

## FTC's Rules of the Road for Advertising: A 5-Point Inspection

September 30, 2019 | [Erica A.N. Kramer](#) and [K. Dailey Wilson](#)

On April 15, 2019, the Federal Trade Commission and the Office of the Georgia Attorney General presented "Green Lights and Red Flags: FTC Rules of the Road for Business." The program addressed a variety of issues, including hot-button issues in advertising.

An attorney with the FTC's Bureau of Consumer Protection and the Office of the Georgia Attorney General's assistant deputy attorney discussed false advertising, a topic applicable to all businesses, including auto dealers. They suggested that businesses consider five questions before disseminating an advertisement:

- What consumer protection laws apply?
- What claims does the ad convey to consumers?
- Do you have proof to support those claims?
- Have you clearly disclosed material information?
- Do your claims raise any compliance red flags?

First, it is important to identify which laws apply to your motor vehicle advertisement. Possible laws include the FTC Act, the Truth in Lending Act, the Consumer Leasing Act, and various state consumer protection laws, including state statutes addressing unfair or deceptive acts or practices. Each law imposes unique requirements on advertising content. For example, the Truth in Lending Act requires that certain additional disclosures be included in an ad that uses "triggering terms," such as the number of payments, the period of repayment, the amount of any payment, or the amount of any finance charge.

Second, when creating an advertisement, consider what claims a reasonable consumer could take away from the advertisement. When making this assessment, it is important to look at the advertisement as a whole. While individual statements may not be misleading, those statements, when taken together with other parts of the advertisement, could still mislead consumers. And don't just consider the words on the page - visual images can deceive consumers, too.

Third, ensure that you have adequate support for any claims that you make in an advertisement. You must have competent and reliable evidence to back up any claims you make. For example, you cannot say that "9 out of 10 consumers are approved for financing with us" unless you have objective proof that the statement is true.

Fourth, you must disclose all material limitations on the offer clearly and conspicuously. Disclosures should be prominent, clearly worded, placed in proximity to the qualifying claim, and provided in time for the consumer to make a meaningful choice. Resist the temptation to include material limitations in the fine print, as deceptive advertising claims cannot be cured by fine-print disclosures.

Fifth, take care to consider FTC guidance regarding key issues such as price comparisons, discounts, bait advertising, "Made in the USA" claims, and use of the word "free." The FTC and some state agencies have published extensive guidance addressing these concepts. Dealers should carefully review that guidance and follow it when crafting their advertisements.

Taking the extra time to run through the FTC's 5-point inspection before disseminating an advertisement can save you a lot of headaches in the end. Make sure that these five items are on your marketing checklist today.

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7037 Ridge Road, Suite 300, Hanover, Maryland 21076  
410.684.3200

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