



Summer 2020

THE SOURCE

News You Need At Automotive Speed

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Chief Editor Phyllis Sartin

Dear all members & partners:

We hope your business is good and your families are well during these trying times. We have spoken with a number of dealers and all say that good inventory is hard to come by and sales are pretty steady. Most think that when the new models hit the showrooms, inventory will be less of a challenge and the sales can be attributed somewhat to the US Government Stimulus packages.

I have had a number of dealers reach out recently with inquiries and we want to encourage folks to contact us with any question or request. Our group has close to 40 years of car business between us and I feel confident we can get you answers. Please consider becoming a Premium Partner to obtain other great benefits and discounts. Visit our website for information and contact us there or call us any time.

Thank you and stay safe!

Disclaimer:

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That's Life

I can hear Frank Sinatra crooning one of my all-time favorites, "That's Life". There's the line of the third verse that goes like this ".....I've been up and down and over and out and I know one thing, each time I find myself flat on my face, I pick myself up and get back in the race...", Yup, that's life. It's what we do. Dealers throughout the U.S. have had to deal with the consequences of Covid19 with partial closing, full closing, not really sure if we should open or stayed closed, closings. Just when you thought it was clear to come out from under the covers, your community might have had to deal with racial or political unrest.

It is times like these when you discover just what type dealer, general manager or used car manager you really are or what type of leader you needed to be to get through times like these. These are the times you discover which infrastructure you had in place that held your business together and which infrastructure was lacking or weak and caused your business to lose thousands of dollars. It concerns me when I hear dealers or their leaders say things like, "hey, in times like these you just gotta push forward and plow ahead," or "hey, you can't quit now, you gotta keep doing what you know you gotta do." While quotes like these seem to create a positive and more cheerful environment, they are not what necessarily needs to be done. Now is not the time for clichés. Now is the time to evaluate, plan and put into place the actions necessary to accomplish your financial goals.

What are your newly formed financial goals to salvage the remainder of the year? How are you planning to achieve a minimum of eight percent net profit (not gross profit) on overall sales? Focus on the bottom line because that's what it's going to take to pay your bills and earn a salary. Set your target for net profit (income after expenses but before taxes). Which expenses on your statement are out of line and will prevent you from reaching that bottom-line goal? Which of your expenses are

mandatory and which can be reduced or eliminated without having a negative impact on customer service and employee safety and performance? Who is working on your social media and on-line presence? Studies are indicating franchise dealers are way ahead of independent dealers in on-line presence and overall effectiveness. How much inventory do you need to carry without endangering your cash position should the market shift downward unexpectedly? Do you need more inventory or do you have units in stock over 60 days tying up cash and not generating service and F&I income and sales gross? Which units turn in the shortest period of time at the highest gross earning potential? Stop telling yourself, "I'll buy anything right now, I just need some cars." Everybody needs cars right now. Don't buy emotionally and don't apologize to customers when you have a great car, by permitting your staff to offer discounts like it's a fire sale. If you bought it right, fully reconditioned it, it's marketed properly, it's worth your asking price.



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Digital Retailing: It's Not the Technology, It's the Technician!

While Tennessee dealerships were spared the outright showroom closures that impacted automotive retailers in states like Kentucky, Pennsylvania, and others, the consequences of Coronavirus and subsequent stay-at-home orders had most dealers scrambling for a digital retailing solution.

If that describes your dealership, you may have already figured all this out. For the rest of you, it's important to stress that success with digital retailing has little to do with the technology you choose, and everything to do with the technician. That is, the members of your team who pull your customers through a process and sell them a vehicle.

Digital retailing is not a panacea. It's not a website add-on that instantly starts driving market share. For successful dealers, digital retailing is little more than a lead generation tool that requires people and process to produce sold units.

