Winter 2024

THE SOURCE

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As dealers, you spend a lot of time selling customers on the cool technology features available in vehicles. Back-up cameras, rearview video mirrors, power liftgates – everyone wants them, but no one wants to get hit with the repair costs when these expensive components go bad. Explaining why they aren't covered is not a conversation anyone wants to have.

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By: Steve Stauning

Live By 4 Simple Rules, Sell More Vehicles

The automotive retail market has swiftly moved from one where vehicles sold based on availability to one based on control. That is, we are back to a "normal" market where your sales team's ability to grab and maintain control of your prospects can make the difference between profitably growing market share or barely treading water.

The "availability market" we just experienced created some bad habits, including turning top sellers into order-takers. Moreover, anyone who started selling cars after March 2020 is especially prone to being in permanent order-taker mode. Those teams still in order-taker mode are being punished by the market. They're losing share and starting to give up gross as their inventory ages before their eyes.

It's time to break your team out of this; and the best place to start is with your Fresh Ups.

Garbage In/Garbage Out

I'm fascinated when I meet sales managers today enamored by their team's "stellar" closing percentage of Fresh Ups. Forty percent! Fifty percent! Sixty percent!

When asked what percentage of the Fresh Ups their team is logging, the answer is invariably between 80 and 90 percent. Impressive! (If only it were true.) Anyone reading this knows these high reported closing percentages are the result of garbage in/garbage out.

Want to close an even larger percentage of your Fresh Ups? Don't log non-buyers, and you'll be at 100% overnight!
Of course, there are plenty of good reasons to log every Up, and the two biggest ones are that you'll sell more vehicles today and you'll sell more vehicles tomorrow. This begs the question: How can I stop my team from brooming so many otherwise qualified buyers?

The 4 Rules

I didn't create these four rules. In fact, they've been around for decades, and the salespeople who live by these sell more vehicles today and more vehicles tomorrow; they're also more likely to hold gross and less likely to lose deals in the write-up.

If you've read my book, Ridiculously Simple Car Selling, then you know that selling cars isn't hard, it just takes work. To help make that point, there are just four ridiculously simple rules your salespeople need to live by with every Fresh Up to begin selling more vehicles immediately. These are:

1. No one leaves the lot unless they're in the CRM.
2. No one leaves the lot unless we have their contact information.
3. No one leaves the lot unless they've been presented with numbers.
4. No one leaves the lot unless they've met a manager.

Done properly, your Meet & Greet can achieve the first two rules, and always focusing on the next step in the road-to-the-sale moves the prospect toward the last two. My Meet & Greet is called the Assumptive Selling Meet & Greet and it goes like this:

"Welcome to ABC Motors, my name is Steve. Which vehicle did you come to test drive today?"

Fully 80% of Fresh Ups will volunteer a specific vehicle, body style, type, or price range. For these 80%, your team simply follows with:

"Great. Let me get your driver's license, I'll get you registered, and we'll grab some keys for the test drive."

Your team has now scanned the driver's licenses for four out of five Fresh Ups, and simply asking a couple of follow-up questions (What's a good email address for you? What's a good number?) gets them everything they need to satisfy the first two rules.

The Road-to-the-Sale

Once your salespeople have the customer's vehicle of interest and contact information in the CRM, the rest is ridiculously simple: They just need to follow your road-to-the-sale as they build value in themselves, the dealership, and the vehicle. Properly following the road-to-the-sale most often means saving the answers to certain questions for the appropriate step (as in the write-up) and staying in control as they move the prospect through these.

I highlight these four rules because most Five-Car Freddies make zero effort to achieve these unless they feel they have a "real" buyer on their hands. They think the CRM is slowing them down; they only want contact information from "real" buyers; they're happy to vomit their version of payments, etc. on anyone at any time; and they're certain their manager doesn't really need to meet these tire-kickers.

Hint: If your team's closing percentage of Fresh Ups is anywhere north of 35%, you've probably got a few Five-Car Freddies deciding who is a buyer and who is not long before "wasting" their time on the demo drive or write-up.

They're still in order-taker mode; and today's market will punish you for it.

