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Chief Editor Phyllis Sartin

I want to welcome you to our first issue of Tennessee Dealer News Magazine since assuming duties as the Chief Editor. My experience as the Tennessee State Association Director and an Automotive Products Representative has given me a genuine respect for the Auto Dealer Industry.

Tennessee Dealer News Magazine's mission is to provide Auto Dealers relevant content, product & service updates, and allow a free flow of dialogue to further this great industry. I want to personally ask for your feedback as we look forward to serving the hard-working Dealers, Auctions, and Product Providers of the great State of Tennessee.

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Greg Wadsworth
General Manager

Speaking for Success...time to Modernize your Dealership Sales Language

It's kind of nostalgic to listen to car salespeople talk with customers on the phone, either in live calls or when leaving voicemails, and hear language that I was taught back in 1982 when I started in the auto business. As difficult as it is to teach adults new strategies and tactics, I marvel when I think of the words, we just can't shake that have been around seemingly forever. They must have just hit at the right time when car salespeople were willing to absorb and commit to the updated language. As I type this, I imagine that some more experienced salespeople can weigh in and say, "that was around in the 60's, 50's, 40's... (fill in the era)."

One of my personal ambitions in the industry is to assist our clients in updating their sales language in an effort to help them separate from the long-standing reputation that sandwiches car salespeople between Members of Congress and Lobbyists in the latest Gallup Poll on Professions Ranked on Ethics. By the way, the aforementioned professions are at the bottom of the December 2017 Gallup poll. Just like dressing for success can change the way you are perceived, "speaking for success", can have the same impact.

I've often heard that the way you can tell a salesperson is lying is when they open their mouth, and as a salesperson for my entire career, I think this can work in my favor by behaving differently, and that starts with the sales language I choose to use. Let's start with some of the industry language stalwarts and think of another approach.

"Your presence is your leverage" – in the digital age, I can almost imagine a sales agent for any online retailer contacting you after you agree to purchase online

sending a message or calling to let you know, "if you can make it down to the warehouse this evening, we can knock another 5 bucks off your book order because your presence is your leverage." With the ability to gather all the details about purchasing (specs, price, trade value, financing options, incentives, etc.) from dealership websites, independent consumer sites as well as 3rd Party marketing platforms, one can imagine that consumers contact a dealership to firm up the deal or confirm the details.

When auto shoppers reach out from down the street, across town or across the country, shouldn't they be able to depend on the information they just read online? I think yes. I also think salespeople and managers should be able to depend on that same information too. So, my recommendation is to suggest a simple update for salespeople to use..." My presence is your leverage!" If you can convince shoppers that you are their advocate, and differentiate yourself and your dealership, I believe you'll enhance your value and build more trust. And, keep in mind, it is still ok to suggest that they come in, so your manager can fall in love with their trade in and offer a bit more.

"Great News" – this phrase left on voicemails and typed into emails and messages is perhaps used more than any other. I can almost hear sales managers right now sharing this strategy in a sales training class..." just tell them you have great news and they'll call you back every time." Let's say you stick with the Great News strategy but perhaps offer a glimpse of what the great news really is to enhance it..." I have great news about the (price, trade, incentives, etc.) that I believe you'll find valuable."

I recently read a great book called "Exactly What to Say: The Magic Words for Influence and Impact" by Phil M. Jones at the suggestion of my friend John Gottschalk. It was enlightening to hear someone who's passion for using the right language, I shared. In fact, I plan to encourage my clients to use the suggestions in the book to update their own scripts. Scripting works great and yet, when we pass down for generations, language that encourages consumers to feel we behave the same as our reputation suggests, there is an opportunity for improvement.

Consider the impact of the words your team uses, and you personally use each day in conversations with your dealership guests and start the update process. I think you'll be impressed with how positively consumers react.

If you'd like to share some updates you've made, please send them my way or if you'd like a thought partner as you update your scripts, just let me know. I'd love to help.

Thanks for reading!



