

Spring 2021



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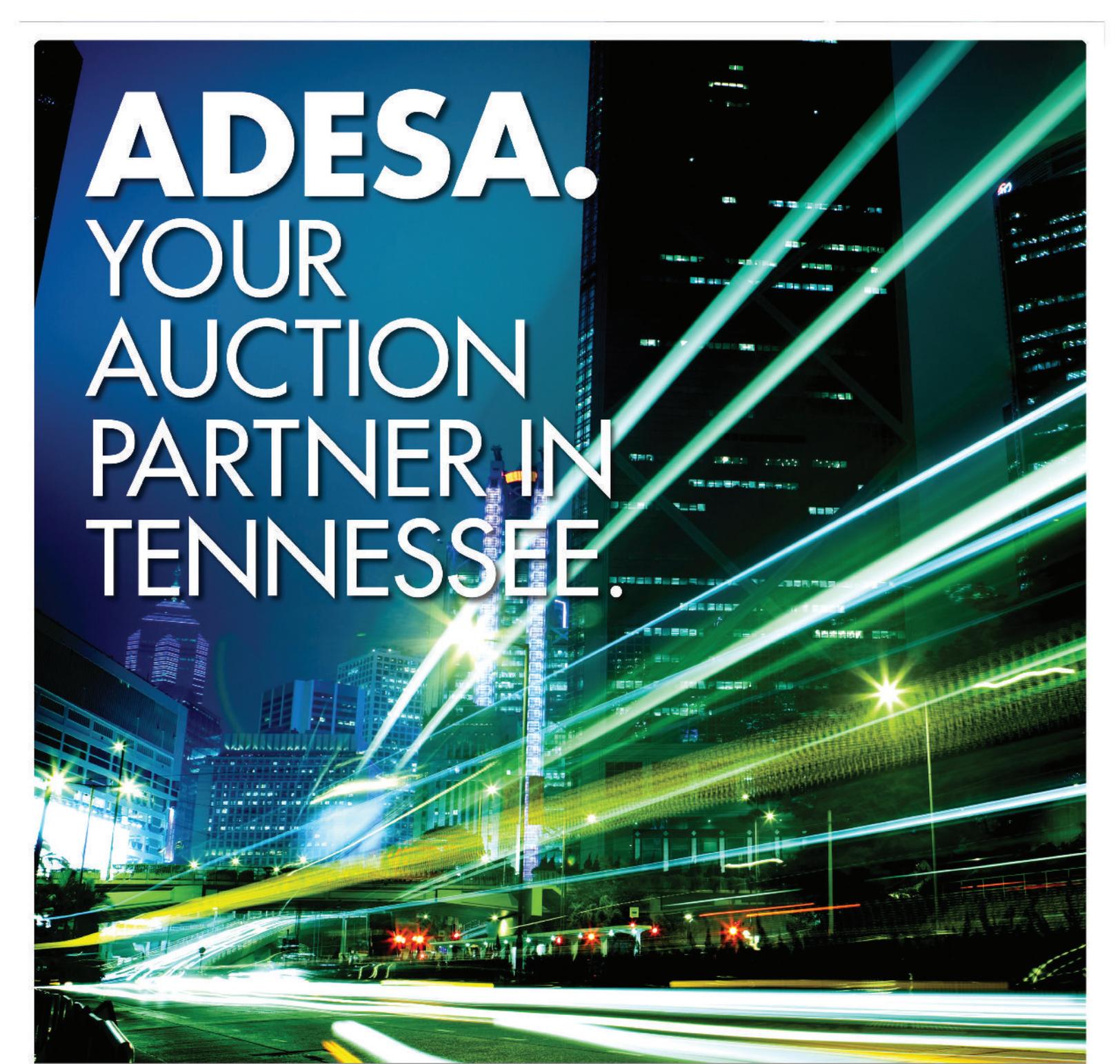
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– Theodore Levitt
Economist, Harvard professor (1925-2006)

Long before COVID was an every day word, ProGuard began searching for solutions to help our dealers adapt to the changes online shopping were bringing to the buying process. We wanted a tool that was easy to use and after much testing, found it with a company called SnapCell that offers online video capabilities to operate the automotive sales process digitally.

