

Loser Fronts, Winner Backs

by : Gil Van Over

Farrah and Michael died today. Since I grew up loving Farrah (gorgeous) and despising Michael (he could dance), it got me to thinking about other icons of past times. Like Gilligan (on the Island), Hogan (Heroes) and Jethro (Hillbillies).

I still vividly remember a Beverly Hillbillies episode when Jethro was proudly touting his sixth grade education. "I know my Gizintas. Two gizinta four two times!"

I remember this even today because some of the jurors in the jury pool that could end up adjudicating your case may not even know their gizintas. You have to make things very plain and simplistic for some jurors. The following case would be a tough one for the jury pool to see a dealer's point of view.

In a recent recap meeting after a day of looking through deal jackets, I pointed out to the general manager that a number of his customers were sold F&I products at amounts that exceeded his pricing guidelines.

This is a sensitive topic, because after all, money is money and in short supply in some dealerships.

His immediate response was, "How big of a loser did we have on the front?"

Since most of the deals I saw with pricing violations were to members of protected classes and the amounts were in the thousands, I was prepared to have a conversation about discriminatory pricing and price gouging.

Instead, we went off on a tangent about his marketing and advertising strategy, which is to advertise loser fronts and count on winner backs (retail deals with the requirement that the customer purchase a service contract or gap or both in order to purchase the vehicle). After all, he said, "I can refuse to sell a car to anyone."

True. You can also be sued by anyone for this practice.

Our point-counterpoint discussion:

Dealer's point #1: "I can sell the car for any price I want. No reasonable person should expect me to have a deal with a loss. If the bank cuts me back, or I have a large sub-prime fee, or advertise a car at a loss leader, I should be able to require that the customer purchase F&I products to make up the difference."

Counterpoint #1: A sub-prime fee must be taken as a cost of goods sold, not as an increase to the cash selling price. This is a potential violation of Truth in Lending for understating the APR.

Counterpoint #2: The attorney general would not likely be happy with your advertising strategy of luring a poor unsuspecting consumer into your dealership with a price that requires the purchase of additional products.

Counterpoint #3: You cannot tie the price of one product to the purchase of a second product (Sherman Anti-Trust Act).

Counterpoint #4: Making optional F&I products required turns them into finance charges that must be included in the APR calculation and disclosure. Failure to include the gap premium in the APR

calculation violates Truth in Lending for understating the APR.

Dealer's point #2: "OK, then, I will just bury the service contract and gap into the purchase price and tell the consumer it is included or free."

Counterpoint #1: Deceptive.

Counterpoint #2: Gap included in the purchase price is a hidden finance charge and an APR disclosure violation under Truth in Lending.

Dealer Point #3: "I am upfront with the customer, either/or deal. I gave them the option of putting the additional money down, they declined that. I also stated to the customer that it was not the bank wanting the service contract and gap, but the dealer. As a profit issue."

Counterpoint #1: These products are cancellable anyway.

Counterpoint #2: If the customer ends up a repossession with a \$9,000 deficiency balance, all she will remember about the conversation is that you told her she had to buy the service contract or gap in order to get the car.

Counterpoint #3: When the lender calls the customer to verify the loan and the coverage he's going to tell the lender he had to buy the coverage.

At the end of the day, it is your job to sell cars and make money. It is your job to understand your risks with your sales and marketing strategies. It is my job to explain your risks so that you can make an informed decision.

I've done my job. Best of luck with yours.

Gizintas. Hah!

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