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Working Smarter in 2019

I wish I had a nickel for each time I heard a manager respond to the question, "what are your plans for next year?" and the response I get is, "We're gonna work a little smarter next year." Seriously? Were you not working smart this year? What exactly does "working smarter..." really mean?

In my opinion I think working smart is working a plan. When I say, working a plan I mean working specific sales, gross profit and most importantly net profit goals for the dealership. Dealers who only set unit sales goals and gross per retail unit are setting themselves up for a very disappointing year-end result. The beginning of the year is an ideal time evaluate each expense within the dealership. What was your total dealership net profit (after all expenses and adjustments) on used vehicle sales (before taxes)? Was it less than 8% or more than 15%? I get concerned when a dealer/general manager is unable to answer this very simple question. It tells me the dealer/general manager is not looking at expenses and perhaps only focusing on gross profit per unit sales. Remember, it is very possible to have high gross profit per retail sale and still not be profitable on the bottom line.

The three primary expenses that destroy the bottom line are; Personnel, floor plan interest and marketing/advertising. The most destructive of these is the floor plan interest expense. Take a look at your year-end financial statement and calculate the amount of floor plan you paid out at year-end and divide that dollar amount by the total amount of gross profit (before expenses) you generated. All too often I find that amount to be in excess of

3.5% of gross profit. If you want to work smarter this year, then carefully consider your inventory needs and inventory management processes. The major contributing factor to floor plan expense being so high is aged inventory. Dealers all too often find themselves worrying about the interest rate and fees being charged by floor plan providers and caring less about which inventory sells in the shortest period of time at the high gross profit earnings. It is imperative to reduce and eliminate inventory that is over 45 days old. Interest typically begins accumulating from the date of acquisition of a vehicle, not from the time it's ready to sell on the lot Dealers must be able to control; the length of time it takes to recondition a vehicle, the effective market price of the vehicle, how the vehicle is being marketed on the dealer's lot and most importantly on-line.

This year stop working in the dealership and start working on the dealership. Keep your eyes on the bottom line.



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TIME FOR YOUR COMPLIANCE CHECK-UP

By Steve Levine, Chief Legal and Compliance Officer of Ignite Consulting Partners.

I'm excited to have the opportunity to reach the readers of this publication to discuss dealership compliance issues through a series of columns that will appear throughout the year. To get things started, I'm going to provide some pointers on how to begin a compliance program.

Who is in Charge of Compliance?

In my experience, a common trait among dealers that make a weak effort at compliance is that they fail to put someone in charge. In order to avoid that mistake, appoint a compliance officer. It must be communicated to everyone in the organization that this person has authority and the support of management and the owner(s). Next, the compliance officer should be given training and resources so that they can become an expert. Having someone in charge of this important function will go a long way towards success.

Adopt a Compliance Management System

Every dealership selling and financing vehicles, no matter its size, should have a Compliance Management System ("CMS"). That sounds intimidating, but a CMS is simply comprised of (a) Board or Ownership Oversight with regards to Compliance; (b) an internal compliance infrastructure with policies and procedures and training; (c) complaint management program; and; (d) and an audit function to check how things are going. The following pointers should get you pointed in the right direction.

Do you have Written Policies?

A lot of dealers don't know where to begin when it comes to policies, so they just never get around to it. Start with the basics: on the front end of the business there should be an underwriting policy, credit reporting/equal credit opportunity act policy and policies related things like OFAC and Red Flags. On the back end of the business, there should be a Servicing and Collections Policy and a policy on handling repossessions. These aren't a complete list but it gets the wheels turning. The bottom line, though, is that written policies will provide consistency and a framework on which to build.

Is Training Provided to Employees?

Written policies will do no good, though, if they're simply sitting on a desk. The key to having policies is to get employees to use them and that's where training comes in. The best operators I've seen take training of personnel seriously and view it as an investment in their business. They teach them the expectations for their position as well as comprehensive company values. Operators that aren't as successful tend to look at training as an expense and a distraction. Which are you?

Is there a Complaint Management Process?

