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It won't happen to us

by Gil Van Over

I get calls and notes and texts and emails.

Through these messages, I sense a shift in some dealer's approach, opinion and frustration over the seemingly increasing litigation and regulatory oversight.

When I first started my company, it was sometimes a tough sell to dealerships with less than five rooftops. The prevailing opinion seemed to be, "I'm too small," or "There are bigger fish in the pond," or "It won't happen to us." Oh, how times change...

Now, the calls I receive talk about "I can't believe I got sued for this," or "Why are we one of the highest regulated industries in the country," or "How do the big guys stave off litigation?"

The truth is that the dark side does not differentiate between big dealers and small dealers. Everyone, in their opinion, is a potential target. In fact, some of the plaintiff's attorneys appear eager to file lawsuits against the small guys because they figure the one rooftop dealer will be more like to settle than fight.

Here are a few tips to help mitigate the chances of litigation:

- Speak with your attorney about the types of lawsuits being filed against dealers in your market. Plaintiff's attorneys seem to like to find a potentially deceptive practice or technical violation, become a specialist in that area and sue, sue, sue. For example, a law firm in Chicago specializes in adverse action notice lawsuits.
- Once you have an understanding of the higher risks levels based on what local attorneys are suing for, firm up your processes in those areas. Chicago dealers should have a firm process for handling adverse action notices because there is a law firm there ready to sue, sue, sue.
- Attorneys General across the country keep a keen eye on advertising mistakes and miscues, including print, electron and direct mail. Have your attorney review your ads, website and any direct mail campaign you are thinking of running.
- Many state DMVs are starting to walk dealer's used car lots looking for violations of the Used Car Rule. Review the rule and make sure your buyer's guides and processes are compliant with the rule.
- Finally, review the way your forms are spitting out of the DMS. Some computer programming issues can become the fodder for class action litigation.

Size does not matter anymore. Being small or a one rooftop dealership does not mean you will not be a target. Being compliant and successfully fending off litigation will take you off the Dark Side's target list.

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