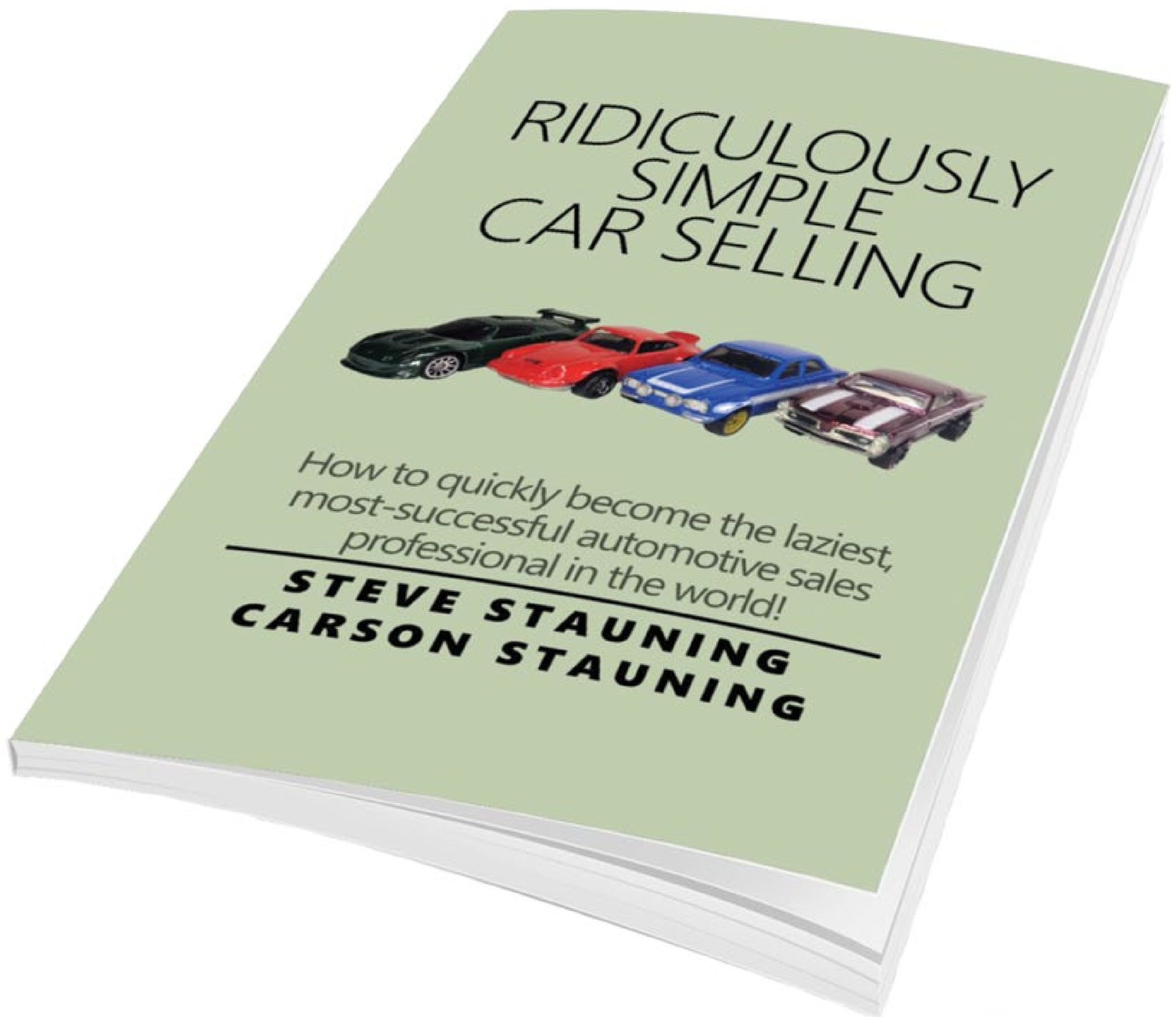
Good Selling!

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.comSteve@SteveStauning.com

got order-takers?



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By: John Summer

Internet Corner: This isn't working! What next?

What do you do when you get to the point where you realize your advertising dollars are not paying off? Obviously, you stop spending money on that advertising! That seems straight forward, but for some, that is a hard point to reach. Most of today's advertising is done on the Internet. That type of advertising is the easiest to measure if you know where to look.

