

VERMONT SUPERIOR COURT
CIVIL DIVISION, WASHINGTON UNIT

2011 OCT 13 A 9:54

IN RE:)	
)	WASHINGTON UNIT
WILLIAM FENTON)	
d/b/a SUBARU OF KEENE,)	DOCKET NO. <u>645-10-11 WNW</u>
Respondent)	

ASSURANCE OF DISCONTINUANCE

This Assurance of Discontinuance (referred to herein as "AOD") is entered into by Attorney General William H. Sorrell (the "Attorney General"), acting pursuant to the Vermont Consumer Fraud Act, ch. 63, 9 V.S.A. § 2451- 2460 and William Fenton, d/b/a Subaru of Keene (referred to herein as "Respondent"). Respondent is meant to include all owners, partners, predecessors and successors of Subaru of Keene. Upon execution, this AOD shall be filed in the Washington Superior Court.

WHEREAS the Attorney General is the chief law enforcement officer of the State of Vermont (the "State") and is authorized to investigate and enforce the Vermont Consumer Fraud Act ("VCFA") and to enter into assurances of discontinuance. 9 V.S.A. §§2458-2460;

WHEREAS Subaru of Keene is an automobile dealership owned by William H. Fenton, that markets and sells new and used automobiles and is located in Keene, New Hampshire;

WHEREAS Respondent held sales from February 1 through February 28, 2010, and from June 1 through July 31, 2010 and at each time advertised "employee pricing" to Vermont consumers purchasing new vehicles;

WHEREAS Respondent's February 10, 2010 print ads used the phrase, "you pay what our employees pay" and one broadcast ad referred to the February 2010 sale as "our annual employee pricing event," and another broadcast ad referred to "employee pricing on every new Subaru;"

WHEREAS the June and July 2010 print and broadcast ads similarly offered "employee pricing" and stated, "You pay what we pay;"

WHEREAS in its September 14, 2010 response to the Attorney General's Civil Investigative Demand, Respondent stated in part, "The price an employee pays for a new car is negotiated, just as the price a retail customer pays is negotiated;"

WHEREAS based on the representation that the price an employee pays for a vehicle is negotiable, it is impossible for Respondent to show that a customer paid the same price for a vehicle that an employee would have paid for the same vehicle;

WHEREAS the phrase "employee pricing" and the like, as used by Respondent in its February and June 2010 advertising, indicates a selective price structure that did not exist;

WHEREAS in six Vermont vehicle purchases made during the February and June-to-July 2010 sales, Respondent informed consumers they were being offered sale prices that were calculated based on Respondent's dealer cost and did not disclose a holdback of 2% of each vehicle's Manufacturer's Suggested Retail cost;

WHEREAS in four Vermont vehicle purchases made during the June 2010 sale, consumers were not given any discount and paid the "Total Suggested List Price" or more;

WHEREAS the Attorney General alleges that all of the above described practices violate the VCFA prohibition on unfair and deceptive trade practices, 9 V.S.A. § 2453(a);

WHEREAS the Attorney General also alleges that the above described practices violate the following specific Consumer Fraud Rules promulgated under the VCFA that pertain to pricing and to automobile advertising:

1. CFR 110.01 prohibits the sale of goods through the use of false or deceptive price comparisons;

2. CFR 110.05 prohibits advertising a retail price as a wholesale price and/or representing prices to be factory prices when they are not selling at the prices paid by those purchasing directly from the factory;

3. CFR 118.02(b) prohibits dealer advertising (1) that are direct statements that have a tendency to mislead consumers or (2) whose overall impression has the tendency to mislead consumers;

4. CFR 118.05(e)(1) prohibits using terms such as "dealer cost" that represent that a vehicle is for sale at a price below cost, at cost or slightly above cost, when the price in fact includes holdbacks or other payments or credits from the manufacturer to the dealer;

AND WHEREAS, Respondent and the Attorney General are willing to accept this Assurance of Discontinuance pursuant to 9 V.S.A. §2459;

THEREFORE the parties agree as follows:

1. Respondent will fully comply with the Vermont Consumer Fraud Act ch. 63, and any regulations promulgated under the statute.

2. Respondent will comply fully with Consumer Fraud Rules 110 and 118 in all respects and in all advertising and sales promotion reaching Vermont consumers.

3. Respondent shall maintain for 2011 to January 1, 2014 and, upon request, make available to the Attorney General for inspection and copying a print or electronic copy capable of being printed, of all advertising directed to Vermont consumers, or printed or published in a medium likely to reach consumers in Vermont, and such other documents that demonstrate that the representations and offers made in the advertising are in fact true and bona fide.

4. Respondent shall prepare an information sheet identifying the conduct prohibited by this AOD, the VCFA and CFR 110 and 118, and deliver the information sheet to all current and future officers and managers responsible for operations, and to all current and future employees, agents, representatives, and contractors employed in or responsible for business operations having any responsibility with respect to advertising and sales promotion. Within 30 days of the signing of this AOD, Respondent shall prepare the information sheet for approval by the Attorney General and distribute it within 10 days once approved, to current employees in the positions identified above. Respondent will deliver the information sheet within 30 days to future employees that assume the identified positions.

5. Respondent shall, within ten business days of the signing date of this AOD, pay to the State of Vermont Eight Thousand Five Hundred Dollars (\$8,500.00) as civil penalties.

6. Respondent shall respond diligently and promptly to requests for information and documents that the Attorney General determines would be of assistance to the State in enforcing compliance with this Assurance.

7. Nothing in this Assurance shall be construed as a waiver of any private rights of any person. Nothing in this Assurance shall permit any person or entity not a signatory hereto to enforce any provision of this Assurance.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

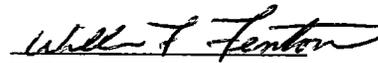
Dated: October 13, 2011

By:


Sandra W. Everitt
Assistant Attorney General

Dated: 9-29, 2011

By:


William Fenton d/b/a
Subaru of Keene
Respondent