keep the
Rebate!

This Has
NEVER
Been Done!

| | | | |
|---|--|---|---|
| <p>'02 Nissan Altima S</p> <p>CD Player, Air Conditioning, Tilt Wheel and Cruise Control</p> <p>The Cure for the Common Car.</p> <p>ONLY \$16,995 or \$249^{mo} 72 Mo PURCHASE</p> <p>42 Available!</p> | <p>'02 Nissan Sentra XE!</p> <p>21 Available!</p> <p>Tilt Steering Wheel, Dual Airbags, & More!</p> <p>ONLY \$9695 or \$141^{mo} 72 Mo PURCHASE</p> | <p>'02 Nissan Sentra GXE!</p> <p>21 Available!</p> <p>Overdrive Transmission, Power Windows, Power Locks, Air, CD, & Much More!</p> <p>ONLY \$11,070 or \$162^{mo} 72 Mo PURCHASE</p> | <p>'02 Nissan Maxima SE!</p> <p>31 Available!</p> <p>250HP V6, 4 Wheel ABS, Automatic, Power Windows & Locks, Tilt, Cruise, Air, Keyless Entry, More!</p> <p>ONLY \$21,911 or \$314^{mo} 72 Mo PURCHASE</p> |
| <p>'02 Nissan Altima 3.5 SE!</p> <p>Power Windows, Power Locks, Cruise Control, Tilt Wheel, Air, 3.5L, & More!</p> <p>ONLY \$21,995 or \$326^{mo} 72 Mo PURCHASE</p> <p>42 Available!</p> | <p>'02 Nissan Xterra XE!</p> <p>21 Available!</p> <p>15" Wheels, Air, Roof Rack, CD Player, & More!</p> <p>ONLY \$17,907 or \$263^{mo} 72 Mo PURCHASE</p> | <p>'02 Nissan Xterra SE!</p> <p>21 Available!</p> <p>Power Windows, Power Locks, Roof Rack, Gear Basket, Cruise, CD, Tinted Glass, More!</p> <p>ONLY \$21,715 or \$286^{mo} 60 Mo LEASE</p> | <p>'02 Nissan Frontier!</p> <p>17 Available! King Cab</p> <p>15" Wheels, ABS Brakes, More!</p> <p>ONLY \$10,187 or \$147^{mo} 72 Mo PURCHASE</p> |
| | <p>'02 Nissan Quest GXE!</p> <p>5 Available!</p> <p>16" Alloys, Stereo Cassette, Dual Rear Sliding Doors, Rear Air Conditioning!</p> <p>ONLY \$18,823 or \$277^{mo} 72 Mo PURCHASE</p> | <p>'02 Nissan Pathfinder SE!</p> <p>12 Available!</p> <p>Roof Rack, Air, Power Windows & Locks, 16" Rear Wheel, CD, & More!</p> <p>ONLY \$24,678 or \$268^{mo} 60 Mo LEASE</p> | |



Showroom Hours:
Mon-Fri 8am to 6pm
Sat 8am to 6pm
Service Hours:
Mon-Fri 7am to 6pm
Sat 7am to 1pm
Courtesy shuttle available

★ MotorCity Nissan
860 US Route One, Saco
283-2999 or 1-888-211-7257



*New Vehicle Disclosure: All prices and payments to buy or lease include applicable incentives. All prices & payments exclude tax, title & doc. fee (unless otherwise advertised) All lease offers require the refundable security deposit, first month payment

G. STEVEN ROWE
ATTORNEY GENERAL



Telephone: (207) 626-8800
TDD: (207) 626-8865

STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

REGIONAL OFFICES:

84 HARLOW ST., 2ND FLOOR
BANGOR, MAINE 04401
TEL: (207) 941-3070
FAX: (207) 941-3075

44 OAK STREET, 4TH FLOOR
PORTLAND, MAINE 04101-3014
TEL: (207) 822-0260
FAX: (207) 822-0259
TDD: (877) 428-8800

128 SWEDEN ST., STE. 2
CARIBOU, MAINE 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

September 10, 2004

Bruce C. Gerrity, Esquire
PO Box 1058
Augusta, ME 04332-1058

RE: Prime Toyota Advertising

Dear Bruce:

First, thank you for your ready response to our request for Prime Toyota documents. I have now had a chance to carefully compare the Prime Toyota advertisements with the Camry LE sales for the period April 9, 2004 through June 2, 2004. My conclusions are as follows:

