

Is Your Ad Clear and Conspicuous? Apparently it Depends.

We've all heard the jokes about fine print before – the text is so small you could be agreeing to give the dealership your first-born child. However, for regulators the fine print is no laughing matter. The bottom line is that both state and federal regulators expect the disclosures in the fine print to be clear and conspicuous.

But, what does the term “clear and conspicuous” mean? The FTC has provided copious amounts of guidance regarding the standard throughout the years. A critical factor in assessing whether fine print, or any other disclosure, is clear and conspicuous is the medium used to convey the advertisement. Regulators have different expectations regarding disclosures in print advertisements versus disclosures in radio advertisements versus disclosures in television advertisements. Here are a few considerations to keep in mind when creating your dealership's next advertisement:

1. Make key disclosures in the same medium as the advertisement. That is, if the advertisement is a print ad, make the disclosures in writing. If the advertisement is a radio ad, make the disclosures audibly.
2. Make visual disclosures stand out by using characteristics such as font size, color, contrast, location, and, in television advertisements, the length of time the disclosure appears on the screen.
3. Deliver audible disclosures in the same volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand the disclosure.
4. Use easily understandable language, diction, and syntax.
5. Make disclosures in each language used in the

advertisement – that is, if you make a statement in Spanish, the disclosure should also appear in Spanish.

6. Ensure disclosures are consistent with all other statements appearing in the advertisement.

Looking to the guidance above when crafting your dealership's next advertisement can help make your fine print stand out – ensuring your dealership is not the punchline of a joke.

* Ron Gorsline is a partner in the Ooltewah, Tennessee office of Hudson Cook, LLP. Ron can be reached at 423-490-7562 or by email at rgorsline@hudco.com. Dailey Wilson is an associate in the Ooltewah, Tennessee office of Hudson Cook, LLP. Dailey can be reached at 423-490-7567 or by email at dwilson@hudco.com.



Dailey Wilson
Associate of Hudson Cook, LLP



Ron Gorsline
Partner of Hudson Cook, LLP

Tennessee Office of Hudson Cook, LLP
9431 Bradmore Lane
Suite 201
Ooltewah, TN 37363
P: 423.490.7560
Fax: 423.490.7558