Think Omni-Channel

While my clients have sold a few deals start to finish via their digital retailing tools, their real success comes from their ability to leverage this to bring the online prospect into the showroom without "breaking the flow," if you will. Here's basically what that looks like:

- **The customer starts online and completes a few steps of the process.**
- **A lead is delivered into the CRM.**
- **A qualified BDC agent or salesperson contacts the customer in a concierge role.**
- **Using an appointment-first approach, the concierge invites the customer to move to the next step (generally a test drive).**
- **The customer arrives and finds their vehicle of interest is cleaned, gassed, and parked right out front.**
- **A product specialist (holding a tablet) greets the customer.**
- **The tablet is loaded with the customer's deal; and the process continues offline right where the customer stopped online.**

That's omni-channel digital retailing; a long-winded way of describing how most car deals will be consummated in the future. That's right; Carvana and Vroom be damned, the vast majority of vehicles will not be sold like a bag of dog food or a book.

You see, regardless of return policies, most people will never be comfortable spending \$40,000 on something they haven't seen and touched in person. As Dr. Alan Grant said in Jurassic Park, "T-Rex doesn't want to be fed, he wants to hunt."

While this doesn't mean you don't need to embrace digital retailing, it does mean you don't need to panic. You do, however, need a plan.

The Next Steps

If the digital retailing tool you choose can help you complete a deal similarly to the example I showed above, the company you partner with is largely irrelevant. Your success with digital retailing will depend on a few

important elements:

1. Messaging and Marketing. Addressing buyer concerns around transparency, time, turmoil, and trust in your marketing, on your website, and in your communications will make them more likely to start their deal online with you.

2. Response Time and Quality. For those prospects who do start online, the speed and quality of your response to their inquiry – whether it's a simple lead or a nearly completed sale – will make or break the deal every time.

3. Process. Combining your digital retailing tool and a great in-store process (like The Perfect Appointment) delivers deals efficiently, drives higher CSI, and improves gross.

The great news about digital retailing is that it's actually okay if you've just begun to think about. You see, it's never too late.

Car buying has not "changed forever" because of the pandemic. Since new car buyers hold their vehicles an average of six years, most of your customers still haven't been introduced to this thing we call digital retailing. This gives you the edge; the ability to shape your messaging and methods to meet the needs many prospects still don't know they have. Combine these with a team (the "technicians" part of the equation) who are strictly following your processes, and you'll sell more vehicles for more gross as you deliver a great customer experience every time. Good selling!



Steve Stauning
Founder
Stauning Solutions Group

Steve is the author of Assumptive Selling: The Complete Guide to Selling More Vehicles for More Money to Today's Connected Customers; as well as a respected automotive industry veteran and founder of Stauning Solutions Group – a leading training & consulting firm – and the free sales video training website SteveStauning.com. 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 his involvement with pladoogle, 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



ProGuard Warranty Includes Three-Month SiriusXM Subscription with Purchase of ProGuard Vehicle Service Contracts

Avoca, PA – June 9, 2020– ProGuard Warranty is collaborating with SiriusXM to offer their customers nationwide a three-month SiriusXM subscription, included at no extra cost, with the purchase of any ProGuard protection plan for their vehicle. Eligible customers with a factory installed SiriusXM radio will receive three months of SiriusXM All Access, SiriusXM's most extensive package, which enables the listener to hear all that SiriusXM offers both in their vehicle and outside the car with the SiriusXM app. Customers who already received a trial subscription with their vehicle purchase are not eligible.

SiriusXM comes installed in over 75% of new vehicles sold in the U.S. and is available in a fast-growing number of pre-owned vehicles. An estimated 15.28 million vehicles up to 5 years old will be returned to the market in 2020 through the retail, lease and rental channels, according to J.D. Power.* ProGuard, which sells a wide variety of protection plans and ancillary products through several thousand dealers across the U.S., is well positioned to deliver the benefit of SiriusXM to a substantial base of potential customers in the market for a new or pre-owned vehicle.

