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Division of Law
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By: Alina Wells
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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

In the Matter of

EDISON MOTOR CARS, INC. d/b/a BRAD
BENSON MITSUBISHI / HYUNDAI

Administrative Action

CONSENT ORDER

WHEREAS this matter having been opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection (“Division”), as an investigation to ascertain whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), and the Regulations Governing Motor Vehicle Advertising Practices, N.J.A.C. 13:45A-26A.1 et seq. (“Motor Vehicle Advertising Regulations”), have been or are being committed by Edison Motor Cars, Inc. d/b/a Brad Benson Mitsubishi/Hyundai, as well as its owners, officers, directors, managers, employees, representatives, agents, subsidiaries, successors and assigns (collectively, “Respondent”) (hereinafter referred to as the “Investigation”);

WHEREAS Respondent, with a main business address in the State of New Jersey (“State”) at 3905 Route 1 South, Monmouth Junction, New Jersey 08852, is engaged in the business of Advertising, offering for Sale and selling Motor Vehicles;

WHEREAS the Division alleges that Respondent, among other things, failed to pay off trade-in Motor Vehicles in a timely manner;

WHEREAS the Division also alleges that Respondent failed to include in its Used Motor Vehicle Advertisements the required: (1) Buyer's Statement; (2) a description of the nature of any prior use of a Motor Vehicle; and/or (3) a description of any prior damage;

WHEREAS the Respondent denies that it has committed any violation of the CFA and/or the Motor Vehicle Advertising Regulations;

WHEREAS the Division and Respondent (collectively, "Parties") having reached an amicable agreement resolving the issues in controversy and concluding this Investigation without the need for further action, and Respondent having voluntarily cooperated with the Investigation and consented to the entry of the within order ("Consent Order") without having admitted any fact or violation of law, and for good cause shown:

IT IS ORDERED and **AGREED** as follows:

1. EFFECTIVE DATE

1.1 This Consent Order is effective on the date that it is filed with the Division ("Effective Date").

2. DEFINITIONS

As used in this Consent Order, the following words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Order:

2.1 "Additional Consumer" shall refer to any Consumer who submits to the Division directly or through another agency, after the Effective Date, a written Consumer complaint concerning Respondent's business practices.

2.2 “ADR Unit” shall refer to the Alternative Dispute Resolution Unit of the Division.

2.3 “Advertised Price” shall be defined in accordance with N.J.A.C. 13:45A-26A-3.

2.4 “Advertisement shall be defined in accordance with N.J.S.A. 56:8-1(a). For purposes of the Motor Vehicle Advertising Regulations, “Advertisement” shall be defined in accordance with N.J.A.C. 13:45A-26A.3. These definitions shall apply to other forms of the word “Advertisement”, including “Advertising” and “Advertise”.

2.5 “Attorney General” shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

2.6 “Buyer’s Statement” shall refer to the required statement that “price includes all costs to be paid by a consumer, except for licensing costs, registration fees, and taxes,” pursuant to N.J.A.C. 13:45A-26A.5(a)(2).

2.7 “CALA” shall refer to Consumer Affairs Local Assistance offices within counties and/or municipalities in the State.

2.8 “Clearly and Conspicuously” shall mean a statement that, regardless of the medium in which it is made, is presented in such type, size, color, contrast, duration, location and audibility, compared to the other information with which it is presented, that it is that is readily apparent and understandable and in language and terms used in accordance with their ordinary usage and meaning. If such statement modifies, explains or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, explains or clarifies and in a manner that is readily apparent and understandable.

2.9 “Consumer” shall refer to any Person who is offered Merchandise, defined in accordance with N.J.S.A. 56:8-1(d), for Sale.

2.10 "Include" and "Including" shall be construed as broadly as possible and shall mean "without limitation."

2.11 "Motor Vehicle" shall be defined in accordance with N.J.A.C. 13:45A-26A.3.