Having a process for handling customer complaints is important from both a risk perspective and because it's just plain good business. Do your employees know what to do when they receive

a complaint and have the same understanding of what constitutes a complaint? Are personnel empowered to try to fix the problem or do complaints fall through the cracks? Finally, are complaints tracked and analyzed so that management can identify trends and common problems, such as whether complaints involve individual employees or a particular product or service offered to customers? Being able to answer all of these questions will allow for better customer service, retention and an overall experience.

Is there Ownership Oversight?

Ideally, there will be a process where the person in charge of compliance reports to the owners on a regular basis, and ownership asks questions and provides feedback. Again, this doesn't have to be fancy, but it would be ideal if the dealership can demonstrate it does this. At Ignite, we encourage our clients to have quarterly compliance meetings, they can be fifteen minutes, or they can be half a day, it just depends on the size of the business and the issues on its plate, but we have a written Agenda and also produce minutes after the meeting. That goes a long way towards being able to demonstrate that compliance is a priority.

What's in an Audit, Anyway?

Folks tend to gloss over pretty quickly when I bring up the subject of an audit, but don't worry, I'm not talking about the accounting kind. Instead, I'm talking about looking at key compliance factors of your business. You can all probably recite your key business metrics like "look to book", "30 day delinquency, and "Repo Rate". I encourage you to do the same thing on the compliance side.

Conclusions

Whether it's establishing a new written policy every month, developing a regular training schedule or formalizing complaint management, the key is to set the goal and then create the roadmap to achieve it. Compliance doesn't just happen, and the journey won't be quick, but by giving serious consideration to the questions raised in this article, you'll be on your way to significantly upgrading your compliance capabilities.

Ignite Consulting Partner offers compliance, technology, operational guidance to car dealers and finance companies. Please contact sales@IgniteCP.com to learn more. You can follow Steve on Twitter @LawyerLevine for compliance and industry related content.



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Compliance: Setting up a Preventative Maintenance Compliance Budget

By: Ronald Gorsline and Dailey Wilson

Prioritizing compliance with federal and state law may be the last item on your never-ending to-do list. Most days, you have bigger fish to fry – you want to increase sales and decrease overhead. However, a small investment in good compliance practices on the front-end can keep your dealership in the black on the back-end.

The sale and financing of motor vehicles involves dozens of federal laws, including the Truth-in-Lending Act, the Consumer Leasing Act, the Equal Credit Opportunity Act, the Fair Credit Reporting Act, the Electronic Funds Transfer Act, the Federal Trade Commission Act, the Fair Debt Collection Practices Act, and the Gramm-Leach Bliley Act, just to name a few. Various state laws also apply to financing transactions, including laws regarding insurance and unfair or deceptive sales practices. Knowingly or unknowingly violating these federal and state laws can result in fines, license suspension, injunctive relief, and—in some cases – even criminal penalties. Not to mention the fact that customers can also sue as part of a class action.

You now also have 2 federal agencies—the **Federal Trade Commission** (“FTC”) and the **Bureau of Consumer Financial Protection** or “BCFP” formerly known as the CFPB—that can investigate your compliance practices.

The FTC has obtained numerous settlements against auto dealers, including a \$3.6 million settlement against California-based Sage Auto Group. The FTC alleged the dealer engaged in deceptive advertising, used fake reviews to promote their dealerships while discrediting negative reviews, and violated the advertising provisions of both the Truth-in-Lending Act and the Consumer Lease Act. The FTC also claimed the dealer violated the FTC Act by charging consumers for add-on products without their consent or claiming the products were required or free.

The CFPB has also investigated dealers, entering into an Restitution Agreement with Herbies Auto Sales, a Buy-Here Pay-Here Dealer in Colorado that offered financing to about one thousand people each year. Herbies agreed to pay \$700,000 in restitution to harmed consumers, with a suspended civil penalty of \$100,000. According to the Bureau Herbies unlawfully advertised a misleadingly low 9.99% annual percentage rate (APR), without disclosing a required warranty, a payment reminder device and other credit costs as finance charges.

