

OP. NO. 05-070

TRADE AND COMMERCE: VIRGINIA CONSUMER PROTECTION ACT.

Car rental companies may not assess and collect nongovernmentally mandated 'vehicle licensing fee' as separate charge on consumer car rental transactions. Disclosure of unadvertised, nonmandatory charges for car rental transactions at point of sale does not constitute adequate disclosure pursuant to Virginia Consumer Protection Act of 1977.

The Honorable Martin E. Williams
Member, Senate of Virginia
October 12, 2005

Issues Presented

You ask whether car rental companies doing business in Virginia may assess and collect a "vehicle licensing fee," which is not governmentally mandated, as a separately stated additional charge on consumer car rental transactions when it is not part of the advertised price of car rentals. You also ask whether the disclosure of the separate fee¹ at the time of the car rental contract transaction constitutes an adequate disclosure of the fee pursuant to the Virginia Consumer Protection Act of 1977.

Response

It is my opinion that car rental companies doing business in Virginia may not lawfully assess and collect a "vehicle licensing fee," which is not governmentally mandated, as a separately stated additional charge on consumer car rental transactions. It is further my opinion that the disclosure of separate and nonmandatory charges, which were not included in the advertised rental rates, at the point of sale for car rental transactions does not constitute adequate disclosure pursuant to the Virginia Consumer Protection Act of 1977.

Background

You describe car rental companies doing business in Virginia that assess and collect mandatory "vehicle licensing fees" or other similar fees in addition to advertised rates and rental taxes required by § 58.1-2402. You state that certain disclosures in written rental agreements indicate that such mandatory fees are assessed and collected from consumers to recover the owner's average annual cost for licensing and registering of vehicles.

Applicable Law and Discussion

Chapter 17 of Title 59.1, §§ 59.1-196 through 59.1-207, comprises the Virginia Consumer Protection Act of 1977 ("Consumer Protection Act"). Section 59.1-198, in part, defines a "consumer transaction" as "[t]he advertisement, sale, lease, license or offering for sale, lease or license, of goods or services to be used primarily for personal, family or household purposes." Section 59.1-200(A)(8) prohibits suppliers in connection with consumer transactions from "[a]dvertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised." Section 59.1-200(A)(14) prohibits suppliers in connection with consumer transactions from "[u]sing any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction."

You refer to situations in which consumers are charged "vehicle licensing fees" separate from the stated rental charge. You indicate that such fees are not governmentally mandated. In my opinion, a car rental company's use of terms such as "vehicle licensing fees," even with a disclosure in a written contract with a consumer, suggests that such fees are governmentally mandated. Such usage would have a tendency to mislead consumers. Therefore, I conclude that the use of the term "vehicle licensing fees" or similar terms would constitute a "deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction"² and, thus, a violation of the Consumer Protection Act.³

You also refer to situations in which car rental companies assess or collect separate charges generally applicable to all car rentals where such charges are not included in the advertised daily, weekly, or other rental rates. Other states and the Federal Trade Commission, applying statutes similar to the Consumer Protection Act, have held that a point of sale disclosure is not sufficient to clarify deceptive media advertising.⁴ When a company intends to charge nonmandatory fees, but advertises its car rental terms without reflecting or including the nonmandatory fees, such company violates § 59.1-200(A)(8). Further, it is my opinion that, consistent with authority in other states,⁵ the disclosure of such nonmandatory fees at the point of sale in a written contract is deceptive media advertising. Therefore, such a point of sale disclosure in a consumer transaction is insufficient and a violation of the Consumer Protection Act.

Conclusion

Accordingly, it is my opinion that car rental companies doing business in Virginia may not lawfully assess and collect a "vehicle licensing fee," which is not governmentally mandated, as a separately stated additional charge on consumer car rental transactions. It is further my opinion that the disclosure of separate and nonmandatory charges, which were not included in the advertised rental rates, at the point of sale for car rental

transactions does not constitute adequate disclosure pursuant to the Virginia Consumer Protection Act of 1977.

¹You provide an example of a disclosure of a "vehicle licensing fee" that states: "VLF means vehicle license fee, which is the per day recovery of the owner's average annual cost for licensing and registering the vehicles."

²Va. Code Ann. § 59.1-200(A)(14) (LexisNexis Supp. 2005).

³"A tax recoupment surcharge is not a tax. The state has not imposed this charge on the car rental transaction. The tax recoupment surcharge is overhead, no different from other overhead expenses. While the Task Force understands the arguments advanced by the rental car companies making this charge, these arguments do not alter the basic deception ... involved in advertising one price and charging another." *Final Report and Recommendations of the National Association of Attorneys General Task Force on Car Rental Industry Advertising and Practices* [Adopted March 14, 1989], Antitrust & Trade Reg. Rep. (BNA) No. 1407, at 2.5(c) (March 16, 1989).

⁴See, e.g., *Resort Car Rental Sys., Inc. v. Fed. Trade Comm'n*, 518 F.2d 962, 964 (9th Cir.1975) (holding that under Federal Trade Act, public is under no duty to inquire about truth in advertising; Act is violated when public is induced into contract through deception, even where buyer becomes fully informed before entering into contract); *Prata v. Superior Court*, 111 Cal. Rptr. 2d 296, 309, 2001 Cal. App. LEXIS 675, *34-35 (Cal. Ct. App. 2001) (noting fact that disclosures and credit agreement issued, which stated "details" of promotion may have explained that promotion was, in fact, not as advertised, does not ameliorate deceptive nature of advertising); *Chern v. Bank of Am.*, 127 Cal. Rptr. 110, 116, 544 P.2d 1310, 1316 (1976) (holding that under statute proscribing false advertising and deceptive practices, statement is false or misleading if members of public are likely to be deceived; intent of dissemination and knowledge of customer are irrelevant; holding that practice of quoting "per annum" rate on basis of 360-day year was false and misleading advertising); *Missouri ex rel. Webster v. Areaco Inv. Co.*, 756 S.W.2d 633, 635-36 (1988) (interpreting statute prohibiting deception, fraud, false pretense and promise, or misrepresentation, court held that statute is violated even where final sales papers contain no misrepresentation or even correct prior misrepresentations); *Robinson v. Avis Rent A Car Sys., Inc.*, 106 Wash. App. 104, 114-16, 22 P.3d 818, 824-25 (2001) (noting that quoting car rental price that does not include airport concession fee that is also charged would have capacity to deceive purchasing public, absent disclosure of fee; also noting that time for disclosure is when rental fee is quoted, not later at car rental counter when customers sign rental agreement containing information about concession fee; plaintiffs failed to establish nondisclosure); *State v. Amoco Oil Co.*, 97 Wis. 2d

226, 237, 293 N.W.2d 487, 493 (1980) (interpreting statute requiring price to be paid in combination sale must state total price, court noted that point of sale price disclosures decrease consumer's opportunity to evaluate offer to detect high priced dealer or price manipulation, and total price must be stated in advertisement).

⁵See *id.*

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