

STATE OF COLORADO

COLORADO DEPARTMENT OF REVENUE
Motor Vehicle Dealer Board

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The Colorado Department of Revenue Auto Industry Division (Division) has reviewed the text below, which was submitted by the Colorado Automobile Dealers Association after the Division's presentation to the Motor Vehicle Dealer Board ("Board") at its meeting on December 8, 2011. The Division believes the text fairly and accurately describes the issues surrounding the relationship between Colorado motor vehicle dealers and TrueCar. The Division will take all steps necessary to fulfill its statutory duty to assist the Board in protecting consumers, investigating suspected or alleged violations of statutes or rules, and enforcing all licensing statutes and rules.

MEMO:

It has come to the attention of the Colorado Motor Vehicle Dealer Board ("Board") and the Auto Industry Division ("Division") that a number of new motor vehicle dealers licensed in Colorado have relationships with a company known as TrueCar. The Division has identified a number of advertising violations in TrueCar materials and on its web site, as well as other potential violations of the Motor Vehicle Dealer Act ("Act") and related regulations. Any Colorado licensed dealer that is using TrueCar to promote and list its vehicles to consumers is ultimately responsible for any such violations. The specific advertising violations identified are:

- Failure to include stock number of the vehicle for sale (violates Advertising Rule 3)
- Use of the word "invoice" in the advertising (violates Advertising Rule 11)
- Font size of disclaimers is too small (violates Advertising Rule 15)
- Failure to advertise price of vehicle including all costs including Delivery & Handling (violates Advertising Rule 13)
TrueCar disclaimers also refer to a "Documentation fee" which is terminology that has led to lawsuits in Colorado in the past
- No expiration date or time limit for offer which could possibly result in a motor vehicle being listed for sale but no longer in inventory (violates Rule 3)

In addition to the specific advertising rule violations, the Board and the Division have concerns with the ability of TrueCar to access the inventory information of a licensed dealer. There would appear to be the potential for a consumer [who has been quoted a price for a *specific* vehicle and assured a "guarantee"] arriving at the dealership to find that vehicle has already been sold. The consumer may then be targeted for the sale of a different vehicle. In certain circumstances, this may constitute a "bait and switch" transaction

which is prohibited by the Act as well as other Colorado statutes (and could be a criminal offense). Moreover, concerns extend to the compensation structure that is based on a completed sale, meaning there appears to be unlicensed sales activity taking place—a violation for both the entity engaging in the unlicensed activity as well as a violation for the dealer that is engaging with that unlicensed entity.

As of December 8, 2011, neither TrueCar nor its employees were licensed by the Board. The Board has instructed the Division to pursue licensure by TrueCar as either a Used Motor Vehicle Dealer or to have individuals associated with TrueCar licensed as salespersons or both. The Division also noted that licensed motor vehicle dealers who knowingly allow an unlicensed person to exercise any of the privileges granted to a licensed dealer are in violation of the Act and can be held accountable for the acts of such unlicensed persons. [C.R.S. §12-6-109]

Should the Division receive any consumer complaint regarding the activities of TrueCar, the Board will look to the licensed, selling dealer and will hold the dealer accountable for any violations.

The Board and the Division requested the Colorado Automobile Dealers Association (CADA) to inform its members immediately of these compliance issues. Meanwhile, TrueCar has been directed by the Division to correct the advertising violations that are controlled via content on their site immediately and meet with the Division concerning licensure.