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By: Steve Stauning

Taking Control of Your Digital Marketing

Given that Autobytel sold their first Internet Lead back in 1997, digital marketing has now been around longer than nearly every one of your employees has worked for you. Of course, you'd think that with such a long history, dealers would be on top of their digital spend – you'd be wrong.

And it's not just independent dealers. Even the largest franchised dealer groups in the country (like AutoNation and Lithia) are wasting millions of dollars every year on ineffective digital marketing.

It doesn't have to be this way for you and your dollars. You can take control of your digital marketing by just following some simple rules.

Rule #1: Pay the final vendor directly. If you're buying Google Ads, pay Google. If you're buying Facebook and Instagram Ads, pay Meta. This means that your dealership (and not your agency) puts a credit card on file with these services. You'll earn credit card points or miles, and you'll know exactly how much of your budget is going to ads and how much is going to the agency to manage these ads.

Rule #2: Demand access to the Google Ads account. While Google Analytics can show you some results from your Google Ads, you'll never spot misused spend unless you have access to Google Ads. For example, it's easy for a vendor to waste your entire budget bidding on your dealership's name in Google. This will show a great ROI if you only look at Google Analytics because all this traffic was already looking to do business with you. Hint: If your agency will not give you access to Google Ads, find a new agency.

Rule #3: Employ a VLA-First strategy. The Vehicle Listing Ads (aka Performance Max Sopping) on Google are currently the most effective marketing any dealer can do. For many of my clients, these are driving conversions (leads, calls, and store visits) for less than $20 each. However, let me give you a quick tip here: Google (and maybe your agency) wants you to run straight Performance Max (PMax) campaigns complete with Shopping and Search. The problem with this strategy is that PMax Search can and does waste your budget chasing your dealership name. Demand your agency run Shopping-only campaigns in PMax.

Rule #4: Skip the Facebook Leads. If you're going to market on Facebook, stick to the ads that drive website traffic. While most of this traffic will likely be bots, some will convert on your website. When your Facebook focus is on generating leads from Facebook, you'll be inundated with garbage leads from people who will ask, "How did you get my information?" Save yourself the brain damage here and just stick with traffic ads.

Rule #5: Skip the vendor reports. Digital agencies love to show their clients colorful graphs and charts that have nothing to do with moving metal. Moreover, these reports almost never have anything to do with the agency's actual performance. These reports are meant to distract you from closely examining the effectiveness of your campaigns. Tell your agency you only want to see how many "human" conversions (leads, calls, and store visits) each campaign generated and what was the cost-per-conversion.

Rule #6: Ask dumb questions. Beyond worthless reporting, digital agencies are famous for trying to talk over the heads of their dealer clients. They do this because (A) they want to prove they're smarter than you; and (B) they know you'll almost never ask them to explain because you don't want to look dumb. Don't allow it! Ask dumb questions, and if you don't like or understand the answer, ask even dumber questions.

Here's a typical cadence I like to use: First, I ask the agency to explain how this result or that result helps the dealership sell cars. Then, if I don't like their answer, I'll follow up with, "Okay, but can you explain it to me like I'm in the third grade?" If I still don't like their answer, I'll simply reply, "I don't get it." This causes them to dumb it down even further, and eventually, we all gain an understanding of the true ROI of the campaign in question.

While these six simple rules won't help you understand everything happening with your digital marketing, they will give you the necessary control that keeps your agency focused on results that move metal. Moreover, they'll eliminate much of the waste and fraud that even the big guys haven't figured out yet.

Good Selling!

Steve Stauning
Founder
Stauning Solutions Group

Steve is the author of Ridiculously Simple Car Selling and Ridiculously Simple Sales Management; as well as a respected automotive industry veteran and founder of Stauning Solutions Group – a leading training & consulting firm. Steve's consulting work puts him in dealerships nearly every week, working side-by-side with managers, salespeople, and internet teams to help them improve their sales, processes, and profits. Prior to this, Steve served in various automotive leadership roles, including as the Asbury Automotive Group's (NYSE: ABG) director of ecommerce, the director of the Web Solutions division of Reynolds & Reynolds, and as the general manager of Dealer Web Services for Dominion's Dealer Specialties. You may contact Steve directly by calling him at 888-318-6598 or via email at Steve@SteveStauning.com

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By: Eric L. Johnson and Mark D. Metrey

From One Dragon to Many: States Will Fill the Void Left by the CFPB

In the wake of significant changes at the federal level, including reductions in force at the Consumer Financial Protection Bureau, budget slashing, and a major shift in supervision and enforcement priorities, it may be tempting for motor vehicle dealers and financing sources to believe that the regulatory, compliance, and enforcement heat is off. That would be a big mistake.