“ProGuard has exceeded every growth benchmark we’ve ever set and as a company we are constantly looking ahead at what it will take to get to the next level. Further enriching the customer experience is our top priority and by giving our customers access to SiriusXM’s wide-ranging audio entertainment we are adding value to our already superior products. Teaming up with SiriusXM provides one more way we can differentiate ourselves and better serve our dealer partners.” Dominic Limongelli, President, ProGuard Warranty

“At SiriusXM, we pride ourselves on delivering the best audio entertainment experience available, and as the number of SiriusXM-equipped vehicles in the pre-owned market grows every year, we want to get as many of those pre-owned customers as we can to tune in and experience all that we have to offer. Working with ProGuard, a trusted and growing brand, enables us to connect with a large population of buyers through ProGuard’s thousands of independent and franchise dealer partners. And ProGuard will be able to deliver the added benefit of SiriusXM to eligible customers who buy any of their excellent F & I products.” Gail Berger, Vice President, Auto Remarketing for SiriusXM

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Lots of dealers do. Most of the time, it works out OK. But sometimes things can fall through the cracks. A lot depends on who owns the car. On your garage liability policy, the dealership is the insured. That policy covers vehicles owned by the dealership; not owned by you personally, or your spouse or your kids. If you want to use your dealer connections to provide a nice ride for yourself, your wife or kids, the best way to do this is buy them a car at auction, title the car to them and put it on a personal auto policy. This has the advantage of not exposing their driving history to your dealership insurance loss history.

There is a common misunderstanding out there that it's less expensive to add them and the car to the garage policy. Well, the State of TN requires dealers to carry a minimum of \$300,000 liability and lots of dealers carry \$1,000,000. Business insurance is typically more expensive than personal insurance – Why ? Well ask yourself.....who has more assets exposed to a lawsuit – a business ? or a person ?

Here's an example of something “falling through the cracks” A dealer from middle Tennessee flew to an auction in New Jersey to buy cars. He rented a car to drive back. On the drive back, on I 80 in Pennsylvania, he tangled with a semi in the lane next to him. Don't know who hit who but the rental car rolled over in the median. Our driver was OK but the car was totaled. Fortunately our driver bought the collision damage waiver when he rented the car. That takes care of the car. But the tractor was a 2019 Kenworth; a very expensive rig. The trucker's insurance company is now pursuing subrogation against our driver. Our driver's garage policy had a 300 mile radius of operations on it and he was way outside that. That garage policy is not responding to the claim.

Ya'll please keep your agent informed if you change your operations. It's not very expensive to go to a 1,500 or a 2,500 mile radius. And please

BE SAFE OUT THERE !!!!

About the author: John Niven has owned and operated Auto Agency Inc., specializing in insuring used auto dealers, since 1995. He holds the CPCU and ARM designations in risk management from the American Institute for Property and Liability Underwriters in Malvern, PA. He can be reached at 901 756 5440 or Niven@bellsouth.net.

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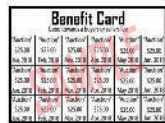
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Primary Phone: 423-348-8419

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Is Your Ad Clear and Conspicuous? Apparently it Depends.

We've all heard the jokes about fine print before – the text is so small you could be agreeing to give the dealership your first-born child. However, for regulators the fine print is no laughing matter. The bottom line is that both state and federal regulators expect the disclosures in the fine print to be clear and conspicuous.

But, what does the term “clear and conspicuous” mean? The FTC has provided copious amounts of guidance regarding the standard throughout the years. A critical factor in assessing whether fine print, or any other disclosure, is clear and conspicuous is the medium used to convey the advertisement. Regulators have different expectations regarding disclosures in print advertisements versus disclosures in radio advertisements versus disclosures in television advertisements. Here are a few considerations to keep in mind when creating your dealership's next advertisement:

1. Make key disclosures in the same medium as the advertisement. That is, if the advertisement is a print ad, make the disclosures in writing. If the advertisement is a radio ad, make the disclosures audibly.
2. Make visual disclosures stand out by using characteristics such as font size, color, contrast, location, and, in television advertisements, the length of time the disclosure appears on the screen.
3. Deliver audible disclosures in the same volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand the disclosure.
4. Use easily understandable language, diction, and syntax.
5. Make disclosures in each language used in the

advertisement – that is, if you make a statement in Spanish, the disclosure should also appear in Spanish.

