



## The Do's and Don'ts of Body Shop Advertising

You've decided to do some advertising—in your local newspaper, radio station, TV or cable station, but are wondering what can you say in your ads without getting into trouble? If your ad is effective, consumers will hopefully see it and/or hear it, but also remember—your competitors will too! Even though you have the best of intentions, if your advertisement is deemed false and misleading, it could become your worst nightmare.

Unlawful advertising is one of the most frequently ways why California auto repair shops get into trouble with the Bureau of Automotive Repair (BAR), leading to civil and criminal penalties, disciplinary action and revocation of your BAR license. The fact that you didn't know the information in your advertisement was misleading or deceiving is irrelevant.

Recently, we sat down with **Jack Molodanof**, an attorney and lobbyist who has been specializing in automot-



**Jack Molodanof** is an attorney and lobbyist who has been specializing in automotive legislative, administrative and regulatory law for the last 30 years and represents body shops in numerous cases

otive legislative, administrative and regulatory law for the last 30 years. He's considered an expert in California for the automotive repair industry and represents several of the largest state-wide automotive repair associations, including the California Autobody Association and the Automotive Service Councils of California. Molodanof also serves on the California Bureau of Automotive Repair (BAR) Advisory Group, which provides input on BAR programs.

Below are some of Molodanof's Do's and Don'ts with regard to automotive repair dealer advertising and how to comply and stay out of trouble. If you don't dot your I's and cross your T's, the penalties for getting caught surely aren't petty. In fact, the BAR disciplinary guidelines for getting busted for misleading advertising are a minimum penalty of 180 days suspension, two years probation and

the maximum penalty also means that your license is revoked.

### Do's

Perform all Services as Advertised. "This seems so obvious but you would be surprised how often it is violated," Molodanof explained. "You must perform/sell the services/parts in the advertisement as advertised. If you advertise a free service, without charge or at specified price you must perform the service as advertised, otherwise you can be accused of using "bait and switch" tactics. Be sure there are no unstated terms or conditions that qualify the offer. If there are limits, state them clearly and conspicuously. What is important is the overall impression created by the advertisement, not the technical truthfulness of the individual parts. Taken as a whole, the advertisement must fairly inform the ordinary consumer."

Clear and Conspicuous Disclosures. "All ads must accurately, clearly and conspicuously disclose all pertinent information about the services. This includes all conditions and disclaimer statements," Molodanof said. "If you advertise specific credit terms, you must provide all relevant details, including down payment, terms of repayment, and the annual interest rate. See BAR regulations section 3372.1 (d).Disclosure Statements. "If you know or should have known that the advertised service cannot usually be performed in a good and workmanlike manner without additional parts, services or labor, you must disclose that additional labor, parts or services are often needed, to that extent."

According to BAR guidelines, any such disclosure statement shall indicate that many instances of performance of the service involve extra cost and, if the automotive dealer reasonably expects that the extra cost will be more than 25% of the advertised costs, that the extra cost may be substantial. The type size shall be at least 1/2 the type size used in the advertised price and the statement shall either be shown near the price or shall prominently footnoted through use of an asterisk or similar reference. See BAR regulations section 3372.1 (d)Include Name & Ad-

dress. The advertisement must include the auto repair dealer's name and address as they appear on the BAR registration certificate. See BAR regulations section 3371 (a)Telephone Numbers. If a telephone number appears in an advertisement or on an advertising sign, this number shall be the same number as that listed for the dealer's firm name and address in the telephone directory or in telephone company records. See BAR regulations section 3371 (b)

### Don'ts

False & Misleading Advertisements. "Failing to perform, as advertised will get you in trouble," Molodanof said. "An advertisement that is false or misleading is illegal. An advertisement that fails to disclose information or is unclear may be unlawful if the public is likely to be deceived" Bus & Prof section 17500