When you consider other forms of advertising and how they work, you understand how difficult it is to measure Return On Investment, or ROI. Take a radio or TV ad. When you advertise in one of those media you only know part of the story. You know how long your advertisement is in duration, you know how many days or weeks or months you will run that ad, and you may even know the number of times that ad runs during that time. But what you don't know is whether or not anyone ever saw or heard that ad. Furthermore, unless they tell you they saw or heard that ad, you don't know how many sales you can attribute to that advertisement. There is no real method for the radio or television industry to be able to accurately provide you with the number of eyeballs and/or ears that encountered your ad. There is no way to identify the people seeing or hearing that ad. Those are sort of like Spaghetti String approaches to advertising. Throw it against the wall and see if it sticks!

The same is not true for Internet advertising! Your web provider can tell you all kinds of data related to the traffic making it to your website. Not just how many visitors, but also all the W's. When did they visit, What pages did they visit, Where did they come from, and Why are they there are all questions you can get answered. If your web provider cannot get you those details, then you should either find a provider that can or employ other third-party tools that will get you those answers. The most common source for this data comes from Google and its Google Analytics (GA) toolbox. Not knowing these things is not acceptable! Furthermore, if your advertising Calls To Action (CTA) are well defined, you will be able to identify the advertising source of most of your car buying clients. Today's advertising is the most measurable type of advertising, by far.

Why do you need to know these things? So, you can determine what is working and what is not. For the first time, you can calculate the cost per shopper and the cost per paying customer unlike any other advertising out there. If you see that you are spending only a few bucks with one advertiser, but they are getting you multiple sales every month, you might want to see if it is possible to spend a few more bucks with them in hopes you get even more sales. Likewise, if you see you are spending a lot of money with another advertiser but only getting a few (if any) sales as a result, you may want to cut back or cut out that advertising.

So, you reach that point where you realize a particular advertiser is not working for you. What should you do? Obviously, you might kick them to the curb, but don't stop there. Work on ways to replace that advertiser. Find the next source of sales, now! If you had something working for a while in the past but watched its ROI dwindle and subsequently cut them off, you might re-visit that advertiser and see if they got the wheels put back on their cart! Often, they are happy to see you return and may work out a special trial plan for you to earn your business again. Then, look for the newest success story. Talk to your dealer friends and see what is working for them. This is where it is good to have dealer friends near and far. You know your market. But sometimes the next success story may come from an advertiser not yet in your market. Check out social media. Dealers are now getting together and trading secrets on Facebook and other social media outlets. And finally, don't be afraid to ask your employees. You are not as young as you were last year and they may have exposure to other advertising you do not. Don't be afraid to try something new.

Advertising is no longer a Set It and Forget It approach. We all know you have to spend money to make it, but with today's advertising, if you are paying attention to the ROI, you will intuitively know how to best spend your advertising dollars.

John Summer
Owner
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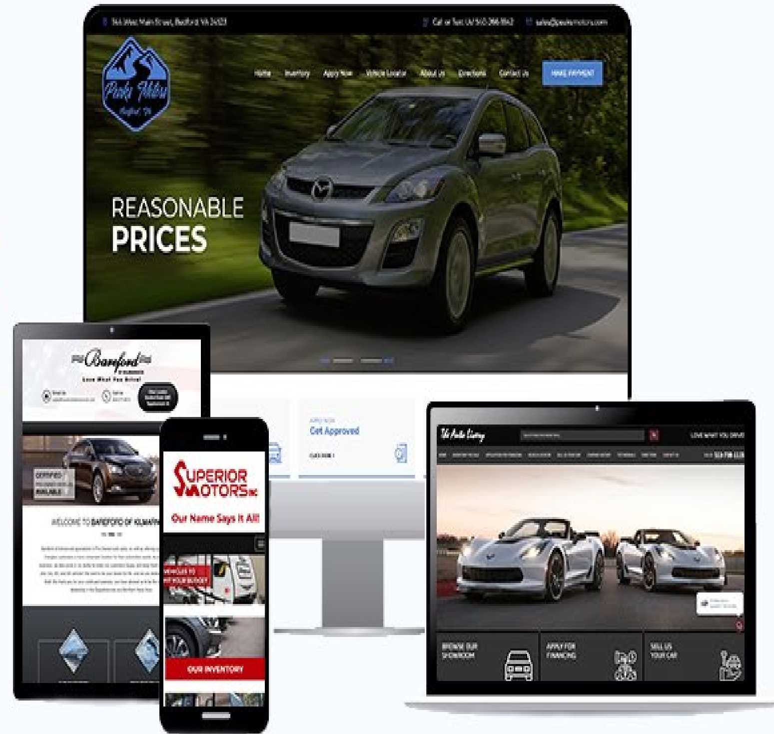

