

I Keep Preaching...

My family genealogy lists a number of Baptist preachers. Many of my uncles and cousins are deacons in their Bible belt churches. I learned about preaching at an early age with the Wednesday, Friday, Saturday and Sunday services as well as the annual week-long tent revival. So please forgive me while I preach my F&I compliance sermon.

One thing I learned while listening to my relatives and other preachers is to continuously preach the same message and eventually the message will get through to the masses. I have two messages for you that I continuously preach to clients through consulting engagements and during various speaking opportunities.

**If it appears confusing, it is probably deceptive.**

Here is an example of a state's unfair and deceptive trade practices act. This one happens to be from Florida; however, most states' statute is just as confusing:

*“Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”*

Now, being a layman, I can't begin to tell you what this means, let alone tell you how not to do it. Many of the attorneys I work with (yes, there are a few that did not migrate to the dark side) tell me they struggle with this definition as well.

Being the simple guy that I am, I came up with a definition of deceptive practices that works for me. When I give this definition in my discussions with dealers and in my speeches, the dealers and the audience agrees with me.

My very simple definition is, “If it appears confusing, it is probably deceptive.”

Try to explain a four square with four different sharpie colors, cross-outs, five customer initials and three different apparently logical transaction agreements to a jury of six skeptical citizens.

Try to explain a menu that shows a lower agreed upon payment than the base payment disclosed after the customer agreed to purchase \$4,000 worth of F&I products.

Try to explain why the vehicle service contract is priced at \$2,000 on the enrollment form, \$1,700 on the menu, \$2,800 on the Buyer's Order and is not disclosed on the Retail Installment Sales Contract.

The problem is, you can't explain it and are likely headed towards a settlement at best.

If it appears confusing, it is probably deceptive.

**You must testify that you do not remember the deal, but you know your processes.**

Let's face facts; in survey after survey measuring consumer trust, auto dealers rank just above attorneys at the bottom of the list. This means that as soon as you go to court, you are already guilty in the eyes of the six citizens that will be hearing your case.

It makes no difference that you provide numerous jobs for citizens in your community. The citizens seem to forget about the sales tax dollars your dealership generates to support local school systems from the sale of every vehicle. So what if you sponsor teams in every local baseball, softball, basketball and soccer league in your community.

If you are sued, your employees must be prepared to testify in depositions and perhaps in court. I have read a fair amount of depositions and have been deposed on behalf of dealers. One prevailing piece of testimony that appears to help dealers mitigate settlement amounts is to be able to say: "I don't remember this deal, but I know my process and I do it the same way every time."

I read a deposition a few years ago that stands out in my memory. A salesman, thinking he was helping the dealer's case, adamantly asserted that he remembered selling the car to the customer and he just as adamantly denied any wrongdoing. The plaintiff's attorney then asked him what color shirt the plaintiff was wearing, what time of day the deal was transacted, whether it was raining or sunshiny, if anyone was with the plaintiff. When the salesman admitted that he did not know the answers to any of these question, his entire testimony was tainted.

Now, imagine this salesman saying: "I do not remember Mr. Jones and I do not remember this deal. But I know that every time I sell someone a car, I do..." and then lists the process the dealer has established.

The key is to establish a process, chronicle it in a policy and procedure manual, strictly adhere to it and audit the results to ensure your employees are complying with the policy.

Hope this helps. Sometimes, managing the basics helps mitigate the complexities.

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