2.12 "Person[s]" shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.13 "Represent" shall mean to present, describe, state or set forth through statements, conduct, graphics, language and/or documents.

2.14 "Restitution" shall refer to all methods undertaken by Respondent to resolve Additional Consumer complaints, including the issuance of credits or refunds or the reversal of credit card or debit card charges, whether or not in the context of the Additional Consumer complaint resolution process set for in Section 4.

2.15 "Sale" shall be defined in accordance with N.J.S.A. 56:8-1(e).

2.16 "Used Motor Vehicle" shall be defined in accordance with N.J.A.C. 13:45A-26A.3.

2.17 "Website" means the website located at www.bradbenusedcars.com and any other website maintained by or on behalf of Respondent.

3. INJUNCTIVE RELIEF AND BUSINESS PRACTICES

3.1 Respondent shall not engage in any unfair or deceptive acts or practices in the conduct of its business in the State and shall comply with all applicable State and/or Federal laws, rules and regulations, as now constituted or as may hereafter be amended, including the CFA and/or the Motor Vehicle Advertising Regulations.

3.2 Within thirty (30) days of taking possession of a Consumer's trade-in Motor Vehicle and the consummation of the Sale or lease transaction, Respondent shall pay the full amount of the outstanding loan on said trade-in Motor Vehicle. Respondent's obligations under this Section will

be subject to passage of A1174 and/or S1618 or any other legislation addressing a Motor Vehicle dealer's pay-off of a trade-in Motor Vehicle. In no event will Respondent's obligations under this Section exceed any of the requirements of A1174 and/or S1618 or any other legislation addressing a Motor Vehicle dealer's pay-off of a trade-in Motor Vehicle if and when such bills or other legislation are enacted into law.

3.3 Respondent shall not be responsible to pay off a trade-in Motor Vehicle in the event that the Consumer or Respondent has cancelled the Sale or lease transaction and the Consumer has not taken possession of, has returned or has refused to return the Motor Vehicle subject to such transaction, among other things, due to a failure to obtain financing. Respondent shall make available a Consumer's trade-in Motor Vehicle within forty-eight (48) hours after such cancellation.

3.4 Prior to Advertising the Sale or lease of a Used Motor Vehicle at retail, Respondent shall undertake a search of Carfax or similar service, to discern the prior use of such Used Motor Vehicle. Respondent shall disclose such information to Consumers, prior to their purchase or lease of the Used Motor Vehicle. Respondent shall be deemed to have satisfied the requirements of this Section if it provides the Consumer with a copy of the Carfax or similar report.

3.5 Prior to the Sale or lease of a Used Motor Vehicle at retail, Respondent shall undertake a search of Carfax or similar service, to discern whether such Used Motor Vehicle has been involved in an accident or otherwise sustained damage. Respondent shall disclose such information to Consumers, prior to their purchase or lease of the Motor Vehicle. Respondent shall be deemed to have satisfied the requirements of this Section and Section 7.3 if it provides the Consumer with a copy of the Carfax or similar report.

3.6 If in any Website through which Respondent Advertises, offers for Sale and/or sells Motor Vehicles, Respondent discloses prior use and/or prior damage to a Motor Vehicle via Carfax or similar vehicle history report, Respondent shall Clearly and Conspicuously identify the link as Carfax (or similar vehicle history report), along with a designation of "Free Vehicle History Report" with the description of the Motor Vehicle.

3.7 In any Website through which Respondent Advertises, offers for Sale and/or sells Motor Vehicles at an Advertised Price, Respondent shall Include the required Buyer's Statement.

3.8 In its Advertisement of Motor Vehicles through the Website and otherwise, Respondent shall Clearly and Conspicuously disclose whether a Motor Vehicle had been previously damaged and that substantial repair or body work has been performed on it when Respondent knows or should have known of such repair or body work, in accordance with N.J.A.C. 13:45A-26A.7(a)(7). With respect to any internet Advertising, Respondent shall be deemed to have satisfied the requirements of this Section if it complies with the requirements of Section 3.6.