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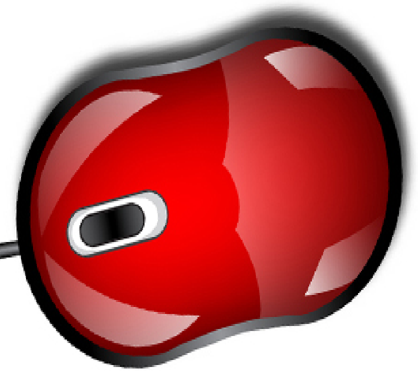

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By: K. Dailey Wilson

Data Security Déjà Vu: FTC Finalizes Notification Event Amendment to Safeguards Rule

Does anyone else feel like Bill Murray in that movie Groundhog Day – where his character keeps experiencing the same day over and over and over again? It seems like the Federal Trade Commission ("FTC") just amended the Safeguards Rule yesterday and now the agency is at it again. On October 27, 2023, exactly two years after releasing the first set of amendments to the Safeguards Rule, the FTC finalized its amendment requiring entities to notify the FTC upon the occurrence of certain types of security events. This article will breakdown the requirements of the 2023 amendment to help you make the changes necessary to your compliance policies and procedures.

What is a "notification event"?

Financial institutions subject to the Safeguards Rule, including auto dealers who offer financing and finance companies, are required to notify the FTC upon discovery of a "notification event" involving at least 500 consumers. The term "notification event" means the acquisition of unencrypted customer information, or encrypted information along with the encryption key, without the authorization of the individual to which the information pertains. This definition is much broader than most breach definitions under state data breach statutes, requiring notification for the unauthorized access of any customer information. Remember, the Safeguards Rule defines the term "customer information" to essentially mean any record containing nonpublic personal information about a customer of a financial institution, whether in paper, electronic, or other form, that is handled or maintained by or on behalf of you or your affiliates. In layman's terms, "customer information" can include:

- information a consumer provides to you on an application to obtain a credit transaction;
- payment history;
- account balance information;
- the fact that an individual is or has been one of your customers or has obtained a financial product or service from you
- any information a consumer provides to you or that your or your agent otherwise obtain in connection with collecting on, or servicing, a credit account;
- any information in connection with a financing transaction you collect through an internet "cookie;" and
- information from a consumer report.

When is notification required?

You are required to notify the FTC "as soon as possible" but no later than 30 days after discovery of the notification event. A notification event is considered "discovered" as of the first day on which you receive knowledge of the notification event. You are deemed to have knowledge of a notification event if the notification event is known to any employee, officer, or other agent of your company (other than the person committing the breach).

What notification is required?

The Rule requires the FTC to make an electronic form available on its website for you to make the required notification. The notification must include the following points of information:

- your company's name and contact information;
- description of the types of information that were involved in the notification event;
- the date or date range of the notification event, if that information is possible to determine;
- the number of consumers affected or potentially affected;
- a general description of the notification event;
- whether any law enforcement official has provided you with a written determination that notifying the public of the breach would impede a criminal investigation or cause damage to national security; and
- a means for the FTC to contact the law enforcement official.

The Rule allows a law enforcement official to request an initial delay in notifying the public of up to 30 days following the date when the notice was provided to the FTC. This initial delay may be extended for an additional 60 days if the law enforcement official seeks an extension in writing and the FTC has determined that public disclosure of the breach continues to impede a criminal investigation or cause damage to national security.

What do you need to do next?

The requirement to notify the FTC upon the occurrence of a notification event will be effective May 13, 2024. So, what do you need to do to be ready for the compliance date? You'll need to review your Safeguards Rule policies and procedures and your information security program and then make any changes necessary to incorporate the requirement to notify the FTC when you experience a notification event. You'll also want to review and revise your written incident response plan that you put into place following the 2021 amendments to the Safeguards Rule to address these reporting requirements as well.