While it is true that the once-mighty CFPB dragon has faced internal and external political pressure, including leadership turnover and congressional and White House scrutiny, the agency's recent wounding does not mean that dealers and financing sources can relax their compliance efforts. The legal architecture of the Dodd-Frank Wall Street Reform and Consumer Protection Act ensures that consumer protection enforcement is a multi-headed hydra—cut off one head, and others remain ready to strike.

In particular, two forces remain fully empowered and increasingly active: state attorneys general and state financial regulators. Coupled with robust state consumer protection laws, these entities will now play a more prominent role than ever in enforcing federal and state consumer financial laws. For auto dealers and their financing sources, the need to maintain strong compliance programs is just as urgent as it was during the CFPB's peak enforcement years, if not more so. In place of what used to be the all-powerful federal dragon now stand as many as 50 smaller, but no less formidable, state dragons.

When Congress passed Dodd-Frank in 2010, it created the CFPB to centralize and strengthen consumer protection at the federal level. However, Congress included a provision in Dodd-Frank to ensure that consumer protection would not be derailed by political turnover or federal retrenchment. Specifically, Section 1042 of Dodd-Frank empowers state AGs and state regulators to enforce provisions of federal consumer financial law and regulations, including those prohibiting unfair, deceptive, or abusive acts or practices. This grant of enforcement authority ensured that, even if the CFPB were rendered ineffective or politicized, the state AGs and state regulators could still enforce federal consumer financial laws and regulations—even in the absence of federal action.

Additionally, before leaving the CFPB, then-Director Rohit Chopra and former CFPB General Counsel Seth Frotman laid out a roadmap for states to assert their enforcement authority. They published an article in the Harvard Journal on Legislation on January 15, 2025, titled "State Enforcement as a Federal Legislative Tool." The article discusses Congress's visionary empowerment of states to enforce federal consumer financial protections. Their analysis found that all 50 states have collectively participated in about 50 total actions using this authority, regardless of the political party of state officials. The article also emphasizes how these state-led efforts have been successful in ensuring robust protections for consumers, complementing federal enforcement of the federal consumer financial protection laws as well as private enforcement by individual citizens.

Furthermore, just before the change in the administration, the CFPB issued new recommendations to the states on how they can update their laws and regulations to meet new risks and challenges in a blog post on January 14, 2025—"Strengthening State-Level Consumer Protections"—and a 34-page Report and a 363-page "Guidance Compendium of Recent CFPB Guidance" coffee table book, which contains the Bureau's circulars, bulletins, advisory opinions, and interpretive rules to the states (and courts). Even though new leadership at the CFPB has recently taken steps to withdraw many of its guidance documents, including its interpretive rule on the authority of states to enforce the Consumer Financial Protection Act, the horse is already out of the barn, and the states may seek to use such guidance to frame their own interpretations.

In addition to having the authority to enforce federal law, every state maintains its own basic (not necessarily credit-related) consumer protection statutes—often modeled after the Federal Trade Commission Act but with broader reach or lower thresholds for proving violations. These state unfair or deceptive acts or practices (UDAP) laws vary, but they generally prohibit false or misleading advertising, deceptive financing practices, bait-and-switch sales tactics, odometer fraud, and failure to disclose material information during a sale.

Some state UDAP laws include private rights of action, meaning that consumers can sue dealers and financing sources directly without relying on regulators. Others permit the award of treble damages, statutory penalties, or attorneys' fees, all of which raise the stakes for noncompliance.

As these are state laws, they do not require any action from the CFPB or the FTC to be enforced. A dealership or financing source that skirts compliance requirements could easily find itself facing a state enforcement action or civil lawsuit—even if the federal government has deprioritized supervision or enforcement.