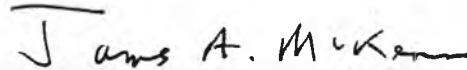
1. The Camry LE sales advertisements are an example of unfair and deceptive "bait and switch" advertising.
2. By my calculations, only twice did a consumer receive the advertised price (the \$17,669 sale on May 7th and the \$16,988 sale on May 22nd). The advertised sale price in one other case was almost realized. A sale on April 30th was for \$50 more than the advertised price.
3. In all other cases, the sale price was significantly higher than the advertised price. In fact, if my math is correct, for the 27 Camry LE sales during that period, the selling price, on average, was \$3,163 over the advertised price.
4. While each ad stated that in addition to the advertised price buyers could qualify for an "additional college rebate of \$400," in not one of the sales that I inspected was the \$400 rebate granted.
5. While the ads made a pretense of supplying at least one stock number for each ad, the stock number was never reflected in an actual sale except for one case (the May 7, 2004 sale for \$17,669). Other than that, there is no relation between the

advertised stock numbers and the stock numbers of the cars actually sold. In fact, the sale stock number given in the advertisements for April 9 through April 29 (# 4T440) was in fact the stock number of a car that was sold on April 6, 2004, the ad for which featured a different stock number (# INC 555).

6. The advertisements during this period were quite emphatic in the promise to consumers of extraordinary savings and that numerous sales were being made:
 - A. 4/09: "Compare our prices anywhere!"
 - B. 4/16 through 4/23: "58 Available"
 - C. 4/25 through 4/30: "58 16 Available"
 - D. 5/06: "Other dealers are afraid to advertise at THIS PRICE"
 - E. 5/07 through 5/13: "58 16 Available"
 - F. 5/14 through 5/19: "58 16 Available"
 - G. 5/21 through 5/26: "Other dealers are afraid to advertise THIS PRICE";
"Special purchase from overstocked dealers – 7 available"
 - H. 5/28: "Special purchase from overstocked dealers – 7 available"
 - I. 5/29 through 6/2: "Special purchase from overstocked dealers! 7 available"

I am attaching a chart that details the calculations I made in reaching my determination that Prime Toyota's advertising is deceptive. We intend to proceed with our Unfair Trade Practice enforcement action. If you would like to discuss resolution of this matter before we proceed, please contact me.

Sincerely,



JAMES A. MCKENNA
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JM/rht
Enclosure

PRIME TOYOTA

| ADVERTISED PRICE | SALE PRICE (Less \$1,000 rebate unless otherwise noted) | DIFFERENCE OVER ADVERTISED PRICE | TRADE-IN | TRADE-IN AMOUNT/ RETAIL BOOK VALUE |
|--|---|---|--|---|
| 4/06 \$ _____ (the sale that ended 4/5, \$15,988, Stock # INC 555) | 1. 4/06, \$19,054 (Dealer Invoice \$18,568) Stock # 4T440 | | 1998 Chevy S10 pickup, 95,111 miles | \$1,800 Retail: \$5,300 to \$7,150 |
| 4/09 \$15,787 Stock # 4T440 "Compare our prices anywhere!" | 1. 4/09, \$21,507 (Dealer Invoice \$19,403) # 4T219 | \$4,720 | 1998 Toyota Camry, 4 door, (defective motor) | \$1,900 Retail: \$7,100 to \$9,575 |
| 4/16 through 4/23 \$15,787 Stock # 4T440 "58 Available" "Additional college rebate \$400 on all Toyotas available." | 1. 4/17, \$22,477 (Dealer Invoice \$20,298) # 4T596 2. 4/19, \$17,475 (Dealer Invoice \$18,680) # 4T606 3. 4/19, \$17,995 # 702 | \$5,690 \$688 \$1,208 | 2001 Nissan Altima, 23,873 miles None | \$8,500 Retail: \$10,000 to 11,600 |
| 4/24 Lease advertisement "Customer must qualify to receive college grad rebate." Stock # 4T440 | 1. 4/24, \$21,164 (Dealer Invoice \$19,163) # 4T616 2. 4/24, \$18,578 (Dealer Invoice \$19,163) # 4T617 | | 1999 Pontiac Grand Am, 2 door, 77,891 miles None | \$4,167 Retail: \$5,500 to \$7,000 |

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|---|---|---------|---|---|
| | 3. 4/24, \$18,781 (Dealer Invoice \$18,680) # 4T662 | | None | |
| 4/25 through 4/30 \$16,669 Stock # 4T440 "58 16 Available" "Other Dealers are Afraid to advertise THIS PRICE!" | 1. 4/28, \$17,995 * (Dealer Invoice \$18,568) # 4T702 | \$326 | None | |
| | 2. 4/28, \$19,397 (Dealer Invoice \$19,218) # 4T597 | \$1,728 | None | |
| | 3. 4/28, \$24,748 (Dealer Invoice \$19,197) # 4T674 | \$7,079 | 2000 Toyota Camry, 4 door, 35,480 miles | \$12,348 Retail: \$9,825 to \$13,475 |
| 4/29 \$16,669 Stock # 4T440 "58 16 Available" | 4. 4/29, \$20,194 (Dealer Invoice \$19,949) # 4T681 | \$2,525 | None | |
| | 5. 4/29, \$22,064 (Dealer Invoice \$19,894) # 4T681 | \$4,395 | 2001 Camry, 4 door 35,315 miles | \$10,629 Retail: \$11,100 to \$15,100 |
| | 6. 4/29, \$19,351 (no \$1,000 rebate) # 4T701 | \$2,682 | 1999 Toyota Camry 4 door | \$4,800 Retail: \$8,300 to \$11,125 |
| | 7. 4/30, \$17,719 * (Dealer Invoice \$18,568) # 4T680 | \$50 | 2001 Chrysler Sebring LX, convertible 46,517 miles | \$9,000, Retail: \$12,300 to \$15,725 |
| 5/06 \$15,988 Stock # 4T728 "Other Dealers are Afraid to advertise at THIS PRICE" | \$23,845 # 4T593A | \$6,857 | 2002 Ford Explorer 28,544 miles | \$18,850 Retail: \$13,100 to \$22,500 |