With SnapCell, you can use live video streaming for face-to-face customer contact or to take them on a virtual test drive. On the service lane side of the operation, technicians can explain recommended repairs to the customer, expediting approvals and open up more bays.

Keeping with our tradition of innovation. ProGuard has formed an alliance with SnapCell to bring value to our dealer partners in today's challenging environment. We have negotiated an exclusive discounted trial rate to help incorporate SnapCell into your operations immediately. We believe this technology has great applications today and well into the future and encourage you to take the first step to successful digital marketing.

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Disclaimer:

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Chief Editor Phyllis Sartin

Greetings,

We are so fortunate to be able to work in this great industry. Our partners have been wonderful as they continue to share information with us about the Automotive Business. All our associates state that business is good, even though inventory is somewhat low, and wholesale prices are increasing. The folks that are forward thinking will be in good shape to deal with this as we move through 2021.

There has been much talk about compliance issues and legislative information over the past few months. TDN is positioned to provide the most up to date data available as we work with some of the top talent in the industry. Please do not hesitate to reach out with questions and consider taking the step of partnering with our group. We are easy to work with, prompt in our response, and appreciate what the Auto Business does for Tennessee.

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Warning

Strong Economic Recovery Predicted for 2021-2022

I'm extremely hopeful many used vehicle dealers enjoyed a very successful sales and profit volume during the pandemic year 2020. It appears many consumers made the switch from new vehicles to used vehicles during this time period as well as having enjoyed somewhat of a financial stimulus jolt. Consumers who frequently used Uber or Lyft opted instead to purchase their own vehicles once again in an attempt to stay a safe distance from unknown drivers. For many used vehicle dealers, the struggle last year as well as this year appears to be in acquiring used vehicle inventory. With lower inventory levels dealers should be able to command higher selling prices even though they are paying higher wholesale prices at auctions.

Economists predict consumers who have accumulated more cash due to lower spending during the pandemic will continue to spend on themselves during the remainder of this year as well as into 2022. This is very good news for most retailers especially those who have built a stronger infrastructure within their businesses in order to deal with on-line shoppers and buyers. Because of the shortage of electronic chips needed to build new vehicles, new vehicle production has either slowed or even halted by several manufacturers.

This lower availability of new vehicle inventory, pent up demand for new vehicles as well as new vehicle payments now exceeding \$500 per month on average, is all contributing to the traditional new vehicle consumer to pause and consider purchasing a nice used vehicle at a lower national monthly payment of closer to \$350 per month. This is very good news for used vehicle dealers who should benefit from this switch being made from new vehicle buyers to used vehicle buyers.

Warning #1: New vehicle buyers have traditionally held new vehicle dealers and product to a higher standard. New vehicle purchasers have been accustomed to being treated and served in a manner often dictated by an OEM. New vehicle purchasers have been accustomed to hearing and learning about OEM's Certified Used Vehicle programs offering nearly new, pristine vehicles with amazing warranties and very competitive interest rates. New vehicle purchasers are accustomed to mostly product knowledgeable salespeople.

Today's sales staff must be fully cognizant of the new used vehicle buyer's shopping and purchasing expectations. Under these current conditions we must be mindful of the fact we will not always enjoy a seller's market and will once again return to a balanced or even lopsided buyer's market. A dealership never wants to place itself in the position of having made a sale solely because it had the vehicle and no one else did. You want consumers to be able make their purchase because you were the only dealer that had the inventory available but also provided an outstanding sales, service and finance experience. Anyone can sell a vehicle one time in a high demand market, but what does your repeat sales percentage look like.

Warning #2: It is very easy for dealerships to permit their sound businesses practices to slide or even get sloppy when selling in a very robust economy. Practices and procedures that have been a part of dealership operations suddenly begin to erode as excuses are being made and accepted such as; "we're too busy right now, just get it done", "we'll worry about that later", "I don't care about that right now, I'm too busy trying to buy cars and run them through the shop", "tell your customer there's no way I can do this today, ask them to come back". Don't let today's gains become tomorrow's struggles by breaking your own rules. Enjoy the feast but don't become lazy and unfit.



