By Scott Silverman

Just Say NO!

How to face the pressure for facility investments

This was the catch phrase of the 1990s teen anti-drug ads. I am sure everyone that watched those ads recognized this was (and remains) an important problem, an admirable concept, and a great idealistic strategy ... but if you had a teenager (or were a teenager at one point) you were also left thinking "if only it were that easy." In the past few years most dealers have probably been advised to use the same strategy when deciding how to handle facility demands. And I am sure they thought the same thing: "If only it were that easy." Manufacturers have finely tuned their leverage skills and, when necessary, have the ability to use "blunt force" to get what they want.

Saying "No" probably won't get the job done. Below are some issues to think about and concrete strategies to consider when you are faced with pressure for a facility investment.

Similar to the franchise laws of almost every state, Chapter 93B does provide protections that dealers can use to help in these situations. 93B requires facility standards imposed by a manufacturer to be "reasonable." It also requires that a manufacturer not impose unreasonable restrictions on dealership finances, including how a dealer finances its facility.

Under G.L. c. 94B, §4 it is unlawful for a manufacturer:

"to impose upon any motor vehicle dealer or any director, officer, partner or stockholder thereof or any other person holding or otherwise owning an interest therein, by or through the terms and provisions of a franchise agreement or otherwise, unreasonable restrictions upon the financial arrangement or structure of a dealership… or upon the ability of any individual, proprietor or stockholder to use, sell or transfer any interest in the dealership or to enter into and implement any testamentary arrangement with respect thereto."

Are you being lured by the Carrot or beaten with the Stick?

Because these protections exist throughout the country, manufacturers' facility image programs have evolved and matured to evade obvious violations. Most programs initially seem flexible enough to accommodate "reasonable" concerns so they are fair and equitable to all dealers. However, "incentive" based programs invariably raise price discrimination questions.

There are already lawsuits pending over the GM EBE program – and Audi's current incentive based image programs also test the laws prohibiting two-tiered pricing. Then there is Jaguar that recently announced it will use incentives in a Chrysler Alpha type approach – with the focus on incentivizing Jaguar and Land Rover dealers to dual their operations. There are approximately 165 dealers of each brand – with only 55 currently dueling both nameplates, leaving 110 in need of "reconfiguration".

The recent NADA facility study confirmed there has been no substantive analysis that has ever identified what if any Return on Investment (ROI) a dealer can or should expect from a facility investment. However, Jaguar's executives seem to think otherwise. Jaguar Land Rover's CEO said if the two brands are dueled . . . "you are guaranteed to make money – only a fool wouldn't." It is rare that a manufacturer makes a statement "on the record" with this type of arrogance. If it is so easy, why are manufacturers so quick to say they don't guarantee success in their dealer contracts? Would any manufacturer guaranty a profit? Of course not.

Ask your manufacturer what justifies the cost you will incur to build what the facilities they want.

Ask them how they think you will make money if you comply with their demands.

Then, be prepared to show (on paper) why it won't pencil out.

If a dealer decides to move forward and make the investment in a new facility an upgrade or improvement, that is not the end of any necessary battle with their factory. The scope of the project demanded by most image/facility programs is almost always more than what is justified by anticipated demand. Manufacturers try to justify their standards by tying them to sales levels or planning volumes that they have also unilaterally created.

Because controlling overhead costs are so critical, every assumption must be questioned. These foundational assumptions are why every dealer needs to pay attention to their assigned territories and sales objectives and object to any irregularity. Because vehicles cannot travel like crows, geographic territories should not be assigned based merely on proximity. Assignment of census tracts is not the only issue – the census tracts themselves are not static and can change over time. A dealer must have a true natural advantage over his competition if he is assigned a specific territory.

If you need any additional reason to think long, hard and carefully about facility issues, the federal government has provided more incentive. In light of the December 23, 2011 Treasury Department and IRS temporary regulations, capital improvements have become less appealing due to the requirement to wait 5 to 39 years to receive the full tax benefit of the expense.

Warranty Reimbursements for Parts

At the risk of repeating a "speech" that has been given one too many times, if you have not calculated the amount your manufacturer SHOULD be paying you for parts used in warranty repairs, you are making a mistake. Even if you do not intend on making a demand/request you need to know your numbers.

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Keep Your Valuable Customer Data Secure with Certified Third-party Integration

By Mark McDonald, CVR

A dealership's most important asset is its customer data. Keeping this data secure should be a top priority for any dealership. And as more and more processes become electronic, managing data carries greater importance.

Key vendors provide safe, secure access to crucial applications that help improve the dealership experience, and thus need third-party access to Dealer Management Systems (DMS).

Applications such as electronic vehicle registration (EVR), CRM, and inventory management, to name a few, help dealerships improve customer satisfaction and increase efficiencies. Unfortunately, many third party application providers access the DMS through a hostile interface often through a password provided by a dealership employee.

The dangers of a hostile interface

With so much customer information stored in a DMS, and identity theft a major issue, dealerships are learning that having the most secure integration is vital. The pitfalls of opening up a DMS in this way are many:

• Key customer data is now open for access or download by unauthorized parties;

• The dealership is now exposed to non-compliance with state and federal RED FLAG laws;

• Users unfamiliar with operating the DMS risk damaging or losing valuable data from the system.

The value of certified integration

The way to achieve both dealership goals — securing customer data and providing safe, secure third-party DMS access — is by using only those vendors certified to integrate with the DMS.

Certified integration preserves the confidentiality, integrity, and availability of dealership information systems, software, data, and network. In addition, certified integration:

• Protects data and documents from disclosure to unauthorized individuals;

• Maintains the accuracy, timeliness, and completeness of dealership information;

• Assures that data is managed only as authorized by appropriate processes and mechanisms;

• Reports back to dealers on third-party activities ;

• More certified integration can also improve the speed and accuracy of certain dealership processes by improving the "flow" of information between the two systems.

Third-party access programs

Third-party access program providers can help protect your dealership by finding vendors certified to work within your DMS. These providers can also help your existing vendors become certified. If your dealership is using uncertified or hostile access to your dealer management system, talk to your DMS provider about its third-party access program. A number of DMS providers offer Third Party Access programs including ADP and Reynolds and Reynolds. The time to protect the security of your dealership's key data is now.

For more information, contact Steve Bylsma at CVR-Computerized Vehicle Registration: (518)764-0561 or sbylsma@cvrreg.com. CVR is the nation's leading provider of online vehicle and titling services to the franchised dealer marketplace and the only certified integrator to the ADP or Reynolds & Reynolds management systems.

Do you have an opinion you want to share? Send submissions to tnash@msada.org.

Most of manufacturer facility and image programs are established through "contractual amendments" that defy the laws of contract, because the dealers have never agreed to these provisions that are issued by the factories years after franchise agreements are executed. Accordingly, the ability of a manufacturer to demand compliance is based on leverage. Dealers should always be trying to stockpile leverage points to counterbalance and prepare for the inevitable negotiations with the manufacturers.

Put simply, the law mandates there should be no distinction between what a customer pays for a part and the amount your manufacturer reimburses you when you install a part on their behalf on a warranty job. Most dealers do not appreciate the discount they are giving OEMs – and this illegal discount (and debt owed to the dealer) should not be ignored when most dealers are desperate for leverage to support saying "No" to a demand from their factory.

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