-Article Continues on page 15

How can you avoid falling prey to the innumerable penalties? Start taking steps now to ensure that your dealership is adequately complying with state and federal law, and don't wait until a violation is identified by a regulator, plaintiff, or court. Now is the time to set up your "preventative maintenance compliance budget" to avoid costly compliance mistakes.

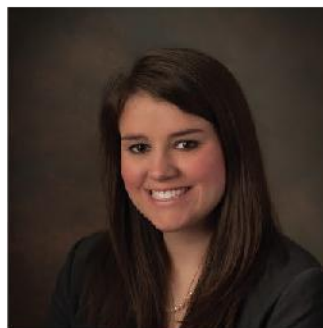
Stay tuned. Through a series of articles, we will explain common compliance pitfalls dealerships face and how you can avoid the dangers posed by them. Topics will include the rules of the road for checking consumer credit; complying with privacy rules; denying customer's credit requests; dealing with active duty servicemembers and family members covered under the Military Lending Act and Servicemembers Civil Relief Act; responsible repossessions; and hot topics in state law compliance.

Ron Gorsline is a partner in the Ooltewah, Tennessee office of Hudson Cook, LLP. Ron was recently selected for inclusion in the 2019 Edition of The Best Lawyers in America. He can be reached at 423-490-7562 or by email at rgorsline@hudco.com.

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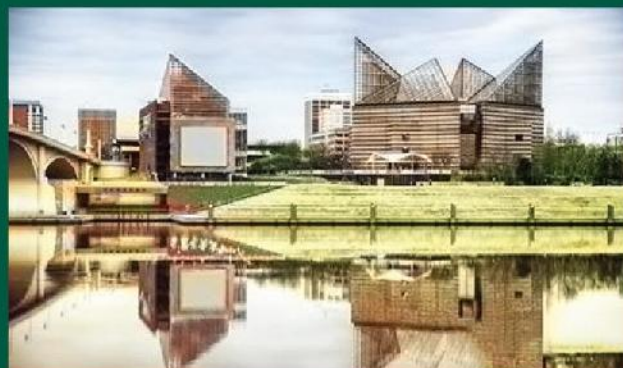


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FTC Shuts Down Websites that Sold Fake Documents

Heard any good lawyer jokes lately? Having been in practice for almost 25 years, I've heard quite a few from friends and clients. How about, "What's the difference between a vulture and a lawyer? . . . *The vulture doesn't get frequent flyer miles.*" Or, "What do you call 100 lawyers chained together at the bottom of the ocean? . . . *A good start.*"

In what can also be described as "a good start," the Federal Trade Commission is cracking down on operators of websites that sell fake documents that can be used to commit identity theft and other frauds, including frauds on dealers and auto creditors.

In three separate cases filed in three different jurisdictions, the FTC alleged that Katrina Moore, Steven Simmons, and George Jiri Strnad II and their affiliated companies violated the FTC Act's prohibition against unfair practices by operating websites that sold customers a variety of fake financial and other documents, such as pay stubs, income tax forms, and medical statements, that can be used to facilitate identity theft, tax fraud, and other crimes. The defendants agreed to pay fines and to permanently shut down their businesses as part of separate settlements with the FTC.

The complaint against Moore and her business, Innovative Paycheck Solutions, alleged that she promoted the sale of a variety of financial documents, including fake pay stubs, bank statements, and profit and loss statements, on the website she operated, FakePayStubOnline.com. The site stated that the documents look authentic and can be bought for as little as \$40 for a fake pay stub to more than \$150 for fake tax returns. The site even offered visitors the choice to customize their documents and to edit real bank statements.

In its complaint against Simmons and his business, Integrated Flight Solutions LLC, the FTC alleged that he operated the NoveltyExcuses.com website from 2013 until October 2017, where, for \$19.95, he sold a variety of financial, identity, and medical documents including pay stubs, auto insurance cards, utility and cable bills, doctor's excuses, and medical absence reports. The website also advertised that the documents the site offered were fake but looked authentic.