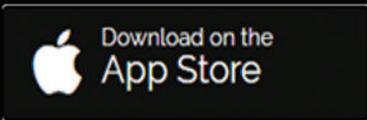
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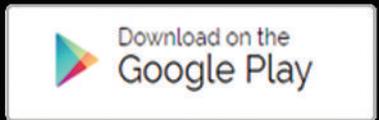
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COVID Changed Car Buying Forever!!! (Well, not quite.)

Read virtually any recent article about car buying, and you'll soon learn that the pandemic changed car buying forever; that virtually everyone wants to buy their next car online; that traditional dealers better change everything now or they'll soon be out of business.

Except, the pandemic hasn't changed everything, has it?

Many of you rushed to add an online buying tool to your website. That was smart, as these tools can be great at driving sales leads. However, many of your salespeople and BDC agents decided to treat the leads from your online buying tool as prospects who only wanted to buy fully online. This is dumb, because assuming someone wants to buy 100% online ensures you'll close less than half the amount of leads you could be closing.

T-Rex Wants to Hunt

Overwhelmingly, even today's car buyers value the test drive when making a buying decision. In fact, a recent Harris Poll showed that 89% rated the test drive as the most important step in buying their last vehicle.

While the convenience of buying fully online makes a lot of sense to members of the press, the truth is people may not like the car buying experience, but they do enjoy car shopping. In the words of Jurassic Park's Alan Grant, "T-Rex doesn't want to be fed, he wants to hunt."

So, why aren't your salespeople and BDC agents inviting them in for a test drive? After all, nine out of ten customers want this, don't they?

It's not your team's fault. They were taught by your digital retailing vendor, your OEM, the press, or some new-age sales trainer that we should treat online buyers differently; we should let them buy the way they want.

If you asked the average car buyer in the 1990s how they would like to buy a car, they would've told you something like: "Well, I'd like to wander the lot by myself, I'd like to see the final price clearly marked on every vehicle, and I'd like to know exactly what my trade is worth before speaking to a salesperson."

If your dealership did business like that in the '90s, you wouldn't be reading this article today. You'd be running an ice cream stand somewhere. The reality is there is a fine line between a great buying experience and an uncontrolled buying experience. Yes, you should provide a great buying experience; but lose control of the sale, and you'll lose the sale.

For leads from your digital retailing tool, maintaining control begins with the very first customer contact.

The Appointment-First Approach

Successfully handling the leads from your online buying tool does not mean asking the customer how they want to proceed. It means treating these leads like any other sales lead until the customer tells you something different.

If someone has done hours of research over the last few weeks, and then submits a lead through your online buying tool, what do you think they want to do next? Well, nine out of ten of them want to see, touch, feel, smell, and test drive their vehicle of interest! That means, it's time to invite them in to do just that. I

call this using an [Appointment-First Approach](#).

Let's say I received a digital retailing lead from a customer named Barbara Jones on a 2017 Ford Escape. Using the Appointment-First Approach, there's only one thing I'd say to her when I made contact:

"Hi Barbara, this is Steve from Stauning Motors, and I'm just calling to schedule your priority test drive on that 2017 Escape. Now Barbara, I have two test drives open on that Escape this afternoon, I have 12:15 and a 12:45. Which one of these works better for you?"

If she has questions, she'll ask them. If she has objections, she'll raise them. If she wants to buy 100% online, she'll tell me this. But, and here's the great news with this approach, about 40% of the time she will pick one of my times or give me a better time! I just set an appointment that will show today without getting a lot of smokescreen questions or objections. I did this because I moved Barbara to the step she wanted to take next; that is, the test drive.

So, don't believe the hype. Yes, some people want to buy fully online, and you should work to make this a reality for that small percentage of buyers. But losing control of the sales process should never be an option for your team when working with any prospect, regardless of what you read in the press. Good selling!



Steve Stauning
Founder
Stauning Solutions Group

Steve is the author of *Ridiculously Simple Sales Management* and *Assumptive Selling*; 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 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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Equality in Credit Decisions – “Sex” DOES include Sexual Orientation and Gender Identity

In 2020, the Supreme Court held in *Bostock v. Clayton County, Georgia* that an employer who fires an employee for being gay or transgender violates the Civil Rights Act of 1964 (“Title VII”). Though the list of protected classes covered by Title VII does not expressly include sexual orientation or gender identity, the Court found that firing an employee for being gay or transgender constituted discrimination based upon the person’s sex. The Equal Credit Opportunity Act (“ECOA”) and Regulation B likewise prohibit discrimination on the basis of sex. Following *Bostock*, many wondered whether the holding would extend to the ECOA and Regulation B.

