



# AUTO INFORMER

May 7, 2018

## WHAT'S THIS AND WHO'S IT FROM?

The Georgia Department of Law-Consumer Protection Unit (CPU) enforces Georgia's Fair Business Practices Act (FBPA) which prohibits unfair and deceptive acts or practices within the context of consumer transactions. This newsletter is part of our efforts to raise awareness among auto dealers and advertisers regarding the FBPA, as well as this office's *Auto Advertising and Sales Practices Enforcement Policies* (AAEP). Although the policies found in the AAEP are not law, they highlight those industry practices that we believe are unfair and deceptive, and thus violations of the FBPA. Expect to find discussions of common advertising issues, as well as additional explanation of the AAEP, and information regarding services we offer.

## BACK-END PRODUCTS – HOW F&I ADD-ONS CAN BE FBPA PITFALLS

Guaranteed asset protection insurance (GAP) and extended service contracts are two of the more common products some dealers offer their customers. These, and other types of "back-end" products, are often first made available in dealers' F&I offices following an extended car buying process that can involve lengthy vehicle selection, negotiation, and reams of complex paperwork. Like any product or service you sell, both your advertising and actual sales process must be free of unfair or deceptive practices in order to avoid conflict with the FBPA. Below are some examples of the types of conduct that can implicate the laws we enforce:

### Misleading consumers regarding purchase of products:

CPU has recently seen numerous complaints from consumers who allege that they unknowingly purchased back-end products. These consumers have claimed, among other things, that they were never told their purchases included these products, and that the charges for the products were added onto the actual purchase agreements and buried in a mound of other paperwork. It was only later, at home, when consumers had the benefit of an unhurried review of their sales documents, that they realized their agreements contained charges they never intended to authorize. Consumers have reported that when they contacted the dealership they were simply told "you signed the contract."

These types of complaints are concerning to our office. The mere fact that a dealership has a purchase agreement signed by the consumer which includes the purchase of a back-end product does not automatically exonerate the business from any unlawful behavior it used to induce the purchase in the first place. If the dealership is deliberately hiding the cost or existence of a product and then rushing consumers through an extended process of document signing, the dealership may well have violated the FBPA.

### Failure to timely forward consumer payments:

Many, if not all, back-end products require the selling dealer to send money to a third party provider or administrator in order to activate the contract for the buyer's use. Problems arise when the dealer fails to timely send these funds to the product administrator and the consumer unsuccessfully tries to use the product. For example, some consumers report that they have purchased GAP insurance, and only later learned, following an accident, that the GAP companies had no contracts with the consumers on file. We have received similar complaints regarding extended service contracts. If you sell these products, many of which can cost consumers thousands of dollars, you must take all steps the product provider requires in order for consumers to receive the benefits of these purchases.

### Failure to timely issue refunds:

Most back-end products are, by the terms of their contracts, cancelable and refundable. If purchasers have the right to cancel the product, the dealership may not obstruct them from doing so. CPU has received complaints from consumers who were required to contact the dealer for cancellation but were ignored in their attempts to receive a refund. Failure to timely cancel a contract results in lower refund payments to the consumer. If a buyer has the right to cancel the product contract and the dealer fails to process the refund and return appropriate funds within a reasonable amount of time, the dealer has violated the FBPA.

### Representing the lender requires back-end product purchases:

It is also deceptive for a dealership to falsely represent that a lender, as a condition of financing a vehicle purchase, requires the consumer to buy back-end products. Such attempts to force a consumer to purchase items they are not required to is a violation of the FBPA.

**TRADE-IN VEHICLES WITH OUTSTANDING LIENS:  
IF YOU ACCEPT THEM, YOU HAVE TO PAY THEM OFF**

As any car dealer well knows, it is common within the industry to accept buyers' current vehicles as part of a sales transaction. Problems can arise when dealers accept a trade-in that is subject to an outstanding loan and fails to pay off the balance in a timely manner.

If you accept a trade-in vehicle subject to such a loan, the buyer reasonably expects that the trade-in lienholder will be contacted and paid promptly. We consider it an unfair and deceptive practice to accept a trade-in with the representation you will satisfy the lien and then fail to do so.

We currently have complaints from consumers who have waited months for dealerships to pay off their trade-in vehicle loans. In the interim, these buyers were forced to either suffer potential negative credit consequences or continue making payments on a vehicle they no longer owned. These problems are compounded when the dealership sells the trade-in vehicle to another consumer and, because the dealer has not satisfied the lien, is unable to title or register the trade-in to the next purchaser. This office expects dealers to comply with their representations, whether express or implied, and timely satisfy trade-in liens. Failure to do so is a violation of the FBPA.

In addition to timely paying trade-in lienholders, always be cognizant of any representations made to induce consumers to offer their vehicles as trade-in's in the first place. In particular, be careful to ensure you accurately represent your treatment of any negative equity. Our advertising policies explain why statements such as "We'll pay off your trade no matter how much you owe" are problematic: consumers who owe more than their car is worth think the dealership will cover the difference between the trade-in value and the trade-in loan balance. In reality, the consumers, not the dealership, remain responsible for that difference. Some examples of deceptive claims in this context include: "We'll pay off your trade, even if you're upside down!" and "Want out of your old car? Owe a lot of money on it? Upgrade to a new car and we'll pay off your trade!" These types of claims clearly suggest it is the dealer, not the customer, who will cover any trade-in negative equity. A dealer may not obscure the fact that the consumer will be paying for both their new car loan and the negative equity on the old one. To do otherwise is misleading and deceptive.