According to the FTC's complaint, Strnad allegedly operated similar websites, including PayStubDirect.com

and PaycheckStubOnline.com, that offered fake pay stubs, tax forms, and bank statements. His iVerifyMe website sold job verification services in which he allegedly claimed to verify employment and income for customers, as well as verify employment claims made using the fake pay stubs offered from his other websites. Strnad's websites also advertised that the documents were fake but looked authentic.

The FTC alleged that the defendants' websites claimed the fake documents were for "novelty" and "entertainment" purposes, but the defendants failed to clearly and prominently mark the documents as such and did not state on the documents that they were fake.

As part of her proposed settlement with the FTC, Moore is permanently prohibited from advertising, marketing, or selling any fake documents or services and providing any means to others to make misrepresentations about an individual's identity, finances, residency, taxes, or employment. She also agreed to pay \$169,000, all of which is suspended due to her inability to pay. In his proposed settlement, Simmons agreed to similar conduct prohibitions and to pay \$15,000, which also has been suspended due to his inability to pay. The full amount will become due if either defendant is later found to have misrepresented his or her finances. Strnad agreed to similar conduct restrictions and to pay \$133,777 in his proposed settlement.



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Dealership's Text Messages About Car's Condition May Constitute Express Written Warranty that Cannot be Disclaimed

By: *Shelley B. Fowler**



Car sellers frequently disclaim all warranties when selling a used car. It's easy to do, with only a couple of words. But what dealerships sometimes forget is that their employees can use language that constitutes an express warranty and won't be disclaimed. Let's see how this concept played out with text messages between a dealership employee and a high-end car buyer.

Silverstar Automotive, Inc., d/b/a Mercedes-Benz of Northwest Arkansas, was looking to sell a used 2007 Ferrari F430. Prior to selling the car, Silverstar hired Boardwalk Ferrari to conduct a pre-purchase inspection of the car. Boardwalk provided the dealership with a list of recommended repairs, and Silverstar approved some of the repairs but declined others, including an exhaust header repair.

After a potential buyer decided not to purchase the car and notified Silverstar that individuals on a Ferrari forum described the exhaust header as a potential safety problem, Silverstar began negotiating with Hamid Adeli, who expressed an interest in buying the car. During phone calls and text messages, Silverstar employees described the Ferrari as being in "turnkey, excellent condition" and told Adeli about the inspection and that all necessary repairs had been made except for an issue with the car's Tire Pressure Monitoring System. There was no mention of the exhaust header issue.

Adeli decided to buy the car, and he and his wife signed a Buyer's Guide acknowledging that the car was being purchased "as is," an invoice stating that "the dealership hereby expressly disclaims all warranties, either express or implied," an odometer disclosure statement, and a notice that Arkansas has no cancellation period for used car purchases. Shortly after buying the car, Adeli smelled gasoline emitting from the car. He had the car towed to a mechanic who made numerous repairs, including one to a leaky exhaust manifold. Adeli sued Silverstar for breach of express warranty, fraud, and violation of the Arkansas Deceptive Trade Practices Act. Silverstar moved for summary judgment, and the U.S. District Court for the Western District of Arkansas denied the motion.

Although the court found that Silverstar disclaimed all warranties, it noted that a genuine issue of material fact existed as to whether the text messages were intended to be part of the parties' final written agreement. If the text messages were intended to be incorporated, then the final written agreement included a written express warranty that could not be disclaimed, and a genuine issue of material fact existed as to the scope of the warranty and whether the cracked manifold was included.

Addressing Adeli's fraud claim, the court found that genuine disputes existed as to whether Silverstar's statements concerning the extent of repairs made to the car and its condition were material misrepresentations and whether Silverstar's failure to disclose the issue Boardwalk found with the exhaust header was a material omission. Further, the court noted that a genuine dispute existed as to whether Adeli's reliance on Silverstar's statements and representations was justified, given that he knew he was buying a car "as is," he has a history of buying Ferraris and other high-performance cars, and he knew the car was underpriced. The court also found that Silverstar was not entitled to summary judgment on the ADTPA claim considering the genuine disputes as to whether the statements or omissions were deceptive or misleading and whether they were material.

