

Do advertising regulations and the BBB Code of Advertising permit an automobile dealer to offer "Tires for Life" with the purchase of a new vehicle?

This question concerns a "Tires for Life" advertising offer where the BBB has expressed concern about undisclosed conditions that fundamentally change the offer. The question is whether it is possible for a dealer to offer a "Tires for Life" program in a manner that is legitimate, straight forward and a real benefit to the consumer. It is. Where a problem may exist isn't with the "Tires for Life" offer itself, but with adequate disclosure of conditions attached to the offer. Regulatory and advertising standards issues are raised if conditions are attached to such offers.

The fact that the offer is contingent upon the purchase of a car should be obvious. This "condition" is sufficiently obvious that no additional disclosure is necessary.

However, a condition that the owner "perform the manufacturers recommended maintenance in our shop" is one for which advertising standards appear to require adequate disclosure. The requirement does not make the offer "a bad deal," because a prudent consumer should not abuse the new purchase through lack of regular maintenance. Nonetheless, the consumer has other options, whether unwisely choosing not to have regular maintenance or choosing reputable non-dealer sources for this maintenance. The requirement that all recommended maintenance be performed at the dealer from which the car is purchased, with routine charges for these services, appears material to the offer. The advertising guidelines and standards that apply are:

Federal Trade Commission advertising guideline IRC §251.1(c) states:

When making "Free" or similar offers all the terms, conditions and obligations upon which receipt and retention of the "Free" item are contingent should be set forth clearly and conspicuously at the outset of the offer so as to leave no reasonable probability that the terms of the offer might be misunderstood. Stated differently, all of the terms, conditions and obligations should appear in close conjunction with the offer of "Free" merchandise or service. For example, disclosure of the terms of the offer set forth in a footnote of an advertisement to which reference is made by an asterisk or other symbol placed next to the offer, is not regarded as making disclosure at the outset. However, mere notice of the existence of a "Free" offer on the main display panel of a label or package is not precluded provided that (1) the notice does not constitute an offer or identify the item being offered "Free", (2) the notice informs the customer of the location, elsewhere on the package or label, where the disclosures required by this section may be found, (3) no purchase or other such material affirmative act is required in order to discover the terms and conditions of the offer, and (4) the notice and the offer are not otherwise deceptive.

The Kentucky Motor Vehicle Commission's advertising regulation 605 KAR 1:190, sections 7, 8 and 10, state:

Section 7. An asterisk (*) may be used to give additional information about a word or term; however, use of one (1) or more footnotes or asterisks which, alone or in combination, contradict, confuse, materially modify or unreasonably limit a principal message of the advertisement shall not be used.

Section 8. Any disclosure appearing in advertisements shall clearly and conspicuously feature all necessary information in a manner that can be read and understood or which can be heard and understood. The minimum duration of printed language in a television advertisement shall be five (5) seconds for every three (3) lines.

Section 10. The words "free", "gift" or words of similar import may be used in advertising only when the advertiser is offering an unconditional gift.

The Better Business Bureau BBB Code of Advertising, Section 2, consistent with the regulations above, states:

"Free"

- a. The word "free" may be used in advertising whenever the advertiser is offering an unconditional gift. If receipt of the "free" merchandise or service is conditional on a purchase:
 - the advertiser must disclose this condition clearly and conspicuously together with the "free" offer (not by placing an asterisk or symbol next to "free" and referring to the condition(s) in a footnote);
 - the normal price of the merchandise or service to be purchased must not have been increased nor its quantity or quality reduced; and
 - the "free" offer must be temporary; otherwise, it would become a continuous combination offer, no part of which is free.
- b. In a negotiated sale no "free" offer of another product or service should be made where:
 - the product or service to be purchased usually is sold at a price arrived at through bargaining, rather than at a regular price; or
 - there may be a regular price but other material factors such as quantity, quality or size are arrived at through bargaining

The Better Business Bureau believes that compliance by businesses with the FTC guidelines, the KMVC regulations, and BBB standards will help maintain confidence in the business, its industry and in advertising. A "Tires for Life" ad should be reviewed by any dealership making the offer to assure that the offer complies with the regulations and standards stated above. When disclosures are made to comply with these standards, dealers making the offer will be able to compete fairly on a "level playing field" and consumers will be able to adequately evaluate the value of the offer.