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BUSINESS ADVISORY

To: Alaska Rental Car Companies

From: Alaska Attorney General's Office
Commercial and Fair Business Section

Re: Vehicle Licensing Fees

Dated: August 30, 2006

Dear Owners and Managers:

This Business Advisory is to inform you that the Alaska Attorney General has determined the advertised price of a vehicle rental must include all fees and costs, except governmentally mandated taxes and airport facilities charges. Vehicle Licensing Fees ("VLF's") are not governmentally mandated charges, and thus must also be included in the advertised price. The advertised price must actually include the entire price to be paid by the renter, and not merely refer to additional "add-on" charges (i.e. "plus VLF").

Alaska's Unfair Trade Practices and Consumer Protection Act (the "Act"), AS 45.50.471 *et seq.* provides that all unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce are unlawful. The Act also lists 50 specific practices that are declared to be unlawful, including:

Advertising goods or services with intent not to sell them as advertised. AS 45.50.471(b)(8);

Engaging in any conduct creating a likelihood of confusion or of misunderstanding and which misleads, deceives, or damages a buyer or a competitor in connection with the sale or advertising of goods or services. AS 45.50.471(b)(11); and

Using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or

omitting a material fact with the intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived, or damaged. AS 45.50.471(b)(12).

Charging a VLF could violate each of these subsections of the Act.

The Act has been interpreted liberally to protect consumers. *State v. Oniell Investigations, Inc.*, 609 P.2d 520 (Alaska 1980). The language in the Act is patterned after the Federal Trade Commission (“FTC”) Act, 15 U.S.C. §45(a)(1), and the Alaska Supreme Court has referred to the FTC Act for guidance. *Matanuska Maid, Inc. v. State*, 620 P.2d 182 (Alaska 1980). When analyzing whether any practice is “deceptive” under the Act, Alaska courts look to whether the practice has the capacity or tendency to deceive. All that is required is a showing that the practice is capable of being interpreted in a misleading way. *Oniell, supra*, 609 P.2d at 534-35.

A practice does not need to be deceptive to be unfair. “Unfairness” is determined by looking to a variety of factors, including:

1. Whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise whether, in other words, it is within at least the penumbra of some common-law statutory, or other established concept of unfairness;
2. Whether it is immoral, oppressive, or unscrupulous;
3. Whether it causes substantial injury to consumers (or competitors or other businessmen).

Id.

Mandatory government fees, like taxes, are required to be charged on a per transaction basis by most state and municipal laws. In Alaska, for example, there is an excise tax imposed on every vehicle rental transaction for rentals less than 90 days. AS 43.52.080. The tax is 10% of the total fees and costs of the rental (3% for a recreational vehicle). This is a governmentally mandated tax that is collected on a “per rental” basis. Most car rental companies exclude this tax from the advertised price, which is appropriate.

There is no requirement, however, that car rental companies charge a per transaction amount to pay for a VLF. This is a non-mandated charge that is part of the cost of doing business. Thus, there is no correlation between a governmentally mandated tax, and a non-mandatory charge like a VLF. Car rental companies are not required to impose and collect a VLF separate and apart from the basic rental charge.

When comparing rental rates, consumers should know the entire charge for the rental excluding only governmentally mandated charges (taxes, airport facilities charges). This prevents the potential to mislead the consumer about the actual rental charge. There is a certain amount of consumer awareness and expectation that taxes and other governmentally mandated charges will be added to the advertised rental charge. When making a rental decision, the consumer should not have to guess about what other charges may be added to the advertised rate. A VLF can easily be confused with a governmentally mandated charge, or at a minimum, will have the “tendency to mislead” consumers in violation of the Act.

Please take immediate steps to comply with the Business Advisory by including any non-mandated charges, including VLF's, in the advertised price of all vehicle rentals. Failure to comply with this requirement can subject you to minimum penalties of \$1,000 and maximum penalties of \$25,000 for each transaction in which a VLF is not included in the advertised price of the rental.

You may contact Ed Sniffen in our office at (907)269-5200 if you have any questions.

Sincerely,
DAVID W. MÁRQUEZ
ATTORNEY GENERAL

By:
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