Today we can answer that yes, “sex” does include sexual orientation and gender identity under the ECOA and Regulation B. On March 5, 2021, the Acting Director of the Bureau of Consumer Financial Protection (“Bureau”), issued an interpretive rule clarifying that ECOA and Regulation B’s prohibition against sex discrimination extends to discrimination on the basis of sexual orientation and gender identity. In reaching this conclusion, the Bureau noted that ECOA and Title VII are usually interpreted consistently with one another. The ECOA, like Title VII, prohibits discrimination on the basis of sex. And discrimination based on sexual orientation or gender identity “necessarily involve consideration of sex.” The Bureau also noted that neither ECOA nor Regulation B require that discrimination based on sex be the sole or primary reason for the discriminatory action – only that the applicant’s sex be a reason. Further, like the Court in *Bostock*, the Bureau found that the ECOA and Regulation B do not require discrimination on a group-basis – e.g., refusing to grant credit to all persons identified as male at birth. Instead, the ECOA and Regulation B are also violated when an individual applicant is denied based on their biological sex.

Finally, the Bureau noted that sex discrimination under the ECOA and Regulation B also includes discrimination “based on an applicant’s associations.” An example of associational discrimination is requiring a person married to an individual of the same biological sex to provide different documentation of the marriage than a person who is married to a person of the opposite biological sex is required to provide.

Based on the Bureau’s March 2021 interpretive rule, the Bureau can engage in an enforcement action against a creditor who discriminates against a credit applicant on the basis of sexual orientation or gender identity. Therefore, it is doubly important that creditors ensure their underwriting policies and procedures neither facially discriminate against such individuals, nor create a disparate impact. Creditors should also review customer complaints for allegations of discrimination and revise existing policies, procedures, and training materials to specifically state that the creditor does not discriminate on the basis of sexual orientation or gender identity.

Practicing equality in credit decisioning is not only required from a legal and regulatory perspective. Today’s consumers value social consciousness and failing to treat all consumers equally will also have reputational and financial consequences for a financial services provider.

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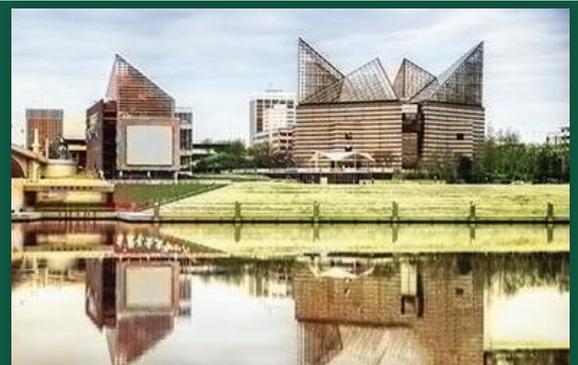


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What's Your Compliance Budget?

by Eric L. Johnson

Like many of you, I sit down at the beginning of a new year and try to map out my budget for the coming year. It's not something that I particularly enjoy, as it requires me to divert my attention from keeping the plates spinning on the various client projects and other matters I'm handling to do my best guess at where I may need to allocate financial resources and efforts during the coming year.

The ongoing global pandemic and changes in the White House and at the federal regulator level have made planning particularly tricky for 2021. If you're watching the changes at the Consumer Financial Protection Bureau and the Federal Trade Commission, I think you'll agree that we can expect to see more compliance issues raised and more enforcement actions in 2021.

I thought it'd be an interesting exercise to look at the budgets of the CFPB and the FTC, two federal regulators that most directly impact franchise dealers, buy-here, pay-here dealers, independent dealers, and auto finance companies.

BUDGETS OF CFPB AND FTC - 2020/2021 - IN MILLIONS



As you can see, two of the biggest, baddest, meanest federal enforcers have hundreds of millions of dollars a year to run their operations, pay their people, supervise and examine your business, and enforce the myriad of federal laws and regulations against you. Those numbers don't even

take into account the Department of Justice budget, which is a proposed \$31.7 billion for 2021 (you read that right — billion, with a "b").

