

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 17,321

IN THE MATTER OF:

Served November 30, 2017

Petition of DISTRICT DRIVING, LLC,)
for Return of Removable Displays)

Case No. MP-2017-153

This matter is before the Commission on the petition of District Driving, LLC, WMATC No. 3023, for the return of removable vehicle displays confiscated by WMATC staff during an inspection of petitioner's sole WMATC vehicle.

I. BACKGROUND

The Commission conditionally approved District Driving's application for WMATC operating authority on April 25, 2017, in Order No. 16,970. Issuance of a certificate of authority was contingent on District Driving filing certain documents, including a vehicle list and any vehicle lease(s), and on presenting its vehicle(s) for inspection.

District Driving submitted a vehicle list with one vehicle on it, a 2014 Ford van leased from District Driving's secretary, Denise Ann Banks-Butler. District Driving presented the vehicle for inspection on July 11, 2017. The vehicle passed inspection, but during the inspection, WMATC staff observed that two removable magnetic signs were attached to the exterior of the van, one on each side. The signs were one foot tall by two feet wide each, and each displayed the same rudimentary depictions of the Capitol, the Washington Monument, and the Lincoln Memorial, plus the following text superimposed against a background image of a cityscape photograph shot at dusk.

District Driving LLC
Driving through the District
240-229-5669

Staff confiscated both signs as violative of WMATC Regulation No. 61.

II. REGULATION NO. 61

Regulation No. 61 governs WMATC vehicle markings. The pertinent provisions of Regulation No. 61 are as follows:

61-01. The following information must appear on both sides of each vehicle used to transport passengers under WMATC authority:

(a) the carrier's legal name or trade name appearing on the carrier's certificate of authority, or otherwise approved by the Commission for use in the Metropolitan District, preceded by the phrase "Operated By" if some other name also appears on the vehicle; and

(b) "WMATC" followed by either the carrier's certificate of authority number or, if applicable, the carrier's temporary authority or approval number.

61-02. The markings required by this regulation must contrast sharply in color with the background and be legible during daylight hours from a distance of fifty feet. Markings less than two and one-half inches in height are presumed not to be legible from fifty feet. The markings must be kept and maintained in a manner preserving the required legibility.

61-03. The markings required by this regulation must be permanent, except that vehicles operated under temporary authority or approval and vehicles leased for not more than thirty days in any calendar year may be marked with the use of removable displays that otherwise meet the requirements of this regulation.

The current provision in Regulation No. 61 governing removable displays was adopted on April 11, 2003.¹ Prior to that date, both Regulation No. 61 (vehicle markings) and Regulation No. 62 (vehicle leases) contained provisions regarding removable displays, and each conflicted with the other. Regulation No. 62 mandated the use of removable displays on all leased vehicles. Regulation No. 61 made it optional. The need for eliminating the conflict between the two rules was the catalyst for amending the removable display provisions in both regulations, but the decision to alter course and all but ban the use of removable displays going forward was animated by the Commission's discovery of abusive practices by certain carriers.

Commission staff had confiscated removable displays during the course of investigating three separate carriers that year.² In two of the investigations, the offending carrier was using removable signs to improperly operate under the authority of another carrier. In the third investigation, the carrier was using removable signs to operate under authority that had been conditionally granted and then denied

¹ *In re Rulemaking to Amend Reg. No. 61 and Reg. No. 62*, No. MP-03-08, Order No. 7132 (Apr. 11, 2003).

² *In re Rulemaking to Amend Reg. No. 61 and Reg. No. 62*, No. MP-03-08, Order No. 7015 at 4-5 n.3 (Jan. 27, 2003).

when the conditions were not timely satisfied. This lead the Commission to declare that after adoption of the proposed amendments:

The use of removable displays would continue to be permitted only with respect to leased vehicles and vehicles operated under a temporary WMATC number. Given the recent history of improper use of removable displays, the use of removable displays on leased vehicles would be restricted to short-term rentals (not more than thirty days in one year) employed as substitutes for permanent vehicles undergoing repairs, temporary fleet supplements and similar purposes.³

III. DISCUSSION

In this case, the removable displays at issue were confiscated during an inspection by Commission staff of District Driving's sole WMATC vehicle. District Driving leases the vehicle from its secretary, Denise Ann Banks-Butler. District Driving presented the vehicle for inspection on July 11, 2017. The effective date of the lease is June 8, 2017. This means that the lease was more than 30 days old and no longer considered a short-term rental when staff seized the displays. In addition, District Driving's WMATC number is missing, and at 1.25 inches tall, the name "District Driving LLC" is presumptively not legible from a distance of 50 feet. Confiscation, therefore, was proper under Regulation No. 61.

District Driving asserts that it seeks return of the displays for use on another vehicle that District Driving claims it uses for transporting children to and from school in Charles County, Maryland, outside the Metropolitan District under contracts with the parents. As proof of this, District Driving offers four documents titled, in whole or part, "Van Registration". The term "van transportation" appears several times in each document. And each mentions that preschoolers may "ride the van". But District Driving offers no evidence of owning or leasing any van other than the van registered with WMATC.

Indeed, according to the website of the Maryland Public Service Commission, which licenses passenger carriers in Maryland, the van registered by District Driving with WMATC is the only vehicle registered by District Driving with the PSC. And queries directed at the Maryland Motor Vehicle Administration failed to uncover the existence of any other commercial vehicles, or any school transportation vehicles, at District Driving's disposal.

Vehicle markings are also subject to scrutiny under Regulation No. 63 governing advertising.⁴ In this case, the removable displays advertise transportation in the District of Columbia, but the displays

³ Order No. 7015 at 4-5.

⁴ See *In re Haymarket Transp., Inc.*, No. AP-08-181, Order No. 11,873 (Mar. 4, 2009) (applying Regulation No. 63-04 to vehicle markings).

do not state that District Driving is regulated by WMATC, as is required by Regulation No. 63-01 for WMATC carrier advertisements in "exclusive" publications, magnetic signs in this case, as opposed to non-exclusive publications such as newspapers, magazines, and telephone directories.

IV. CONCLUSION

Although the removable displays confiscated by staff comply with neither Regulation No. 61 nor Regulation No. 63 and thus their use in public is unlawful, the mere possession of them does not offend the Compact. The petition for return shall therefore be granted.

Petitioner is admonished, however, that said removable displays cannot lawfully be used on any vehicle. Any further use of these displays in public shall be met with a civil forfeiture of up to \$5,000 per day, suspension or revocation of Certificate No. 3023, and/or other sanction(s) available under the Compact.

IT IS SO ORDERED.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS HOLCOMB, RICHARD, AND MAROOTIAN:



William S. Morrow, Jr.
Executive Director