* **K. Dailey Wilson** is a partner in the Tennessee office of Hudson Cook, LLP. She can be reached at 423.490.7567 or by email at dwilson@hudco.com.

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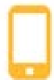

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By: Eric Johnson

The CARLAWYER©
Federal Developments

Continued on page 20

On January 2, a **California-based lead generator and its president agreed to a proposed court order settling charges brought by the Department of Justice, on behalf of the Federal Trade Commission, alleging that they sold the personal information of consumers as leads to telemarketers who then used those leads to make millions of illegal telemarketing calls.** Specifically, the complaint alleged that the defendants operated more than 50 websites, which offered mortgage refinance loans and other products and services to consumers, that used deceptive "dark patterns" to induce consumers to provide their personal information and provided inadequate disclosures about how that information would be used. The defendants allegedly stored and then sold consumers' personal information to telemarketers without obtaining consumers' informed consent to receive telemarketing calls. The telemarketers who bought the consumers' personal information used that information to make illegal telemarketing calls to sell products and services such as solar panels, hearing aids, and extended auto warranties. To resolve allegations that this conduct violated the FTC Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act, and the Telemarketing Sales Rule, the defendants agreed to a $7 million civil penalty, which will be suspended based on their inability to pay. The proposed order also permanently enjoins the defendants from initiating, causing others to initiate, or assisting others in initiating any outbound telephone call that plays or delivers a prerecorded message and any outbound telephone call to a person whose number is on the National Do Not Call Registry. Additionally, the proposed order permanently enjoins the defendants from the collection, sale, transfer, or disclosure of covered personal information in connection with lead generation.

On January 4, the **Federal Trade Commission and the State of Connecticut filed a complaint for a permanent injunction, monetary judgment, and civil penalty judgment in the U.S. District Court for the District of Connecticut against a vehicle dealership, its principals, general manager, finance manager, and two sales managers, alleging deceptive and unfair practices in the advertising, sale, and financing of vehicles in violation of the FTC Act and the Connecticut Unfair Trade Practices Act.** Specifically, the FTC and Connecticut alleged that the defendants charged improper fees in connection with the sale of certified pre-owned vehicles. Certified pre-owned vehicles have been inspected and repaired to the manufacturer's specification and are covered by a manufacturer's extended warranty. According to the complaint, when consumers attempted to purchase certified vehicles for the prices advertised, the defendants charged them hundreds to thousands of dollars in additional fees for services that are part of certifying a vehicle (e.g., fees for inspection, "CT Safety and Reconditioning," "certification upgrades," and "CPO," which stands for certified pre-owned). In addition, the complaint alleged that the defendants represented that consumers were required to pay these additional inspection, safety and reconditioning, and certification fees to purchase vehicles when, in fact, consumers are not required to pay such fees to purchase vehicles that are already advertised as certified. The complaint also alleged that, despite stating in advertisements that vehicles are certified and come with a limited warranty, the defendants did not get the vehicles certified by the manufacturer. The defendants allegedly advertised a vehicle as certified but did not report the sale of that vehicle or pay the certification fee to the manufacturer. Therefore, the consumer did not receive a certified vehicle or the benefits of the limited manufacturer warranty that come with certification. The FTC and Connecticut also alleged that the defendants charged consumers for add-on products that they did not authorize, including guaranteed asset protection products, service contracts, maintenance contracts, and total loss protection coverage, or deceived consumers into paying for them by saying that they were required. Finally, the complaint alleged that the defendants made misrepresentations about registration and other state-imposed fees, such as by stating that certain fees were required by the state when, in fact, they were not and by inflating the amount of required state fees.