Enforcement is not the only threat: don't forget about those pesky plaintiffs' attorneys who are also likely to pounce if they perceive any lack of enforcement at the federal level. Dealers and their financing sources cannot afford to treat compliance as something that may change depending on who is in the White House or in charge at the CFPB or the FTC. The core elements of compliance—truthful advertising, transparent financing terms, equal access to credit, and fair treatment of consumers—are not going away. The states, and likely plaintiffs' attorneys, will pick up any slack in enforcement. Use this time wisely to get your compliance house in order before the states kick it into high gear. Otherwise, you may find yourself battling not just one dragon, but many. And history shows that federal retrenchment rarely lasts—the pendulum always swings back.

Eric L. Johnson
Partner of Hudson Cook, LLP

Mark D. Metrey
Associate of Hudson Cook, LLP

**Eric L. Johnson is a partner in the Oklahoma office of Hudson Cook, LLP. He can be reached at 405.602.3812 or by email at ejohnson@hudco.com. Mark D. Metrey is an associate in the Washington, D.C., office of Hudson Cook, LLP. He can be reached at 202.715.2009 or by email at mmetrey@hudco.com.*

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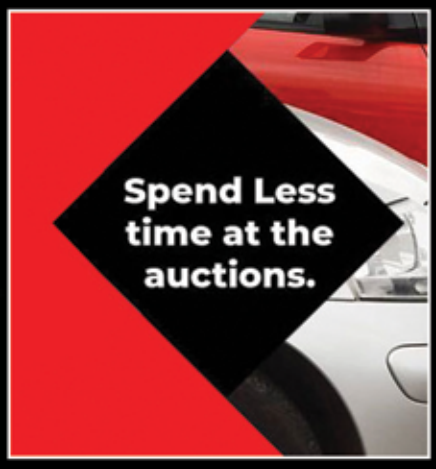

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By: Eric Johnson

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The CARLAWYER©
Federal Developments

On June 9, Acting Comptroller of the Currency Rodney E. Hood released a letter in response to a letter from the Conference of State Bank Supervisors requesting that the Office of the Comptroller of the Currency rescind its 2011 preemption regulations in light of recent executive orders that direct federal agencies to rescind unlawful and anti-competitive regulations. The CSBS's letter claims that the OCC's preemption regulations are unlawful because they are not consistent with the best reading of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Acting Comptroller Hood concludes that the OCC's preemption regulations are consistent with the Dodd-Frank Act, Supreme Court precedent, and the recent executive orders. In the letter, Hood states: "[T]he OCC reviewed its preemption regulations following Dodd-Frank's enactment. The OCC considered the relevant statutory language, legislative history, and judicial precedent and concluded that Dodd-Frank codified the conflict preemption standard in Barnett Bank of Marion County, N.A. v. Nelson, including the antecedent cases it cited. This conclusion is consistent with the Supreme Court's subsequent decision in Cantero v. Bank of America, N.A., which rejects arguments that Dodd-Frank created a new preemption standard and instead notes that 'Dodd-Frank adopted Barnett' and that Barnett 'was also the governing preemption standard before Dodd-Frank.' The OCC applied this same standard when it identified certain preempted and non-preempted state laws in its regulations in 2004 and again when it reviewed the regulations in 2011." Hood also rejected the CSBS's suggestion that the OCC's preemption regulations are anti-competitive, stating that "[f]ederal preemption is a cornerstone of the dual banking system, under which federally and state-chartered banks operate alongside one another." "Federally chartered banks, many of which operate across state lines, therefore may rely on preemption to remove barriers and achieve efficiencies associated with a uniform set of rules. Thus, federal preemption has helped to foster the development of national products and services and multi-state markets, which have benefited individuals and businesses in every state and powered this Nation's economy."

On June 16, the Federal Trade Commission released Frequently Asked Questions discussing the requirements of the Safeguards Rule and how the rule specifically applies to motor vehicle dealers. The FAQs are meant to supplement related compliance materials available on the FTC's website, including FTC Safeguards Rule: What Your Business Needs to Know and FTC's Privacy Rule and Auto Dealers: FAQs. The FTC's Safeguards Rule, which implements the Gramm-Leach-Bliley Act, requires covered non-bank financial institutions, including motor vehicle dealers, to develop, implement, and maintain a comprehensive written information security program to protect their customers' nonpublic personal information. The FTC amended the Safeguards Rule in 2021 to provide more specific guidelines for financial institutions and to ensure that the rule keeps pace with current technology and amended the rule again in 2023 to require financial institutions to report to the FTC certain data breaches and other security incidents involving their customer information.

