

NEW MOTOR VEHICLE BOARD  
1507 - 21st Street, Suite 330  
Sacramento, California 95814  
Telephone: (916) 445-1888

June 24, 1983

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of: )  
FEN, INC. dba VALLEY MAZDA, )  
Appellant, )  
vs. )  
DEPARTMENT OF MOTOR VEHICLES OF )  
THE STATE OF CALIFORNIA, )  
Respondent. )

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Appeal No. A-96-83

FILED: January 17, 1983

Time and Place of Hearing:

June 24, 1983, 10:30 a.m.  
1507 - 21st Street  
Suite 330  
Sacramento, California 95814

For Appellant:

Harold C. Wright, Esq.  
Wright & Britton  
3190 Clearview Way  
Suite 210  
San Mateo, California 94402

For Respondent:

Nancy Rasmussen, Esq.  
Staff Counsel, Legal Office  
Department of Motor Vehicles  
Post Office Box 11828  
Sacramento, California 95818

FINAL ORDER

1. On May 24, 1982, the Department of Motor Vehicles, (Department), filed a formal accusation against Fen Inc., doing business as Valley Mazda (Appellant), for alleged violations of the California Vehicle Code and Title 13 of the California Administrative Code. A hearing was held, and on December 13, 1982, an Administrative Law Judge submitted a proposed decision which would suspend for ten days the license and special plates of Appellant. The proposed decision provided for a one-year stay of the suspension on the conditions that Appellant incur no further cause for disciplinary action for one year and that Appellant not utilize the advertisement which was the subject matter of the hearing. This decision was adopted by the Department on December 13, 1982.

2. The Appeal was filed with the Board on January 17, 1983.

Listed below are each of the findings of the Department which resulted in disciplinary action against the Appellant and this Board's determinations in regard thereto.

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DEPARTMENT'S FINDING IV

3. The Department's Finding IV was as follows:

A. *The accusation in this matter involved several separate instances wherein the Department alleged respondent had violated Section 11713(a) of the California Vehicle Code; each instance constituting a cause to impose discipline under Section 11705(a)(10) of said Code.*

*In each instance the Department charged respondent's newspaper advertisements on specific dates in the San Jose Mercury News were "false or misleading".*

*Essentially each ad first mentioned a definite [sic] price for the vehicle being offered by respondent for sale to the public. Thus, the advertisements ("subject ads") read: "\$\_\_\_\_\_ cash, trade or pay credit mgr. \$3 deposit and finish balance EZ way w/ok job or credit". Specifically, the Department alleged ". . . advertisement was false and misleading in the Respondent had no intention of selling the advertised vehicle on credit with a deposit of \$3.00".*

B. *Respondent admitted said ad was designated to attract the public to its showroom - and, as it is the purpose of most advertisements - to attempt to sell its*

product. Further that the \$3.00 deposit was intended to pay for its costs of a credit report and was a psychological device to get something being exchanged between the customer and the dealership in an effort to make a sale more likely. Respondent denied, however, that it had no intention of selling such advertised vehicles on credit with a deposit of \$3.00.

- C. The credit worthiness of potential purchasers was ultimately determined by several independent financial lending institutions. It was to these institutions to whom the respondent dealership forwarded both the employment and credit records of its potential purchasers. Respondent carried no "paper" on such sales; that is, it did not finance any of its vehicle sales.

After review of the employment and credit reports of a potential buyer, either one or several of these lending institutions would, unbeknownst to the customer, either deny financing in particular cases - or would set the terms of such financing; for example, by requiring a minimum amount of cash to be deposited as a down payment on the vehicle in question - aside from, and regardless of, the \$3.00 deposit mentioned in respondent's advertisements.

At all times herein mentioned respondent was well aware of its own credit evaluation processes (as above found). Thus it would not know, at the time of placing each of the advertisements here in question, whether a deposit of \$3.00 as a down payment would, in fact, be qualifying in order to purchase any given vehicle it advertised.

If, on the other hand it so happened that the lender would permit a down payment of \$3.00 only (essentially a 100% financing of the purchase price), respondent was and would be willing to consummate the transaction on such terms.

It was in this sense that the advertisement was misleading. While the language of the advertisement was stipulated not to be misleading, nevertheless, the respondent's practice in supplementing the ad was misleading; thereby making the advertisement itself misleading. It, the advertisement, failed to inform the public that in actuality even if a prospective customer had an "ok job or credit" the deposit required would not necessarily and always be \$3.00. The deposit required would be, as respondent well knew, any sum of money - all dependent on the lender's terms.

D. It was not established that any of the particular potential purchasers of the vehicles designated in the accusation actually had "ok credit". In addition to the qualifying requirements of a lender being highly discretionary with the lending institution, there were not lending standards or guidelines introduced by which to possibly show that credit in any individual instance was "O.K."

For this conduct the Department, in conjunction with the Department's Finding V, imposed a five-day suspension of Appellant's license and special plates.

4. The Board determines that the findings are not supported by the weight of the evidence in light of the whole record reviewed in its entirety, and that the decision is not supported by the findings. The Board therefore reverses the decision of the Department in regard to Finding IV and finds no violation.

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DEPARTMENT'S FINDING V

5. The Department's Finding V was as follows:

V.

*As to the 1976 Ford, license #274 PGX, advertised on or about June 27, 1981, for \$1,288.00 the subject ad was misleading in that respondent intended only to sell this vehicle for cash alone.*

For this conduct the Department, in conjunction with the Department's Finding IV, imposed a five-day suspension of Appellant's license and special plates.

6. The Board determines that the findings are not supported by the weight of the evidence in light of the whole record reviewed in its entirety, and that the decision is not supported by the findings. The Board therefore reverses the decision of the Department in regard to Finding V and finds no violation.

DEPARTMENT'S FINDING VIII

7. The Department's Finding VIII was as follows:

*As to the 1979 GMC Pick-Up, license IL 89958 advertised for \$4,488.00 on August 1, 1981, the subject ad was*

*misleading. Not only was the prospective purchaser under an "impression" that the respondent dealership would only sell this vehicle for cash, but said person was informed by respondent that the vehicle could not be financed.*

For this conduct the Department, in conjunction with the Department's Finding IV, imposed a five-day suspension of Appellant's license and special plates.

8. The Board determines that the findings are not supported by the weight of the evidence in light of the whole record reviewed in its entirety and that the decision is not supported by the findings. The Board therefore reverses the decision of the Department in regard to Finding VIII and finds no violation.

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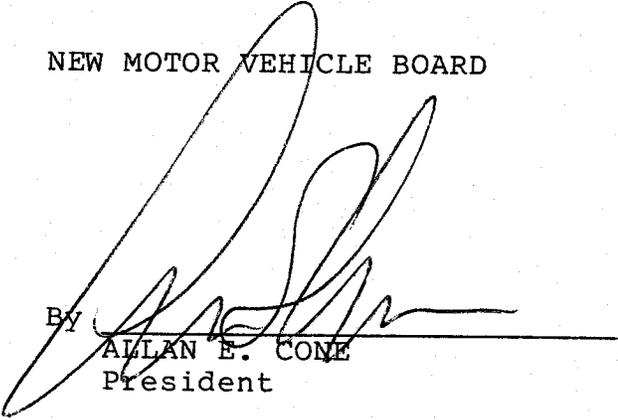
Specifically, the Board finds:

1. The decision of the Department is reversed.
2. The penalty imposed by the Department is reversed.

The decision of the Director is reversed.

DATED: June 24, 1983

NEW MOTOR VEHICLE BOARD

By 

ALLAN E. CONE  
President