On January 18, the **Federal Trade Commission issued an order postponing the effective date of the Combating Auto Retail Scams Trade Regulation Rule ("CARS Rule") while a legal challenge to the rule is pending judicial review.** The CARS Rule was published in the Federal Register on January 4, and the FTC designated an effective date of July 30, 2024. On or about January 5, the National Automobile Dealers Association and the Texas Automobile Dealers Association filed a Petition for Review ("PFR") in the U.S. Court of Appeals for the Fifth Circuit, challenging the rule on the grounds that it is "arbitrary, capricious, an abuse of discretion, without observance of procedure required by law, or otherwise not in accordance with law[.]" On January 8, the industry associations filed a motion with the Fifth Circuit seeking a stay of the rule and expedited consideration of their PFR. The FTC's order states: "Petitioners' assertions and suggestions that legally compliant dealers have to make unnecessary changes to satisfy Petitioners' misunderstandings of the Rule have created uncertainty. Additionally, Petitioners are seeking expedited consideration of the PFR, and if that request is granted, a stay of the effective date pending expedited review should not postpone implementation of the Rule by more than a few months, if at all. Balancing the equities here, the Commission has determined that it is in the interests of justice to stay the effective date of the Rule to allow for judicial review. A Federal Register notice to reflect this action is forthcoming. Once the PFR's merits are resolved, the Commission will publish a new document in the Federal Register establishing a new effective date."

On January 19, the **Federal Reserve Board announced that it entered into a consent order with Industrial and Commercial Bank of China Ltd., which conducts operations in the U.S. through a branch in New York, resolving allegations that the bank and the branch disclosed confidential supervisory information to a third party without obtaining prior approval of the FRB.** The FRB determined that the bank's branch lacked any formal policies, procedures, training, or other internal controls designed to instruct employees regarding how to properly handle confidential supervisory information or how to prevent the unauthorized dissemination and use of that information. The FRB imposed a civil money penalty of $2,431,956 on the bank and the branch. The consent order requires the bank and the branch to submit a written plan to enhance their internal controls and compliance regarding the identification, monitoring, and control of confidential supervisory information. The FRB's action was taken in conjunction with an action by the New York Department of Financial Services, the state supervisor of the bank's New York branch, which imposed a $30 million penalty on the bank and the branch for unlawful disclosure of confidential supervisory information and Bank Secrecy Act/Anti-Money Laundering violations.

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BLOCK OUT THE NOISE

I travel a great deal by plane throughout North America. I rarely travel without my latest pair of over the ear Bose noise cancelling headphones. Between the consistent hum of the plane's engines, the sound of air hissing through the overhead vents, the "expert" on all Boeing airplanes seated behind me who also happens to be sharing his "expertise" with anyone who will listen,

I would go crazy without the headphones. As social as I consider myself to be, I really enjoy my privacy on planes. This is my time to focus and think about my days ahead. If the noise level gets to the point where I can hardly hear myself think, I insert a pair of silicone ear plugs and place the noise-cancelling headset on top of those. Ahhhh. Peace and quiet at last.

I so often wish I could convince dealers, general managers and department managers to place a pair of noise-cancelling headphone on their heads to block out such noises as; "floor traffic is terrible, I can't buy any cars at the auction, auction prices are sky-high, if I had more leads we'd sell more cars, nobody wants to work anymore, I can't make any gross… it's all a race to the bottom…." You have to cut the ambient noise by allowing the "good noise" in. You can do this by no longer comparing your dealership to others or to your past performance. Stop calling the guy up the street to see if he is as miserable as you. Start tuning in to your POTENTIAL. No one cares about your average gross profit per vehicle. What I want to know is, how's your bottom line? I'm not saying gross profit isn't important. What I'm suggesting is that in this challenging and competitive economy, it doesn't matter how much gross is generated. What matters is how much gross profit you got to keep after expenses. Do you and your management team have any idea the percentage of gross profit generated, was spent on operating expenses? Stop fooling yourself into believing, "my people don't need to be worrying about expenses, they need to focus on selling cars and generating gross." Without a doubt, I find when dealers have open, honest and consistent discussions regarding expenses, net profit (before taxes) increases. Do your managers understand the true cost of aged inventory? Do your managers understand the true cost of replacing a lost set of keys (or fobs)? Do your managers understand the true cost to over-night documents that should have been signed correctly in the first place? How much money is being wasted on your ineffective website? Some dealership websites appear to intentionally inhibit potential buyers from buying. When is the last time you actually tried to walk through your own site? Stop spending money on marketing until you know what is actually working and what is not.

Remember this: on your worst day of the month when you sold zero vehicles, some dealership had a great day. Start holding yourself accountable for daily results and teach your team to block out the noise.

