

FILED

SEP 10 2008

JUANITA S. KOCH
DOUGLAS COUNTY CLERK
WATERVILLE, WASH.
BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF DOUGLAS

IN THE MATTER OF:

NO. 08-2-00365-2

KANE AUTOMOTIVE GROUP,
INC., AND WENATCHEE
VALLEY'S TRUCK AND AUTO
OUTLET, INC., d/b/a SPOKANE
KIA, WENATCHEE KIA, SPOKANE
KIA ON SPRAGUE, AND SPOKANE
SUZUKI,

ASSURANCE OF
DISCONTINUANCE

Respondents.

The State of Washington, by and through its attorneys, Robert M. McKenna, Attorney General, and Jack G. Zurlini, Jr., Assistant Attorney General, files this Assurance of Discontinuance pursuant to RCW 19.86.100.

I. INVESTIGATION

1.1. The Attorney General initiated an investigation into the business practices of Respondents Kane Automotive Group, Inc., and Wenatchee Valley's Truck and Auto Outlet, Inc., who operate their businesses under various d/b/a's including Spokane Kia, Wenatchee Kia, Spokane Kia on Sprague, and Spokane Suzuki.

1.2. The Respondents are engaged in the sale of new and used motor vehicles in the state of Washington.

COPY

1 1.3. The Attorney General deems and Respondents agree and acknowledge the
2 following to constitute unfair or deceptive acts or practices, and unfair methods of
3 competition, in violation of the Unfair Business Practices—Consumer Protection Act, chapter
4 19.86 RCW:

5 a. Failing to timely pay off trade-in liens in compliance with WAC 308-66-
6 195.¹

7 b. Failing to comply with the "bushing" statute, specifically, RCW
8 46.70.180(4)(a) and RCW 46.70.180(4)(b).

9 c. Submitting credit applications to financial institutions knowing that the
10 applications contain material misrepresentations of customers' financial information, or
11 otherwise aiding, assisting, encouraging, or participating, directly or indirectly, in the
12 customers' material misrepresentation.

13 d. Improperly certifying signatures on documents required to be filed with
14 Washington State Department of Licensing in violation of WAC 308-56A-275.

15 e. Failing to comply with WAC 308-66-152(4)(i)(ii), including but not
16 limited to failing to maintain advertisement records as required by that regulation.

17 1.4. Respondents agree they will not engage in the above-identified unfair or
18 deceptive acts or practices and unfair methods of competition and will not associate with, hire, or
19 engage others to do so on their behalf.

20
21 ¹ For example, Respondents agree to pay off the trade-in lienholder within two business days following
22 the sale of a vehicle when there are no conditions involved with the sale as required by WAC 308-66-195; this
23 contemplates circumstances such as a cash sale with no conditions being involved. In addition, in those instances
24 where financing or another condition is involved, it is agreed that WAC 308-66-195 requires that the pay off of
25 the trade-in lienholder shall be made within the two business day period following the fulfillment of any condition
26 or stipulation that is part of the deal, whether the condition or stipulation is imposed either externally by the
financing agent or internally by the agreement between the buyer and seller. It is also agreed that, as
contemplated by the language of RCW 46.70.180(a), the internal or external conditions or stipulations of the deal
must be satisfied, removed, or waived by Respondents and the sale concluded within the four business day period
pursuant to RCW 46.70.180(a)(i), or Respondents otherwise reject and unwind the deal within the four business
day period pursuant to RCW 46.70.180(a)(ii). It is also agreed that Respondents may comply with meeting the
deadline imposed by WAC 308-66-195 by mailing the pay off payment so that it is postmarked on the date that
the payment is required to be paid pursuant to WAC 308-66-195.

II. ASSURANCE OF DISCONTINUANCE

2.1. This Assurance shall not be considered an admission of violation for any purpose but failure to comply with this Assurance shall be *prima facie* evidence of violations of RCW 19.86.020 and raise the possibility of imposition by the court of injunctions; restitution; civil penalties of up to \$2,000.00 per violation; and costs including reasonable attorneys' fees.