If you don't think they're going to use their budgets to come after you, you're wrong. As I'm sure you know, CFPB Director Kathy Kraninger resigned the day President Biden was inaugurated. CFPB Chief Strategy Officer Dave Uejio took over as the CFPB's acting director until Biden's nominee, FTC Commissioner Rohit Chopra, is confirmed by the Senate as the next CFPB director.

In a memo to staff, Uejio reportedly said that, although his appointment "may be relatively brief," he does not intend to perform the role as a steward. "The COVID pandemic rages unabated, threatening the well-being of millions of Americans. I believe the Bureau can and must do more to meet the moment to ensure we are taking all available measures to protect consumers, particularly the most vulnerable." It's clear, based on the statement in his memo that "Black, Brown, and Native American communities in particular have borne a disproportionate share of the impacts of COVID," that Uejio plans to focus on ways the CFPB can address racial and economic inequality.

When Chopra is confirmed by the Senate and becomes the next CFPB director, it won't get any easier for the industry. Chopra has served as an FTC commissioner since May 2018, often issuing dissenting statements in voting against settlements approved by the Republican-led FTC. In those statements, he often stressed the need to enforce the laws and to get more redress and penalties in cases, even if it means having to litigate. He has argued that no-money, no-fault settlements include no help for the affected parties and no other meaningful accountability.

Continued on page 20

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Advertising and the Motor Vehicle Commission

On March 9, 2021 the Tennessee Motor Vehicle Commission sent an email to all motor vehicle dealers in Tennessee informing us of an increase in auditing of advertisements to be performed by the Motor Vehicle Commission. This was expected as the new executive director of the Commission, Denise Lawrence, has made it a point that she wants to level the playing field for all dealers as it relates to advertising. Now more than ever dealers need to pay close attention to their own advertisements (regardless of the medium – print, email, radio, TV or websites) to ensure they are within the bounds of Tennessee statutes and all the federal laws – including the Federal Trade Commission.

Our office has fielded numerous client calls to ensure their advertisements are in compliance and aren't made an example by the Commission. Throughout these reviews a few common issues continue to surface that we believe will be "low hanging fruit" for the Motor Vehicle Commission to target:

- All advertisements must be truthful. Truthful means claims must be able to be substantiated. Ex. "Lowest price in Tennessee" would not pass this test.
- If you list a sales price of a vehicle, the price must include the dealer processing fee. This is done by advertising the sales price as base price plus processing fee and also a disclaimer stating "Sale price includes dealer fee of \$X." Also note to always identify the dealer processing fee as such and not use "doc fee."
- Advertisements/Sales price cannot "stack incentives." If a sales price is only found after a down payment, minimum trade in or financial institution incentives, this needs to be stated in large print and not hidden in a disclaimer.
- A disclaimer, i.e., small print, cannot contradict large print.

- The only additional fees that can be added to a sale price is tag, title, registration fees and customer selected options.
- If the ad includes any trigger terms, the full Truth in Lending disclosure must be included. For example, a down payment or amount of payments is a trigger term. If used, the disclaimer must include a stock number, amount of down payment, amount and number of monthly payments, the APR and "price includes dealer fee of \$X, plus tag, title and registration."

There are countless items that can trigger an audit or a direct fine from the Motor Vehicle Commission. Therefore, especially now, we highly recommend all dealers speaking with their attorney who understands the advertising laws and can ensure their dealership is not caught in the crosshairs.



Jonathon D. Mason
Cameron Worley, P.C.

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What's Your Compliance Budget?

Continued from page 16

What about changes at the FTC? Commissioner and Chairman Joseph Simons resigned, effective January 29, along with members of his senior staff. Commissioner Rebecca Kelly Slaughter has been designated the acting chair. To understand what she may think of the auto financing market, look no further than her statement in Matter of Liberty Chevrolet, Inc. d/b/a Bronx Honda. In the very first sentence, she states: "The automobile-financing market in the United States is profoundly broken." It doesn't get any better, as she later writes: "Although this matter involves extreme conduct that may make it seem like an outlier, the tricks and traps that Bronx Honda used against consumers are all too prevalent at auto dealerships across the country." When Chopra is confirmed by the Senate as CFPB director and President Biden appoints two new commissioners, we'll likely see a 3-2 Democrat majority at the FTC.