3.9 In its Advertisement of a Used Motor Vehicle at an Advertised Price, Respondent shall Clearly and Conspicuously disclose the Used Motor Vehicle's prior use, when such prior use is known or should have been known by the Respondent, unless previously and exclusively owned or leased by individuals for their personal use, in accordance with N.J.A.C. 13:45A-26A-5(b)(2). With respect to any internet Advertising, Respondent shall be deemed to have satisfied the requirements of this Section if it complies with the requirements of Section 3.6.

4. ADDITIONAL CONSUMER COMPLAINTS

4.1 For a period of one (1) year from the Effective Date, the Division shall forward to Respondent copies of any Additional Consumer complaints received by the Division or forwarded to the Division, among other things, by any CALA office. The Division shall forward to Respondent the Additional Consumer complaints within thirty (30) days of the Division's receipt thereof.

4.2 During this one (1) year period, the Division shall notify each Additional Consumer in writing, with a copy to Respondent's designated representative, of the following: (a) that the Additional Consumer's complaint has been forwarded to Respondent; (b) that he/she should expect a response from Respondent within thirty (30) days; and (c) the right to refer his/her complaint to the ADR Unit for binding arbitration if Respondent disputes the Additional Consumer's complaint and/or requested relief.

4.3 Within thirty (30) days of receiving the Additional Consumer's complaint from the Division, Respondent shall send a written response to each Additional Consumer, with a copy to the following: New Jersey Division of Consumer Affairs, Office of Consumer Protection, Case Management Tracking Supervisor, 124 Halsey Street, Post Office Box 45025, Newark, New Jersey 07101.

4.4 If Respondent does not dispute the Additional Consumer's complaint and requested relief, Respondent's written response shall so inform the Additional Consumer. Respondent shall contemporaneously provide the requested relief to such Additional Consumer. Where Restitution concerns the reversal of credit or debit card charges, Respondent shall include documents evidencing that such adjustments have been made. Where Restitution concerns a refund or other payment, such shall be made by a check payable to the Additional Consumer.

4.5 If Respondent disputes the Additional Consumer's complaint and/or the requested relief, Respondent's written response shall include copies of all documents concerning Respondent's dispute of the Additional Consumer's complaint.

4.6 Within forty-five (45) days of Respondent's receipt of the Additional Consumer's complaint, Respondent shall notify the Division as to whether such Additional Consumer's complaint has been resolved. Such notification shall include the following:

- (a) The name and address of the Additional Consumer;
- (b) Whether or not the Additional Consumer's complaint has been resolved;
- (c) An identification of any Restitution provided to the Additional Consumer;
- (d) Copies of all documents evidencing any Restitution;
- (e) In the event Respondent's written response was returned as undeliverable, the efforts Respondent had undertaken to locate the Additional Consumer; and
- (f) Confirmation that Respondent sent all mailings to the Additional Consumer as required by this Section.

Following the Division's receipt and verification that an Additional Consumer's complaint has been resolved, the Additional Consumer's complaint shall be deemed closed for purposes of this Consent Order.

4.7 If within sixty (60) days of Respondent's receipt of the Additional Consumer's complaint: (a) Respondent has not notified the Division that the Additional Consumer's complaint has been resolved; (b) Respondent has notified the Division that the Additional Consumer's complaint has not been resolved; or (c) Respondent has notified the Division that the Additional Consumer refuses Respondent's offer of Restitution, the Division shall forward such Additional Consumer's complaint to the ADR Unit to reach a resolution of the complaint through binding

arbitration. Respondent agrees herein to consent to this arbitration process and to be bound by the arbitrator's decision. Respondent further agrees to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14, and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. The arbitration shall proceed in accordance with the ADR Guidelines (copy of which is attached as Exhibit A). The Division shall notify in writing both the Additional Consumer, Respondent and Respondent's designated representative of the referral of the Additional Consumer's complaint to the ADR Unit. Thereafter, upon the consent of the Additional Consumer, the arbitration shall proceed in accordance with the ADR Guidelines.