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**GOVERNMENT CHARGES: LEMON LAW AND TITLE FEES**

**Georgia Lemon Law.** If you are a franchise dealer, you are likely well aware of the Georgia Lemon Law (GLL) and the steps you must take to ensure you are in compliance with this statute. As you know, the GLL offers certain protections to purchasers of most new passenger vehicles. Although some, if not many consumers, wrongly assume there are comparable lemon law protections for used vehicles, no such remedies exist in Georgia. Dealers can run afoul of the FBPA if they misrepresent the application of the GLL.

For instance, franchise dealers are required to collect a GLL fee for every vehicle which qualifies for GLL protection. One way dealers could misrepresent the extent of the GLL's application is by also charging used car buyers a lemon law fee. Consumers being charged a lemon law fee might reasonably assume their purchase qualifies for GLL protection when it does not. Misrepresenting the application of the GLL and/or charging customers for legal remedies for which their purchase is not actually qualified is a violation of the FBPA.

**Title Fees.** As you know, as of January 1, 2018, all dealers must use the Georgia Electronic Title and Registration System (ETR). We have previously expressed concern with dealers representing that increased costs associated with ETR vendors is a government charge if the money is not actually being collected and sent to the government. For instance, a "title fee" is a fee set by and remitted to the Department of Revenue. Rolling additional, non-government, charges into a fee which you have designated as a "title fee" is misleading. Review your sales documents to ensure that the manner in which you are designating charges associated with title and registration is not misleading.

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**"YOU'VE WON" AND OTHER PROMOTIONS PHRASES**

Our office continues to hear from consumers who were directed to come to a dealership to claim a "prize." These types of advertisements, which are generally considered promotions, can be rife with problems. It is your responsibility to familiarize yourself with our state's requirements for lawfully advertising and conducting promotions. Reviewing our *Auto Advertising and Sales Practices Enforcement Policies* is a good place to start.

While we have stressed concerns with these types of claims before, they bear repeating. Most commonly we see the following issues:

1. **Awarding cash prizes.** Georgia law specifically prohibits awarding cash prizes when conducting a promotion that requires a consumer to visit your dealership in order to qualify for or to receive a prize.
2. **Odds of winning and prize value.** If a consumer may win a prize the receipt of which involves an element of chance, you must clearly disclose the odds of winning that prize and/or all potential prizes. The value, or as the FBPA puts it, the verifiable retail value, of each prize must also be included. Our office most commonly sees issues when no odds or value are included, or these disclosures are made in obscure locations or small font. The FBPA has specific requirements for how this information must be provided to consumers, including that it is in the same font size and boldness as the language which describes the prize.
3. **Deceptive scratch-off icons.** Some promotions use direct-to-consumer mailers with scratch-off icons. Consumers sometimes complain to CPU about these mailers, usually when the mailer uses scratch off icons to suggest that the consumers have won a prize which they may not have actually won, even though the odds of winning and odds have been appropriately disclosed. For example, suppose a dealership is offering a flat screen television as a prize and has placed pictures of a T.V. under each scratch-off. Every consumer who received the mailer would believe they had won the grand prize, when in reality, only one mailer receipt had. This type of representation is highly misleading.

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### **ADVERTISED PRICES: FAILURE TO HONOR THEM IS A VIOLATION OF THE FBPA**

This office consistently receives complaints regarding car dealers' pricing. When you advertise a price to the public, we view it as unfair and deceptive to fail to honor that price when a consumer attempts to purchase the vehicle. Beyond the classic "bait & switch," there are numerous ways in which a dealership could mishandle its pricing and run afoul of the FBPA. By way of example, consider the following scenarios:

1. Your dealer website lists a particular vehicle for sale at a specific price. This representation is located at the top of the screen next to photos of the advertised vehicle. At the bottom of the screen, in small print, and buried in a list of other form disclosures, your website states that in order to receive the advertised price, the consumer must mention the advertisement. Our stance on this type of disclosure use is simple. If you put a price out to the public, you have indicated your intention to sell the vehicle at that price. You may not then, in a disclosure few consumers would find, indicate the specific conditions under which you will honor the advertised price. Although you may require consumers to reference the advertisement as a condition of receiving the advertised price, in order to be effective, the disclosure must be clear, conspicuous and in close proximity to the advertised price.
2. A consumer has been reviewing your dealership website and comes in to test drive a particular advertised vehicle. While negotiating the purchase of that car, the consumer sees that a paint protection package and window tint costs have been added to the purchase. Unless the charges for those items were already included in the price advertised on your website, you may not require purchase of those items. Furthermore, you may not simply add those items into sales documents and only remove them when asked to do so by consumers. In this context, automatically including those addendum charges implies that their purchase is required.
3. Your dealership does not generally list sales prices on its website. Instead, your site invites consumers to click a button on the website, and communicate with your dealership in order to receive a special "E-Price." This "E-Price" does not include your mandatory dealership fee. Your internet manager reasoned that since the price was only being sent to the specific individuals who took the step of trying to learn the vehicle price, rather than to all other consumers who merely looked at that particular car, the "E-Price" was not "advertised." CPU views this type of tactic as a way of deceptively concealing from consumers the true costs of a vehicle purchase. The "E-Price" must include all required non-government charges, including your dealer fee.

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### **AD REVIEW**

This office offers a complimentary review service to help dealers and their advertisers identify those areas that might violate the FBPA or related rules or laws. **We cannot approve any advertisements** and are generally able to review advertisements within 2-3 business days. Email Victor Hudson at [vHUDSON@LAW.GA.GOV](mailto:vHUDSON@LAW.GA.GOV) for advertising review. **Copies of the Fair Business Practices Act and the Auto Advertising and Sales Practices Enforcement Policies can be found on our website at [www.consumer.georgia.gov](http://www.consumer.georgia.gov).**