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OPINION COMMITTEE

## The Senate of The State of Texas

Senator Leticia Van de Putte, R. PHILE # ML-43192-03

District 26

I.D. # 43192

July 15, 2003

RQ-0080-GA

The Honorable Greg Abbott  
Attorney General  
209 W. 14th St.  
Austin, Texas 78701

**Re: Request for an Opinion on Chapter 40 Business and Commerce Code Section 40.065  
Question**

Dear General Abbott:

I am writing this letter now, to request a formal opinion from you so that we may answer this question of DTPA law. One of my constituents brought me this information regarding a case of potential violations of the DTPA. I, in turn, am looking for guidance from your office in an effort to protect our unsuspecting consumers.

The fact scenario is as follows. A used auto sales business engages a marketing firm to advertise for a sale it wishes to promote on a particular day. The promotional materials sent out by the marketing firm are mailed to 10,000 individuals within a particular metropolitan area. The promotional materials state that the individuals receiving such promotional materials, which include a sealed envelope with a key inside, can -- according to the promotional materials -- win a car if the individuals come to the dealership on the date listed in the promotional materials and try the key in the ignition of such vehicle. If the key starts the engine, the individual wins the vehicle. The promotional materials further state, "Do not remove key from the envelope unless you are in the presence of a sales associate." The promotional materials further set forth the date and the time of the sales event.

On the day of the event, numerous individuals appear at the sales location of the used auto sales business to test their keys in the "prize vehicle." Upon arriving at the used auto sales business lot, individuals who want to test their keys are asked whether they are interested in purchasing a used vehicle. The individuals are then requested to register with agents of the used auto sales business prior to testing their keys in the "prize vehicle." Upon determining that their keys, in fact, do not "match" the "prize vehicle," the agent for the used car sales business asks whether such agent can escort the individuals around the sales lot so as to look at other vehicles which the used care sales business has for sale. Ultimately, none of the keys presented on the day of the event match the "prize vehicle." Thus, no "prize vehicle" is awarded to any individual. Further, no drawing is held so as to award the "prize vehicle" to one of the individuals who appeared on the date of the event, who had registered with the used car sales business; one month following the sales event, the used car business sells the "prize vehicle" at its retail value.

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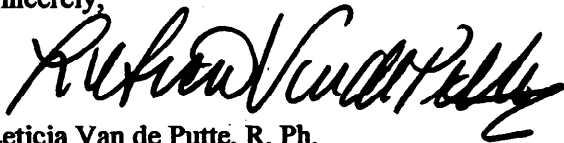
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The issues for which I would like an opinion are as follows:

1. Generally, whether an advertising or promotional campaign whereby keys are sent to various individuals of the general public, who are requested to appear on a sales location to test the key to determine whether it opens the prize vehicle, where no key fits in the winning vehicle and where no subsequent drawing is held to give away the vehicle, do such actions by the used auto sales company amount to a violation of Chapter 40 of the Business and Commerce Code; and more specifically, whether such promotional campaign is, in fact, a matched contest as set forth in section 40.065 of the Business and Commerce Code.
2. Whether promotional materials, with sealed keys, which were received by targeted individuals would constitute an entry form as set forth in section 40.003(a)(4) of the Business and Commerce Code.
3. Whether the facts set forth herein would constitute a matched contest.
4. Whether the key, as set forth in the factual scenario above, would constitute a winning number as set forth and defined in section 40.003(7)(a) and 40.003(14) of the Business and Commerce Code, as another identifying symbol.
5. Whether the statements made by the used auto sales business as set forth herein would constitute a solicitation to execute a contract that obligates a consumer to purchase goods or services as set forth in section 40.003(13) of the Business and Commerce Code, so as to constitute a "sales presentation."
6. Whether, if the factual scenario set forth herein does constitute a violation of a matched contest as set forth in Chapter 40 of the Business and Commerce Code, appropriate damages should be the actual value of the vehicle in question (the "prize vehicle").

Thank you for your consideration of this important issue. I look forward to receiving your response.

Sincerely,



Leticia Van de Putte, R. Ph.  
Chair  
Veterans Affairs and Military Installations

LVP/vcs