Not intending to sell as Advertised: Bait and Switch. "Advertising

goods and services with the intent not to sell them as advertised and then switching them for other goods or services that are at a higher price or on terms more advantageous to the automotive repair shop is unlawful," Molodanof said. Civil Code 1770 (a) (9). Examples include using a photo that misrepresents the advertised item; showing an item that is not suited for the purposes represented in the advertisement; advertising claims based on flawed research; disparagement of products or services of others; false testimonials or endorsements and false offers for free products, rebates or contests. Mislead the extent of anticipated services. According to BAR, It is unlawful if the advertisement has the capacity to mislead the public as to the extent that anticipated parts; labor or other services are included in the advertised price. See BAR regulations section 3372.1 (b)Mislead as to additional related repairs and services. It is

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also unlawful if the advertisement for service or repair has the capacity to mislead the public as to the need for additional related parts, labor or other services; See BAR regulations section 3372.1 (c).

Offering services that cannot be performed at advertised price. It is considered false and misleading if you know or should have known that the advertised service cannot usually be performed in a good and workmanlike manner without additional parts, services or labor. See BAR regulations section 3372.1 (d) Many shops see other shops advertising the claim that they can pay their customers' deductibles and the main question is—can they do that? “The law about advertising that a shop will cover the customer’s deductible is OK as long as the shop does not deviate from the insurance company accepted estimate,” according to Molodanof.

California’s penal code is clear on this topic. A shop may not waive or discount a customer’s deductible if it means the shop will deviate from the insurer company accepted estimate. Except in cases in which the amount of repair has been determined by the insurer and the repair services are per-

formed in accordance with that determination, it is unlawful for a shop to offer or give any discount intended to offset a deductible required by a policy of insurance covering repairs. The law does not prohibit an advertisement for repair at a discount as long as the amount of the repair has been determined by the insurer and the repair is performed in accordance with that determination. See Penal Code section 551 (b).

**Be careful when making any promotional offer, Molodanof warns.**

“With any free give away, the old adage applies: If it's too good to be true, it usually is. Also the BAR regulators I speak with confirm that one way they investigate shops is to review their auto shop ads, websites, social media, etc. Remember the ads not only attract customers, but they also attract regulators too! The shop could become a target and have a big bull’s eye if the ad falls into one of the don’t categories. Also competitors turn in shops (forward ads to BAR) if they feel the ad is too effective and is taking business from them, so make sure if you offer something free or at a discount, you can back it up.”

**What is the Standard to test Advertising Compliance?**

In determining whether any advertisement, statement, or representation is false or misleading, it shall be considered in its entirety as it would be read or heard by persons to whom it is designed to appeal. An advertisement, statement, or representation shall be considered to be false or misleading if it tends to deceive the public or impose upon credulous or ignorant persons. See BAR regulations section 3372. If the answer is yes, or if you are in doubt, you better go back to the drawing board and make sure it’s compliant.

**Bar regulations refers to California Code of Regulations**

If you ever have any questions regarding BAR compliance and California automotive repair laws, feel free to contact Jack Molodanof at: 2200 L Street Sacramento, CA 95816; Phone 916-447-0313; e-mail address: jack@mgrco.org; website www.mgrco.org



**The Carlyle Group Closes Acquisition of NARS**

Global alternative asset manager *The Carlyle Group* announced on June 4 that it has completed the acquisition of Nationwide Accident Repair Services PLC (NARS), a provider of automotive crash repair and accident administration services to the UK automotive insurance industry.

Following approval by the High Court of Justice of England and Wales, NARS has made an application to the London Stock Exchange for the cancellation of the admission to trading on AIM of, and cessation of dealings in, NARS Shares. Equity for the investment will come from Carlyle Strategic Partners III, a global special situations and corporate opportunities fund.

With accident repair centres located throughout the United Kingdom, NARS is the largest dedicated provider of accident repair services in the UK and has relationships with a number of motor insurers. It also provides its services to fleet operators.

**Ian Jackson**, Managing Director and Co-Head of Carlyle Strategic Partners, said, “Our extensive experience in working with businesses in this sector, including the *Service King* repair business in the US, means we are well placed to support management.”

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