

September 2013

LEGAL TRENDS IN THE AUTOMOTIVE INDUSTRY

FTC REMINDS DEALERS IT'S TIME FOR A REFRESHER ON AD COMPLIANCE.

While state regulators can be inconsistent with enforcement (we are five years removed from the Massachusetts Attorney General's last big crackdown on advertising in the 4th quarter of 2008) - don't think your ads are only being viewed by customers!

Just last week the FTC announced that it had settled enforcement actions against two dealerships (one in Ohio and another in Delaware) that violated federal regulations governing deceptive advertising. [Click here](#) for the details. Both Ganley Ford West and Timonium Chrysler Jeep Dodge were targeted for publishing prices artificially lowered through the misuse of discounts and conditional rebates. Their advertising practices were almost identical (if not less egregious) than those targeted by the Mass AGO in 2008. However, the FTC's recent actions reflect an evolution of sorts (similar to the evolution of retail advertising) whereby they involved a review of on-line promotions instead of traditional paper ads.

What does all of this mean? Most retailers know they can't deceive customers by using "game changing" promotions because of the downside risks. That said, what can happen over time is that retailers dilute attention to compliance based on a perception that regulators are pre-occupied and, "if everyone is doing, it must be ok." This poses significant risk to your business. Regulators are reviewing your advertisements and they understand what to look for. They know retailers are moving away from paper ads, and they know the strategies used to create "edgy" and overly aggressive pricing that may not be obvious to those unfamiliar with the industry. This most recent FTC activity comes only months after the FTC successfully brought enforcement actions against several dealers for using the age old phrase (still constantly heard in local radio ads) "we'll pay off your trade-in, no matter how much you owe."

So . . . take this opportunity to familiarize yourself with some big picture issues and basic guidelines every dealer (and their managers) should follow:

What is an ad?

An ad is everything you do to promote sales: newspaper, websites/internet, e-mails, television, radio, texts. Internet and social media marketing have become mainstream. The reality of immediate access to an unprecedented audience is something all businesses want to leverage. Is it the Wild West? No. While many of the "old rules" were written before the

internet was invented, these rules still apply. More importantly, they were written so that they cover your promotional activity in every medium. There is plenty of opportunity to increase sales and traffic through advertising while still maintaining regulatory compliance.

What must go into an ad, and what can come out?

Now that we know that every promotional effort is regulated, what can't you do?

The golden rule – Eliminate Surprises! Every ad needs to include all charges you know will be required: acquisition fees, required accessories, delivery charges, freight, handling, prep, etc. Then, the advertised prices can't be reduced by discounts or rebates unless they apply to everyone (or the conditions are disclosed so they would be understood by a 5th grader!). Generally, the most creative approaches do not include making all the necessary disclosures and complying with advertising laws. Only incredibly few types of charges can be left out of an advertised price – “taxes and optional charges for the dealer's preparation of title and assistance in registering a vehicle.” Dealers can charge doc fees, but they must be fully disclosed and included in advertised prices (make sure you know how to calculate/establish your doc fee – something that has been the subject of many prior bulletins).

What to Do?

Big picture – DO NOT over-promise and underperform. Ask yourself whether your promotions pass the "smell test":

- (1) would most average customers understand what is being offered?
- (2) would most average customers be able to take advantage of the offer?

If you are using phrases like “pay as little as” - make sure you have a decent percentage of customers that will get that deal. If a customer is made to feel like they have been surprised . . . right or wrong, you will get a demand letter. If the AGO or FTC is made to feel like your ad surprises customers . . . right or wrong, you will get fined.

Do your managers understand the finer legal requirements for lease advertising? Do they know what a “trigger term” is? Have they heard of Regulation Z? Do they think you can offer “free” products? Are your managers just using the templates passed down from the last manager (or worse, provided by your advertising agency)? Ensure those responsible for approving ads have an understanding of compliance for all advertising and promotional activities (i.e. make sure the baton is handed properly from one manager to the next when making changes). Don't assume your managers understand the finer details about what is and what is NOT acceptable. If you are pushing them to increase sales, make sure you are comfortable that they are not cutting corners to get customers in the door!

If you think the rules seem confusing and enforcement seems random or erratic you are not alone. If you have specific questions or would like guidance on any of the information discussed above, please do not hesitate to contact me at scott@silvermanadvisors.com or at 781.591.2886.