You will soon have very active federal (and state) enforcers with endless amounts of cash in their pocketbooks to use against you. What can you do?

We often tell our clients and attendees at in-person conferences (remember those?) that "no compliance budget means no compliance." Therefore, you need to devote meaningful resources to your compliance program.

Review and update, if needed, your Safeguards and Identity Theft Prevention (Red Flags) Policies. If you're a dealer and you haven't adopted the NADA's Fair Credit Compliance Policy & Program and Voluntary Protection Products Model Dealership Policy, you need to look at doing so ASAP. Don't just do the minimum; fully adopt the program and the policies. If you don't have a Compliance Management System in place, that should be at the top of your "to-do" list. If you do have a CMS, make sure it's updated, taking into account the CFPB's CMS findings with regard to other companies, and ensure it tracks your actual policies and practices.

Given the huge federal budgets you're up against, I have to ask: What's your compliance budget?



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AVOCA, Pa., Feb. 16, 2021 /PRNewswire/ -- ProGuard Warranty, a leading vehicle protection product provider, has launched a Certified Pre-Owned (CPO) program to better position independent and franchise dealers for the current automotive retail environment. ProGuard's CPO program helps dealers improve profit margins and inventory turns by providing higher quality vehicles backed by a 125-point certification process for buyer's peace of mind.

Prior to COVID-19, CPO had been one of the strongest performing segments in the automobile retail market. That changed during the initial quarantine period when shoppers were unable to purchase cars on-site, resulting in a drastic decline in auto sales. At the same time, the forced closures of auto plants created a lack of new car inventory, further reducing revenue. "Rather than sit on unsold units, dealers released a significant amount of CPO-eligible inventory into the non-CPO used-vehicle market to move vehicles off the lot and recoup inventory costs," said Dominic Limongelli, President of ProGuard Warranty. As the year progressed, auto sales recovered, and 2020 CPO sales ended up only slightly underperforming expectations.

Forecasts predict new car production levels to normalize by the third quarter of 2021, but it will take time for automakers to get vehicles into the hands of dealers. Customers wanting a new vehicle will find this low inventory frustrating, leading more buyers to the pre-owned market. "We've been in the automotive business for over 70 years, and while this is our first pandemic, we know that people will always need vehicles. Buyers have come back to dealerships but the marketplace itself has changed and dealers need to adapt to survive," said Limongelli.

"This virus has affected every aspect of our lives, which is clearly evident in the retail automotive market," stated Jan Klais, Vice President of Analytics for ProGuard. "Shoppers are no longer coming in looking for a cheap commuter vehicle, or a car for their kid to drive to college. Instead of spending money on destination vacations, they're putting that money into their homes and vehicles, things that bring comfort daily. Underneath all this exists a layer of financial uncertainty, with buyers being wary of locking themselves into a lease or over-extending themselves on a loan."

ProGuard recognized this as an opportunity to help their dealer partners succeed by offering a program focused on the best of the best certified vehicles to meet the needs of today's buyers. "CPO vehicles allow shoppers to upgrade to a nicer 'new-ish' purchase without taking the depreciation hit. These vehicles are ideal for customers who want the additional features and peace of mind that comes with a new vehicle but aren't willing to pay full price for these luxuries. Since we're all putting less mileage on our vehicles, buyers are willing to pay more for a vehicle that they will hold onto longer," offered Limongelli.

"We think CPO is the way for dealers to set themselves apart right now by capturing the higher price point segment of the used car market," said Tyler Todd, Sales Manager of ProGuard Warranty. "Greater demand for lower mile, late model vehicles is forcing dealers to pay a higher cost per unit, so they are looking for ways to make back that expense. By offering certified vehicles, dealers can increase profitability on every unit and pick up the maintenance business, further solidifying the relationship."