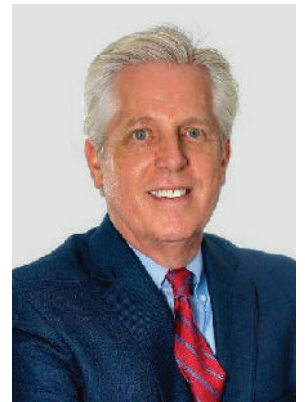
6. Ensure disclosures are consistent with all other statements appearing in the advertisement.

Looking to the guidance above when crafting your dealership's next advertisement can help make your fine print stand out – ensuring your dealership is not the punchline of a joke.

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The CARLAWYER®

Case of the Month

by Thomas B. Hudson and Eric L. Johnson

We hope you and your loved ones make it through the summer virus free. Like you, we long for a normal fall, but the odds of that seem a bit slim. Like last month, there isn't a great deal going on this month by way of business and legal developments, but there have been a few. Here's our monthly article on selected legal developments we think might interest the auto sales, finance, and leasing world. This month, we note developments at the Consumer Financial Protection Bureau and the Department of Justice.

As usual, our article features the "Case of the Month" and our "Compliance Tip." Note that this column does not offer legal advice. Always check with your lawyer to learn how what we report might apply to you or if you have questions.

Case of the Month

Buyer Stated Claim Under Missouri Law that Installment Contract Assignee Was Liable for Dealer's Failure to Provide Him with Vehicle Title:

When the dealership where a buyer bought a car failed to provide him with the title to the vehicle as required by state law, he sued the dealership and the assignee of his retail installment contract for violating the Missouri Merchandising Practices Act.

The trial court entered a default judgment for the buyer on his MMPA claim against the dealership. However, the trial court granted the assignee's motion to dismiss the MMPA claim.

The Court of Appeals of Missouri reversed the dismissal of the MMPA claim against the assignee. The appellate court concluded that, under Missouri law and the Federal Trade Commission's Holder Rule, the buyer stated an MMPA claim against the assignee because of its status as the dealership's assignee and holder of the RIC. The court determined that the assignee stood in the dealership's shoes for all purposes, including being liable for the dealership's failure to give the buyer the title to the vehicle.

In light of its holdings, the appellate court did not reach the assignee's argument that it was exempt from liability under MMPA Section 407.020.2. The assignee had contended that, as a credit union subject to chartering, licensing, or regulation by the director of the division of credit unions, it was exempt from MMPA liability resulting from the conduct of its assignor. See *Heinz v. Driven Auto Sales, LLC*, 2020 Mo. App. LEXIS 782 (Mo. App. June 16, 2020).

(Continued on page 20)

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Menu? We Don't Need No Stinkin' Menu. Yes, You Do!

As you know, the pandemic shelter-at-home orders forced the closing of dealerships across the country. I suspect that the new ways dealerships have developed to continue to move the metal have inspired some dealerships to evaluate their menu-selling process when presenting voluntary protection products to customers. Because I've been getting more inquiries about menu selling lately, I thought it would be helpful to summarize the standards a dealership should adopt before presenting VPPs to customers and beneficial content for a menu.

As a starting point, you should know that there is no federal law that specifically requires dealerships to show the full cost of a VPP product in a menu. However, the Federal Trade Commission and the Consumer Financial Protection Bureau have shown significant interest in how things are disclosed to consumers, and those agencies have authority under federal law to determine when a practice is unfair or deceptive (and, in the CFPB's case, abusive). So, is it unfair, deceptive, or abusive to not disclose to a customer the actual cost of a product being purchased? Given the federal regulators' preference towards transparency and full disclosure, dealerships should adjust their menu-selling standards and practices to meet or exceed federal regulators' expectations.

What are some of the standards that a dealership should adopt before presenting VPPs to customers? For one, a dealership should present VPPs in a manner that will help the customer make an informed purchasing decision, including information about:

- **benefits and cancellation and refund rights and procedures;**
- **the claims process;**
- **deductibles, if any;**
- **eligibility;**
- **limitations;**
- **price;**
- **requirements for maintaining coverage; and**
- **other important terms and conditions.**

A dealership should ensure that its employees who offer VPPs understand the products' benefits, limitations, and other terms and conditions before offering them to customers. How can an employee offer and speak intelligently about a VPP if he or she doesn't know these things? A dealership should not offer a customer a VPP for which the customer is ineligible. Similarly, a dealership should not offer a VPP that provides no value to the customer. Although this standard can be a bit tricky to determine, know that the regulators take a very dim view of products that provide no value to the customer.