4.8 If Respondent refuses to participate in the ADR program, the arbitrator may enter a default against Respondent. Unless otherwise specified in the arbitration award, Respondent shall pay all arbitration awards within thirty (30) days of the arbitrator's decision.

4.9 Respondent's failure or refusal to participate in the arbitration process or pay an arbitration award timely shall constitute a violation of this Consent Order. Under these circumstances, the Division may unilaterally discontinue the Additional Consumer complaint resolution process upon notice to Respondent. Notwithstanding the foregoing, Respondent shall not be deemed to be in violation of this Consent Order unless the Division provides it with written notice of any alleged violation of this Consent Order and afforded Respondent a reasonable opportunity to cure same.

4.10 If an Additional Consumer fails or refuses to participate in the ADR program, that Additional Consumer's complaint shall be deemed closed for the purposes of this Consent Order.

4.11 The Parties may agree in writing to alter any time periods or deadlines set forth in this Section.

4.12 After one (1) year from the Effective Date, either Party may opt out of the Additional Consumer complaint resolution process for any reason at any time upon at least thirty (30) days written notice.

4.13 Following the expiration of the one (1) year period, Respondent may request to continue the Additional Consumer complaint resolution process for up to three (3) successive one (1) year periods, upon written notice by Respondent to the Division provided at least thirty (30) days prior to the expiration of the initial or any subsequent one (1) year period. The Division may decline to grant Respondent's request, at its sole discretion for any reason including those set forth in Section 4.9

5. SETTLEMENT PAYMENT

5.1 On or before the Effective Date, Respondent shall make a payment in the amount of Sixty-Five Thousand and 00/100 Dollars (\$65,000.00) ("Settlement Payment").

5.2 The Settlement Payment consists of a civil penalty of \$48,996.23 and \$16,003.77 allocated for reimbursement of the Division's attorneys' fees and investigative costs, pursuant to N.J.S.A. 56:8-13, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19.

5.3 Respondent shall make the Settlement Payment by certified or cashier's check made payable to "New Jersey Division of Consumer Affairs" and shall be forwarded to the undersigned:

Alina Wells
Deputy Attorney General
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029

Newark, New Jersey 07101

5.4 Upon making the Settlement Payment, Respondent shall immediately be fully divested of any interest in, or ownership of, the monies paid, and all interest in the monies, and any subsequent interest or income derived therefrom shall inure entirely to the benefit of the Division pursuant to the terms herein.

6. GENERAL PROVISIONS

6.1 This Consent Order is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Order.

6.2 This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of the State.

6.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Order and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Order.

6.4 This Consent Order contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Order shall be modified only by a written instrument signed by or on behalf of the Parties.

6.5 Except as otherwise explicitly provided in this Consent Order, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

6.6 If any portion of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

6.7 This Consent Order shall be binding upon Respondent as well as its owners, principals, officers, directors, agents, employees, successors and assigns, and any Person through which it may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct its business.

6.8 This Consent Order shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Order avoid compliance with this Consent Order.

6.9 This Consent Order is entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall be construed as: (a) an approval, sanction or authorization by the Division or any other governmental unit of the State of any act or practice of Respondent; or (b) an admission by Respondent that any of its acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the CFA and/or the Motor Vehicle Advertising Regulations. Neither the existence of, nor the terms of this Consent Order shall be deemed to constitute evidence or precedent of any kind except in: (a) an action or proceeding by one of the Parties to enforce, rescind or otherwise implement any or all of the terms herein; or (b) an action or proceeding involving a Released Claim (as defined in Section 8) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

6.10 This Consent Order is a public document subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

6.11 Unless otherwise prohibited by law, any signatures by the Parties required for filing of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Order.

7. REPRESENTATIONS AND WARRANTIES

7.1 The Parties Represent and warrant that their signatories to this Consent Order have authority to act for and bind the respective Parties.