Dealers perceive CPO programs to be difficult and costly, which is based on their experience with factory programs. ProGuard took this into account in developing their CPO program, simplifying the process and providing customer-friendly sales tools to promote the vehicles. Chris Zamboni, General Manager of William L. Aurandt Auto Sales in Johnstown, PA, was looking for a competitive edge and has been pleasantly surprised with what ProGuard's CPO program has done for his business. "With so much of the sales process being done online now, we need to provide every reason possible for a shopper to choose our vehicle over someone else's. The ProGuard multi-point certification process is a great selling point that helps close deals and turn inventory much faster."

ProGuard's Certified Pre-Owned program offers many advantages for the independent and franchise dealer. "Unlike manufacturer's programs where factory CPO vehicles can only be sold by a franchise used-car dealer for that brand, our dealers can select their own inventory. They are not limited to a specific make and model so they can cherry pick the vehicles best suited to their customer base," stated Limongelli. ProGuard dealer partners are given the option of choosing a length of contract that meets their budget and can earn back the cost of certification plus more through upsells. In addition, all CPO contracts are eligible for incentives and points earned on every contract sold can be redeemed for operational, sales and marketing tools through the ProGuard Miles® program.

All of this is backed by the exceptional support of ProGuard, which is more important than ever when it comes to certified vehicles. Technicians are trained to perform the certification process and provide customers verification as to the quality of the product as part of the sale. ProGuard Certified vehicles come with an extensive vehicle protection plan that covers advanced electrical, air conditioning, sensors, and suspension components – ensuring customers will not be hit with expensive repairs down the road. "Our certification is only as good as our reputation, so we are very selective about the dealers we accept into our program," Limongelli said. "If there is one takeaway from this past year, it's the importance of keeping family and friends safe and that's what we work to do every day."

About ProGuard Warranty

ProGuard is a third-generation, family-owned business that has been serving the automotive industry for over seventy years. Their many years in the industry has led to a unique expertise in knowing the products and coverage needed to protect dealers and their customers. They offer an expansive menu of new and pre-owned vehicle protection plans, plus a unique program specifically designed for commercial vehicles and GAP policies. ProGuard products are available exclusively through their nationwide network of dealer partners, who appreciate the company's tradition of flexibility, transparency and simplicity. For more information, contact Dominic Limongelli, President, dlimongelli@proguardwarranty.com or call 877-474-9462, ext. 105.



Kevin McGlothlen

Kevin McGlothlen is a 39 year veteran of the Auto Auction Industry and has been active weekly in the Tennessee market place since 1992. He currently sells at 4 auctions per week including Memphis Auto Auction and ADESA Memphis.

While attending cattle and farm auctions with his Father as a young Iowa farm boy, Kevin never dreamed he would spend a lifetime chanting and selling cars literally coast to coast and border to border.

He has competed 8 times in the World Automobile Auctioneer Championship and had earned 2 Runner-up, 2 Reserve and 2 World Champion Titles in the Auctioneer and Team Division before retiring from competitive Auctioneering in 1998.

Mentoring and training young Auctioneers and Ringman, helping them develop marketable skills to open doors into the amazing Auto Auction Industry has become Kevin's focus and passion. "Helping develop the next generation is not only my pleasure, it's my responsibility" McGlothlen said.

He also mentioned the Auto Auction Industry has evolved and grown exponentially during his time behind the microphone. Technology and demand has driven auto auctions to the forefront of automotive remarketing. The internet has opened up the world to what use to be small local markets and created a buyer and seller base that is literally worldwide. The duties and responsibilities of the auctioneer have grown into managing a live crowd and selling to real time live internet buyers. The synergy between live in lane and internet bidding is powerful and productive. Proof of that strength is the exponential growth of Independent auctions such as Memphis Auto Auction and Atlas Auto Auction and others such as Dealers Auto Auction that chose to remain live in the lane over the past year.

Kevin is quick to give credit to the entire team of ringman, clerks, sales team, registration and drivers for making it all happen!! "None of what I do matters if they don't do what they do" stated McGlothlen.

"To all my dealer friends thank you for helping feed my family for 39 years, I hope I've done the same for you." "Come see me when you are in Memphis and we'll do some deals together!!"

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Auction	Auction	Auction	Auction	Auction	Auction
\$25.00	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00
Jan 2018	Feb 2018	Mar 2018	Apr 2018	May 2018	Jun 2018
Auction	Auction	Auction	Auction	Auction	Auction
\$25.00	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00
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