A dealership should set objective policies for any markup practices on VPPs. Further, in connection with a vehicle sale, a dealership should offer every customer the opportunity to buy or decline every VPP the dealership sells for which the customer is eligible and then document that offering in writing. Any sales script and menu the dealership uses should be reviewed by knowledgeable counsel prior to their use. I'm often asked if it's possible to develop a menu checklist to be used to compare a dealership's menu against standard menu practices. The standard menu format should be simple and, at a minimum, prominently disclose:

- **that the purchase of any listed VPP is optional;**
- **that any listed VPP may be purchased separately, if true;**
- **that the purchase of any listed VPP is not required as a condition to purchase or lease a vehicle or to qualify for financing, obtain warranty coverage, or receive financing on particular terms;**
- **that the listed VPPs or the protections they provide may be available from other sources, if true;**
- **that the dealership may retain part of the sale price of the listed VPPs, if true;**
- **the price of - and monthly payment for - the vehicle with and without the purchase of a VPP or service selected by the customer;**
- **the price of - and monthly payment for - each VPP if purchased separately; and**
- **the price of - and monthly payment for - each product bundle if VPPs are purchased as a bundle (e.g., the "Platinum Package")**

What about the practice of actually offering VPPs to a customer? Prior to the sale of a VPP, a dealership should provide the customer with a copy of, and an opportunity to review, each selected VPP's terms and conditions as well as any other required disclosures. In addition, a dealership should obtain the customer's acknowledgement of the menu disclosures and his or her election to either purchase or decline each selected VPP or VPP bundle.

Now you have a smooth process for offering VPPs to a customer and a transparent menu. What should a dealer do post-sale? Don't forget to provide your customer with any required post-sale forms of the selected VPPs. A good dealership will have its menu and menu-selling process audited every so often to ensure its employees are using the approved script and menus the way they are supposed to be used. Regardless of whether your showroom is open or closed to the public, to combat a claim of unfair, deceptive, or abusive practices, you need standards and an approved and vetted script and menu-selling document when offering VPPs to your customers.



Eric L. Johnson
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This Month's CARLAWYER®

Compliance Tip

(Continued from page 16)

Dealers should take careful note of the Department of Justice item above. Although the use by federal and state enforcement authorities of so-called "mystery shoppers" isn't all that common, the DOJ action is proof that it happens. Investigative reporters have also been known to employ this technique. The only way to avoid the risk of a mystery shopper's "gotcha" is to assume that every customer is a mystery shopper. Do all your customer contact personnel know what they need to know about the laws and regulations that apply to the sale, financing and leasing of vehicles to consumers? No? It might be time for a bit of schooling.



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Auctioneer Spotlight



Greg White

I've been in the auction industry for about 15 years. I'm a graduate of Nashville Auction School. I started out as a real estate agent with Ben Bray (B & E Auction Company) located in Lafayette, TN. My broker, Ben Bray asked me if I had ever considered being an auctioneer. My answer was no but was willing to give it a chance. That is when my love for auctions started! My car auction career started about 5 years ago when my best friend & fellow auctioneer, Jeremy Robinson, gave me an opportunity to fill in as a ring man at Manheim Nashville. I filled in off & on until it worked into a full-time position. Music City Auto Auction, Manheim Nashville & OKI Auto Auction in Elizabethtown, KY are my current auctions. I'm married to my wife, Kimberly. We have two children, Betchett age 4 & Reece age 1. We reside in Lafayette, TN where we have lived all our lives. I have many people to thank for my being where I am today & want everyone of them to know how much they are appreciated. Also, I want to thank God for my salvation & the many blessings he has given me through my life.

My family also owns & operates a small business in our hometown called B & B Bargain Store. I'm a board member of the Chamber of Commerce & our local Fair Board. I'm a firm believer that if you put God & family first, everything else will fall into place. The auction business has been a very big part of my life & I hope to continue being able to do what I love.



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