7.2 Respondent Represents and warrants that it will undertake a search of prior use and prior damage history for all Motor Vehicles Advertised, offered for Sale or lease and sold or leased by Respondent.

7.3 Respondent represents and warrants that it will Clearly and Conspicuously disclose to Consumers prior to Sale or lease of a Motor Vehicle any prior non-personal use and/or prior damage history for the Motor Vehicle which is known or should be known to Respondent.

8. RELEASE

8.1 In consideration of the injunctive relief, Settlement Payment, undertakings, mutual promises and obligations provided for in this Consent Order, the Division hereby agrees to release Respondent from any and all civil claims or Consumer-related administrative claims, to the extent permitted by State law, which the Division could have brought prior to the Effective Date against Respondent for violations of the CFA and/or the Motor Vehicle Advertising Regulations arising out of the Investigation, as well as the matters specifically addressed in this Consent Order (the "Released Claims").

8.2 Notwithstanding any term of this Consent Order, the following do not comprise Released Claims: (a) private rights of action; (b) actions to enforce this Consent Order; and (c) any claims against Respondent by any other agency or subdivision of the State.

9. PENALTIES FOR FAILURE TO COMPLY

9.1 The Attorney General (or designated representative) shall have the authority to enforce the injunctive provisions of this Consent Order or to seek sanctions for violations hereof or both.

9.2 The Parties agree that any future violations of the injunctive provisions of this Consent Order, the CFA and/or the Motor Vehicle Advertising Regulations shall constitute a second or succeeding violation under N.J.S.A. 56:8-13 and that Respondent may be liable for enhanced civil penalties.

10. COMPLIANCE WITH ALL LAWS

- 10.1 Except as provided in this Consent Order, no provision herein shall be construed as:
- a. Relieving Respondent of its obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
 - b. Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondent pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Respondent may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

11. NOTICES UNDER THIS CONSENT ORDER

11.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondent pursuant to this Consent Order shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

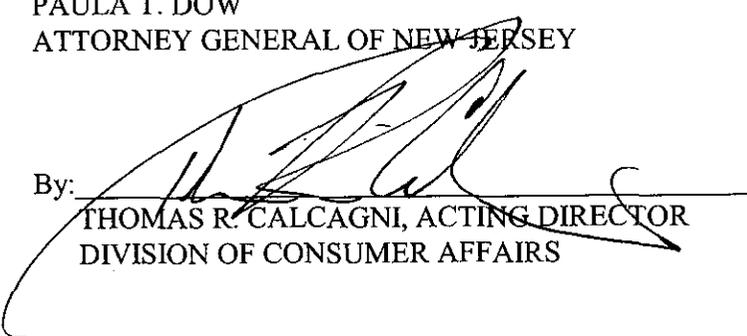
Alina Wells
Deputy Attorney General
State of New Jersey
Department of Law and Public Safety
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

For the Respondent:

Perry Pittenger, Esq.
Schiller & Pittenger, P.C.
1771 Front Street
Scotch Plains, New Jersey 07076

IT IS ON THE 5th DAY OF April, 2011 SO ORDERED.

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY

By: 
THOMAS R. CALCAGNI, ACTING DIRECTOR
DIVISION OF CONSUMER AFFAIRS

THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS CONSENT ORDER ON THE DATES UNDER THEIR RESPECTIVE SIGNATURES.

FOR THE DIVISION:

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY

By: Alina Wells
Alina Wells
Deputy Attorney General
Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Telephone: (973) 648-3762

Dated: April 5, 2011

FOR THE RESPONDENT:

SCHILLER & PITTINGER, P.C.

By: Perry A. Pittenger
Perry A. Pittenger, Esq.
1771 Front Street
Scotch Plains, New Jersey 07076

Dated: 3/31/11, 2011

EDISON MOTOR CARS, INC. d/b/a
BRAD BENSON MITSUBISHI / HYUNDAI

By: Brad Benson
Brad Benson

Dated: 3/30, 2011