It remains to be seen whether the dealership or the buyer will be successful on the various claims that the buyer alleged. However, dealerships should take note of the court's concerns over whether the text messages about the car's condition might be deemed part of the final written agreement and, therefore, not subject to the disclaimer. In this day of less face-to-face contact and more contact by text message or email, the words that your employees write to buyers will be scrutinized if they turn out to be false. Maybe it's time to consider developing, with your lawyer, policies about written communications with potential buyers.

Adeli v. Silverstar Automotive, Inc., 2018 U.S. Dist. LEXIS 156139 (W.D. Ark. September 13, 2018).

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Business Development:

Why We Lack It & How To Fix It

Sales people are not capable of making calls and handling leads. Does this statement sound familiar? We as an industry have been saying this for many years now. But who is at fault for our sales people lacking business development skills? You guessed it! The reason why we fail with this is because there is a lack of training and development in dealerships.

We spend so much money on hiring sales people and so much time on focusing on the wrong things that our sales people are just not skilled. If we shift our strategy towards developing our people and truly showing them how they can increase their income the dealership will naturally grow the bottom line. The biggest problem is that we train only a few people to handle business development and let our sales people only focus on the traffic that is coming in. I believe that phone training, CRM training and lead handling training is a must for every single person that works in the sales department. When is the last you trained your sales people on how customers shop the Internet and what sites they visit?

If we can just educate our people and empower them they can become modern day sales professionals with a forward thinking consultative selling mindset. This training needs to be provided and enforced to management as well. This will improve how we sell cars and handle customers when they arrive. In addition, we can speed up the sales process to increase customer satisfaction. In any other industry sales people are responsible to hunt for their own business and usually have to get creative to generate opportunities.

The tools that are available today will allow anyone that is motivated to find a way to make a great living. The problem is that many are not willing

to take the time to study their craft. They come to work and wait for the next UP to walk in the door. I am also amazed that how very few dealers are embracing text message communication in 2018. The training opportunities are available and the marketing resources are available. All that is left is the desire to improve. When the sales desk is working deals they need to work smarter and use the data given to them in order to improve how a deal is worked.

My challenge to you is that you take a look at how you are doing business this month. Make a list of things that you like and do not like about your business. Next, make a plan to create positive change. Once the plan is in place start to implement over a 90-day period. If training is required then seek the help of the most proper resources. When everyone is on board with the change the dealership will flourish.



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Training Method

Dealer eTraining will not stop working for you. Our dealer support system was created to ensure that our clients are always performing at the top of their game. The dealer support system is also a tool we provide our dealers with more automotive internet training, coaching and consulting on a monthly basis. The reason why this part of our program is important is because our clients only get successful if we are hold them accountable.

Consider Dealer eTraining your second manager in command that will assist with goal setting, training and details that are commonly missed at dealerships..

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Auctioneer Spotlight



Woody Woodruff is a lifelong resident of Tennessee and has been a licensed Auctioneer for 15 years. He has the privilege of selling cars, horses, and Real Estate nationwide. He is the Principal Auctioneer for his wife's company Emily Woodruff Properties in Shelbyville. Woody and his wife have 2 children, and all 4 are active in the Auction Industry.

He currently serves as a Board of Director with the Tennessee Auctioneers Association. His accomplishments in the industry include 2007 TAA Bid Calling Champion, 2016 Mule Day Auctioneer Finalist, 2012 World Automobile Auctioneer Championship Top 10 Finalist, and 2016 World Automobile Auctioneer Championship Top 10 Finalist. Also, Woody and his partner Ben Gunter of Alabama took home the 2017 World Automobile Auctioneer Championship Team title held at the Manheim Pennsylvania Auto Auction.

Woody is very passionate about the Auction business and thankful for the opportunity to work in an Industry that is full of excitement as well as fellowship.

Woodruff Realty & Auction

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