

HOW TO OVERCOME THE LANGUAGE BARRIER AND USE IT TO YOUR ADVANTAGE

*Special Column by George Koons, Esquire
Hall & Evans, L.L.C. – Denver*

George Koons is an attorney with Halls & Evans, L.L.C., where he practices general litigation with an emphasis on commercial matters. This article is designed to provide general information regarding working with non-English speaking customers.

The Scenario

Into the dealership walks a Hispanic couple who does not read, write, or understand English to any great extent, if at all. They are looking at several vehicles on the lot. When the salesperson makes initial contact with the couple, it is apparent they are interested in possibly acquiring a vehicle, even though they cannot verbally communicate this desire to the salesperson. But how does the salesperson know this for certain? Further, how does the salesperson know which make and model the couple is interested in: what color vehicle they like, what options they are looking for, and what financing terms are appealing to them?

Now, more than ever, a large population of non-English speaking customers exist who have the financial wherewithal to qualify for vehicle financing and to lease or purchase a new or used automobile. In order to cater to the large and lucrative Hispanic demographic group in Colorado, dealerships market their products via Spanish-speaking commercials on Hispanic television channels. A noticeable increase in lawsuits has accompanied the flow of Hispanic and other non-English speaking customers into dealership showrooms. These lawsuits typically involve claims of breach of contract, misrepresentation, outright fraud, and violations of various consumer protection laws by the dealerships, financing companies, and their employees.

Although non-English speaking customers have a responsibility to understand the transaction they are entering into and, generally, Colorado law does not require the use of a language other than English, dealerships have an obligation to ensure that the customer has an understanding of the transaction, including knowledge of its terms and the customer's responsibility under the contract. Otherwise, the customer may be entitled to rescission of the contract and other damages.

The Lawsuit

Most lawsuits brought by non-English speaking customers are initiated sometime after the customer leases or buys the vehicle and claims to have discovered the contract did not contain the terms he or she thought it did. Typically, prior to initiating a lawsuit, the customer will bring the vehicle back to the dealership and attempt to rescind the agreement. If that is not successful, the customer may file a complaint against the dealership and financing company. Other times, allegations regarding wrongdoing surface after the financing company repossesses the vehicle then sues the customer for a deficiency amount due under the contract. The customer then files a counterclaim contending some form of deceptive conduct against the dealership and financing company.

An example of this type of suit occurred recently when a major vehicle financing company sued a non-English speaking lessee. The lender contended the lessee owed over-mileage fees, resulting from more than 80,000 mile of use above the allotted mileage amount. The lessee claimed she purchased, not leased, the vehicle (even though she signed a lease agreement) and, therefore, was not responsible for any over-mileage fees and was entitled to possession of the vehicle. She files a counterclaim against the dealership and financing company, alleging various claims pertaining to deceptive practice.

If customers such as these are able to convince a jury that their claims are legitimate, they may be entitled to their actual damages, treble damages, costs, and attorneys' fees under Colorado statute. If a number of people claiming this type of deception exist, a class-action lawsuit typically will be brought against the dealership and financing company. The potential recovery of treble damages and attorneys' fees has fueled these lawsuits and made them more attractive to plaintiffs' lawyers.

Avoiding Litigation

Litigation is expensive, time-consuming, and disruptive to business. Ideally, a dealership wants to do everything within reason to avoid litigation without losing any business. There are a number of steps that a dealership can take to avoid lawsuits related to the language barrier while maintaining its sales. Effective communication between the dealership and the non-English speaking customer is key to avoiding alleged “misunderstandings.”



- ✓ Depending on your location, target market, and number of non-English speaking prospects who come to your dealership, you may want to maintain a salesperson or other employee who is fluent in Spanish (or any other language which is prevalent among your customers). This person need not be specially hired for this position. In fact, efficiencies are gained by employing a person to fill a necessary position within the dealership, with the added benefit that this employee is fluent in Spanish, thereby allowing him or her to fulfill dual roles. Nonetheless, this bi-lingual employee must be familiar with the terms of the various lease and purchase agreements, types of financing available, etc. If not a salesperson, this bi-lingual employee can work in conjunction with the salesperson to explain the vehicle's characteristics, its options, and all financing alternatives.
- ✓ An alternative to employing a bi-lingual employee is to strongly recommend or require that non-English speaking customers bring a friend, family member, or other bi-lingual person to the dealership to assist the customer (and dealership) with determining the proper vehicle that will meet the customer's needs and to ensure that the customer understands the terms of the lease or purchase transaction prior to entering it. Before beginning any substantive negotiations, the dealership should take steps to ensure this bi-lingual “representative” of the non-English speaking customer reads English and can translate it into a language understood by the customer. Likewise, several times throughout the negotiation and sales process, the salesperson should ask the bi-lingual representative whether or not the customer understands the particular terms of the agreement being discussed, including the amount and timing of the monthly payments, the subject matter of the contract (e.g., a 2006 Ford F-150 4wd), and any over-mileage or other fees, default provisions, etc.
- ✓ Salespersons responsible for transacting business with non-English speaking customers and their representatives should be adequately trained to guide this interaction between customer, the customer's bilingual representative, and the dealership. This training is common sense based, simple to teach, understand and learn, and is easily incorporated into the dealership's training program.
- ✓ Another option available to the dealership is to ensure the non-English speaking customer understands the transaction involved, documenting the specific transaction. This documentation is in addition to documents involved in a standard lease or purchase transaction and may consist of a simple, written checklist or form. In the situation where the customer brings a bi-lingual representative to assist with the transaction, the representative acknowledges by initialing and signing a checklist that he or she explained the terms of the agreement to the customer, the customer acknowledges that her or she understood the terms and the associated responsibilities and had the opportunity to ask questions about the transaction.
- ✓ In addition, the dealership can use a form written in Spanish (or other relevant language) in which the Spanish-speaking customer acknowledges with a signature that he or she had the opportunity to ask questions, had the document explained, and understood the terms and implications of the transaction. As with any other documents used by the dealership, this form must be reviewed for accuracy and compliance with applicable regulations.
- ✓ When done properly, documenting a transaction as discussed above provides evidence, other than the testimony of the dealership, showing that the bi-lingual customer understood the transaction. Moreover, it is a powerful tool in preventing a lawsuit or attempted rescission from occurring in the first place as it makes clear the intent and understanding of all parties.

Final Thoughts

The large and steadily increasing population of non-English speaking customers can provide a much-needed source of revenue to a dealership. However, this demographic market brings with it certain considerations and potential problems. In order to realize the potential of this market, the dealership must proactively seek to avoid pitfalls. This is achieved by implementing certain business practices into the sales process, minimizing contract-related problems and safeguarding the dealership should litigation be brought against it. Done properly, the dealership will be positioned to decrease its exposure to lawsuits, while increasing its standing, sales, and revenue in the non-English speaking community.