On June 23, the Consumer Financial Protection Bureau released a report that corrects and updates its 2015 report on the characteristics and number of consumers who have little to no credit record. The 2015 report found that about 11% of adults do not have any credit history with a nationwide consumer reporting agency (known as "credit invisible") and about 8% of adults have credit records that cannot be scored because of an insufficient credit history or a credit history with "stale" credit information. Using updated data and a corrected methodology, the new report shows that "the original estimate of credit invisibles should be roughly cut in half, with an almost commensurate increase in credit records that were unscored. [The CFPB's] new data also show that the share of consumers with a scored credit record increased between 2010 and 2020."

On June 27, pursuant to President Trump's executive order - Fighting Overcriminalization in Federal Regulations - the Consumer Financial Protection Bureau issued a policy statement to describe its plan to address criminally liable regulatory offenses. The executive order defines a "criminal regulatory offense" as a "Federal regulation that is enforceable by a criminal penalty." The policy statement notes that the CFPB has issued regulations implementing certain federal consumer financial laws that are enforceable by a criminal penalty. For example, the Truth in Lending Act provides "whoever willfully and knowingly gives false or inaccurate information or fails to provide information which he is required to disclose under the [TILA] or any regulation issued thereunder ... shall be fined not more than $5,000 or imprisoned not more than one year, or both." The CFPB may, in the course of an enforcement investigation, refer alleged violations of these criminal regulatory offenses to the Department of Justice. The policy statement sets forth several factors that the CFPB will consider when exercising its discretion in making referrals of criminal regulatory offenses. Among other steps the CFPB intends to take to address criminal regulatory offenses, the CFPB will provide within the next year a report to the Director of the Office of Management and Budget containing: (1) a list of all criminal regulatory offenses enforceable by the CFPB and the DOJ; and (2) for each criminal regulatory offense, the range of potential criminal penalties for a violation and the applicable mens rea standard for the criminal regulatory offense. The CFPB will periodically update this report.

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Continued from page 16

The CARLAWYER© Case(s) of the Month

By: Eric Johnson

Federal Court Refuses to Vacate Voluntary Settlement Among Mortgage Broker/Lender, Its President and CEO, and CFPB: The U.S. District Court for the Northern District of Illinois denied a joint motion by the CFPB, a mortgage broker/lender, and the broker/lender's president and chief executive officer to vacate a settlement entered into by the parties over accusations that the defendants discouraged African Americans from applying for mortgage loans through statements made in their radio shows and podcasts. The case, brought in 2020, settled in 2024, with the broker/lender agreeing to pay a $105,000 penalty and accepting a prohibition against future violations of the Equal Credit Opportunity Act, and the court entered a stipulated final judgment and order. The court refused to vacate the settlement and return the civil penalty to the broker/lender. The court noted that "granting the Motion would erode public confidence in the finality of judgments. It would set a precedent suggesting that a new administration could seek to vacate or otherwise nullify the voluntary resolution of a case between a prior administration (or the same administration, but under different agency leadership) and a private party merely because its leadership thought the original litigation unwise or improperly motivated. That is a Pandora's box the Court refuses to open." See Bureau of Consumer Financial Protection v. Townstone Financial, Inc. (N.D. Ill. June 12, 2025).

This Month's CARLAWYER© Compliance Tip

Can you smell it in the air? No, it's not the smell of firecrackers and hot dogs (well, you may smell that too in the air by the time you read this), it's the seismic shift in priority and focus by the federal government (CFPB, FTC, DOJ, etc.) that's been taking place these past few months from a heavy-handed federal enforcer to one that may be a bit more business friendly. With the shift in priority and focus of the federal regulators however, that means that the states may become more active in response to the actual or perceived pullback by the feds. That could actually prove more trouble for dealers in certain states than having a strong federal copy or enforcer on the beat. Now is the time to shore up your compliance defenses – have your consumer-facing documents and notices reviewed, perform a deal jacket review, dust off and improve those policies and procedures. Time to make some hay while the sun is shining!

So, there's this month's roundup! Stay legal, and we'll see you next month.

Eric L. Johnson
Partner of Hudson Cook, LLP

Eric (ejohnson@hudco.com) is a Partner in the law firm of Hudson Cook, LLP, Editor in Chief of CounselorLibrary.com's Spot Delivery®, a monthly legal newsletter for auto dealers, and a contributing author and editor of the F&I Legal Desk Book. For information, visit www.counselorlibrary.com.

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