2.2. Respondents voluntarily agree to pay costs incurred by the Attorney General's Office in the sum of \$20,000.00. This sum is to be paid in full no later than seven days after the date this Assurance is filed with the court. The payment shall be made by valid check, made payable to the "Attorney General - State of Washington," and shall be delivered to the Office of the Attorney General, Attention: Cynthia Lockridge, Administrative Office Manager, 800 Fifth Avenue, Suite 2000, Seattle, Washington 98104-3188.

2.3. In addition, Respondents shall dismiss with prejudice their lawsuit against Robert M. McKenna in his official capacity as Washington State Attorney General, Spokane County Superior Court Case No. 08202692-7, in its entirety on the same day this Assurance is filed with the court.

2.4. Respondents further agree to review and adjust in good faith any customer complaint they receive that articulates concerns that are the subject of any prohibited practice identified in this Assurance or are otherwise alleged to be unfair and deceptive, whether directly from a customer or from another person on the customer's behalf.

2.5 The Office of the Attorney General agrees that in the event a customer complaint is made to the Office of the Attorney General that would question compliance with any act embodied in this Assurance, notice shall be given to Respondents that such complaint exists, including providing Respondents with a copy of the complaint, any supporting documents and, if known to the AG, the complainant's contact information (i.e., name, address, email and telephone number(s)) thereby facilitating Respondent's resolution efforts. Respondents shall

1 investigate and attempt resolution of any complaint in good faith within 30 days of notice of the
2 complaint. Respondents shall report resolution or failure of resolution attempts to the Office of
3 the Attorney General within 5 days following resolution or conclusion of attempts at resolution,
4 but in no event later than 35 days after notice of complaint. Respondents' report shall describe
5 the adjustment the customer requested and reason for the request; the adjustment Respondents
6 made, or if Respondents declined to make an adjustment, their reasons for doing so.
7 However, where the complainant indicates that he or she does not want the Attorney
8 General's Office to send Respondents a copy of his/her complaint, the Attorney General's
9 Office will still notify Respondents that such a complaint exists and describe its general
10 nature, but Respondents will have no obligation to attempt resolution of such complaints in
11 the manner otherwise dictated by this Assurance of Discontinuance. The Office of the Attorney
12 General shall reserve investigation and enforcement action based on the complaint during this
13 35-day resolution period. In the event the customer complaint or complaints amount to evidence
14 of serial noncompliance or a pattern of unfair and deceptive acts within the reasonableness
15 standards that must exist to warrant lawful issuance of a Civil Investigative Demand, the
16 Attorney General may begin investigation and enforcement following a meet and confer
17 conference with the Respondents, which may be telephonic, and consideration of mediation of
18 the issue. Thereafter, appropriate action may commence to address the issue.

19 2.6. Any investigative, regulatory, or enforcement activity by the Washington State
20 Department of Licensing is not contemplated by this Assurance.

21 2.7. Under no circumstances shall this Assurance or the name of the State of
22 Washington, the Office of the Attorney General, or the Department of Licensing or any of their
23 employees or representatives be used by the Respondents or by their directors, officers,
24 employees, representatives, owners, or agents in conjunction with any business activity of the
25 Respondents.
26

2.9. This Assurance may be executed in counterpart.

JUDGE JOHN HOTCHKISS

COURT COMMISSIONER
JUDGE

By:

Dated:

9/9/08

By:

ATTORNEY GENERAL OF WASHINGTON
West 1116 Riverside Avenue
Spokane, WA 99201-1194
(509) 456-3123

1 By: Donald A. Kellman by DM
2 DONALD A. KELLMAN, WSBA No. 15319
3 DONALD A. KELLMAN, P.C.
4 Attorney for Respondents

5 By: Brad S. Kane
6 BRAD S. KANE, WSBA No. 33552
7 KANE LAW OFFICES
8 Attorney for Respondents
9

10 Approved by:
11 KANE AUTOMOTIVE GROUP, INC.,
12 AND WENATCHEE VALLEY'S TRUCK
13 AND AUTO OUTLET, INC.,

14 By:

15 Title:

16 Dated:

Sidne Kane
President
9/5/08