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|---|--|---------|--|---|
| 5/07 through 5/13 \$16,699 Stock # 4T710 "58 16 Available" | 1. 5/7, \$17,669 * (Dealer Invoice \$18,568) # 4T710 | \$0 | 1993 Chevy | \$500 |
| | 2. 5/10, \$24,995 (Dealer Invoice \$19,928) # 4T739 | \$7,296 | 1999 Chevy Blazer, 4 door, 89,258 miles | \$10,600 Retail: \$7,850 to \$9,300 |
| | 3. 5/11, \$18,799 (Dealer Invoice \$19,051) # 4T707 | \$1,100 | None | |
| | 4. 5/8 or 5/11 \$19,117 (Dealer Invoice \$19,163) # 4T691 | \$1,418 | None | |
| | 5. 5/13, \$21,590 (Dealer Invoice \$18,568) # 4T756 | \$3,891 | 1998 Toyota Camry 4 door, 82,785 miles | \$7,600 Retail: \$7,100 to \$9,575 |
| 5/14 through 5/19 \$16,699 Stock # 4T71 "58 16 Available" (but May 16 ad said \$15,988) | 1. 5/14, \$23,981 (Dealer Invoice \$20,298) # 4T756 | \$6,282 | 1996 Volkswagon Jetta, 112,378 miles | \$1,000 |
| | 2. 5/15, \$21,145 (Dealer Invoice \$20,483) # 4T306 | \$3,446 | None | |
| | 3. 5/17, \$20,988 (Dealer Invoice \$19,051) # 4T727 | \$4,000 | 2000 Toyota Camry 94,800 miles | \$18,700 Retail: \$9,825 to \$13,425 |
| | 4. 5/19, \$26,190 (Dealer Invoice \$20,949) # 4T646 | \$9,202 | 2004 Kia Sedona 3,406 miles | \$17,500 |

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|---|---|---|--|---|
| <p>5/21 through 5/26 \$15,988 Stock #s INC 669-75 “Other Dealers Are Afraid to Advertise THIS PRICE!” “Special Purchase from Overstocked Dealers! 7 Available!” \$15,988</p> | <p>1. 5/22, \$16,988 * (Dealer Invoice \$18,568) # 4T728</p> <p>2. 5/22, \$19,578 (Dealer Invoice \$19,218) # 4T767</p> <p>3. 5/22, \$19,788 (Dealer Invoice \$19,894) # 4T754</p> <p>4. 5/25, \$19,849 (Dealer Invoice \$19,894) # 4T831</p> | <p>\$0</p> <p>\$2,590</p> <p>\$2,800</p> <p>\$2,861</p> | <p>None</p> <p>None</p> <p>1999 Chevrolet Blazer</p> <p>1993 Chevrolet Blazer SUV 112,760 miles</p> | <p></p> <p></p> <p>\$4,000 Retail: \$6,975 to \$9,300</p> <p>\$1,500</p> |
| <p>5/28 \$15,987 Stock #s 674-75, 670-71 “SPECIAL PURCHASE from Overstocked Dealers! 7 Available”</p> | <p>\$21,535 LEASE, with a cap cost of \$20,017.69, but also an invoice for \$21,535 # 4T812</p> | <p>\$4,548 ?</p> | <p></p> | <p></p> |
| <p>5/29 through 6/2 \$15,987 Stock #s 674-75, 670-71 “SPECIAL PURCHASE from Overstocked Dealers! 7 Available”</p> | <p>1. 5/29, \$19,463 (Dealer Invoice \$19,218) # 4T773</p> <p>2. 5/31, \$18,766 (Dealer Invoice \$19,163) # 4T849</p> <p>3. 5/31, \$18,939 (Dealer Invoice \$19,218) # 4T726</p> | <p>\$2,476</p> <p>\$1,779</p> <p>\$1,952</p> | <p>None</p> <p>1997 Nissan Pathfinder 100,786 miles</p> <p>None</p> | <p></p> <p>\$3,500 Retail: \$7,375 to \$9,725</p> |