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The CARLAWYER©
Case(s) of the Month

By: Eric Johnson

Florida Resident Failed to State Claim Against Kansas Dealership for Violating Kansas Consumer Protection Act Where Sale Documents Were Executed in Florida: A Florida resident bought a used car from a Kansas dealership. The Florida resident did not come to Kansas to negotiate or complete the purchase of the car; instead, the dealership sent a representative to Florida to sign the documents with him. After the purchase, the car was titled in Florida. The buyer sued the dealership in Kansas for committing deceptive and unconscionable acts, in violation of the Kansas Consumer Protection Act, by failing to deliver the car's title timely, falsely stating that he must purchase an extended warranty or service contract, and failing to engage in the sales contract's arbitration procedure. The parties cross-moved for summary judgment, and the **U.S. District Court for the District of Kansas** granted the dealership's motion and denied the buyer's motion. Determining that it must engage in a conflict of laws analysis because Kansas law and Florida law do not align on the issues of deceptive and unconscionable acts and the effect of failing to deliver title timely, the court went on to note that resolution of the conflict turned on whether the case was a tort case or a contract case. If the case were a tort case, the court found that the law of Florida, which is where the buyer's injuries occurred because he allegedly failed to receive title in Florida in a timely manner, would govern. If the case were a contract case, the court found that Florida law would similarly govern because Florida was where the contract was made and where the parties would have arbitrated the buyer's claims. Because the buyer was not a Kansas resident, because Florida law rather than Kansas law governed, and because the buyer did not state claims under Florida law, the court granted summary judgment for the dealership. Moreover, the court determined that even if it had not undertaken a conflict of laws analysis and merely addressed the KCPA claims, the dealership would still be entitled to summary judgment because the KCPA requires that the consumer transaction complained of take place within Kansas, which the buyer's car purchase did not. See **Moccaldi v. Pratt City Ford, LLC,** 2024 U.S. Dist. LEXIS 1850 (D. Kan. January 4, 2024).

This Month's CARLAWYER© Compliance Tip

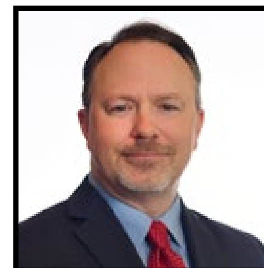
Have you read the FTC's newly issued Combating Auto Retail Scams Trade Regulation Rule ("CARS Rule") related to the sale, financing, and leasing of covered motor vehicles by covered motor vehicle dealers? The CARS Rule is a modified version of the FTC's initial proposed Motor Vehicle Dealer Trade Regulation Rule, called the Vehicle Shopping Rule. The CARS Rule, among other things: (i) prohibits certain motor vehicle dealers from making certain misrepresentations, expressly or by implication, in the course of selling, leasing, or arranging financing for motor vehicles; (ii) requires accurate pricing disclosures in dealers' advertising and sales communications; (iii) requires dealers to obtain consumers' express, informed consent for charges; (iv) prohibits the sale of any "add-on" product or service that confers no benefit to the consumer; and (v) requires dealers to keep records of certain advertisements, sales scripts, consumer complaints, and customer transactions.

The Rule will have a profound impact on how covered motor vehicle dealers advertise vehicles, communicate with its customers, and sell vehicle protection products. The Rule will also require new disclosures and forms, require additional trainings, monitoring, and compliance responsibilities, require a dealer to make substantial recordkeeping changes, and increase the time it takes to sell and finance a vehicle. If a covered motor vehicle dealer violates the CARS Rule, it is considered an unfair or deceptive act or practice (UDAP) punishable by a $51,744 fine for each violation.

The CARS Rule was originally scheduled to take effect on July 30, 2024, but on January 4, the NADA and the Texas Automobile Dealers Association challenged the CARS Rule with a petition for review filed before the U.S. Court of Appeals for the Fifth Circuit. Shortly after this filing, the NADA and the TADA moved to stay the final rule and for expedited consideration. After telling the NADA that the FTC could oppose the stay, the FTC issued an order staying the effective date of the final rule pending judicial review. If the court upholds the rule, the FTC will announce a new effective date for compliance.

Dealers can't afford to wait to see what happens in the litigation before getting ready to comply with the Rule. When looking at the civil penalties for violations that could easily bankrupt a dealership, it's better to risk preparation that may not ultimately be needed over being unprepared if the Rule becomes effective this year.

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



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