

Time to Go to Plan B?

*By Emily Marlow Beck**

For New Years 2008, I resolved to get a life. I also resolved to eat healthier and drink more water. Alas, here I am on a Saturday night, writing this article, chowing down on carrot sticks and chugging a big jug of plain ol' water. So much for my resolutions! But, in the words of that beloved American songwriter Meatloaf, I won't be sad - "cause two out of three ain't bad." (At least that's what I'm telling myself again this year.)

My guess is that some of you are finding yourself in a similar situation when it comes to your compliance goals. Maybe this year you resolved to "get compliant," tighten-up your operations, and (finally!) get those policies and procedures in place. And, perhaps like me, you've already fallen off the wagon and told yourself that you'll tackle these issues next year.

Not so fast! Maybe it's just time to move on to Plan B and develop some resolutions that you can stick to. Never mind that it's February already. Never mind that you've fallen short of your goal to implement huge, thundering changes to the way you do business. Here are a few goals that are relatively easy to achieve. And, like my resolution to drink more water, even small changes can lead to huge benefits and are attainable at little or no cost!

So, here it goes:

Take control of your dealership's advertising. If you read many of our articles in 2007, you'll know that advertisement enforcement actions against car dealers are no joke. We've reported on everything from dealers facing huge fines and penalties to dealers being stripped of their dealer licenses. Many of these cases involved dealers who relied on ads that were developed by third-party ad companies, but were left holding the bag when the AG came knocking.

In light of all this, I've been surprised lately by the number of dealers who tell me that they entrust their marketing efforts (or a portion of those efforts) to third-party marketing companies, but exercise little to no oversight of the ad content. One dealership I visited told me that it gave its marketing company a green light to run ads on its behalf, and it didn't even know what these ads would say until it heard them on the radio. Yikes! (Note that if you like taking that sort of risk, you might want to try your hand at skydiving, lion-taming, alligator wrestling or holding your tongue against subway escalator handrails. To an egg-head compliance lawyer, all of these practices are equally unnerving.)

The solution? For 2008, take control of your ads. After all, if what they say is true about advertising enforcement actions (*i.e.*, that they're like shooting ducks in a pond), wouldn't you want to get those ducks in a row? To this end, consider developing an ad approval process in your dealership. For many of you, this can be as simple as choosing a detail-oriented employee, providing her with the resources she needs to know what laws govern ads in your state, and requiring that she approve all ads before they go out. For others, you'll need to consider running ads by your friendly local lawyer.

Consider using an arbitration agreement with a class action waiver - seriously. In 2007, we used a great deal of ink writing about how litigators are increasingly picking on car dealers and how these litigators often bring class action lawsuits to attack dealer practices and fatten their wallets.

If you haven't done so, 2008 is the perfect time to seriously (did I say seriously?) consider using an arbitration agreement with a class action waiver. A well-drafted arbitration agreement with a

class action waiver can be one of your dealership's best defenses against potentially lethal class action lawsuits. If something does go wrong, the class action waiver can mean the difference between a one-versus-one situation and a one-versus-"pick a number, any number, and add a lot of zeroes" situation.

Consider developing consumer dispute resolution procedures. Several cases that we reported on in 2007 involved lawsuits targeting what appeared to be "dealers behaving badly." Often, the sequence of events that led up to lawsuits went a little something like this: (1) customer and employee disagree over relatively minor issue; (2) disagreement gets bigger, more emotional, and personal; (3) employee and customer are too emotionally involved to reach a compromise; (4) customer hires lawyer; and (5) dealer pays a gazillion dollars.

Wouldn't it be nice to be able to derail that train of events somewhere between numbers one and two? To this end, consider designating an employee or group of employees that are removed from the sales and finance process to serve as level-headed, and company minded, problem solvers. These folks' primary task wouldn't be to save the deal or cover their rear ends, but to solve the problem and protect the dealership. Ultimately, they could put the brakes on a situation before it spirals out of control and into a lawsuit.

So, there you have it. But, don't forget that the goals above will not a compliant dealership make. Some compliance issues are systemic and would require a major overhaul of forms and procedures to repair. But, these small things can go a long way towards reducing your risks. And, after all, a small resolution you can stick to is far better than a big one that falls by the wayside. Good luck!

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