

May 15, 2007

What compliance looks like: Unfair and deceptive practices

I started describing potentially deceptive practices a few weeks ago, including the seemingly willful fraudulent practices of payment packing and bank fraud. This week I will focus on the seemingly innocent types of deception, at least according to the dark side.

I do a little bit of work as an expert witness helping to defend car dealers against largely frivolous lawsuits. In this capacity, I read a lot of depositions and complaints. It is absolutely amazing how creative these dark side creatures are. But first, a refresher on the definition of fraud.

Unfair and Deceptive Practices

Lawyer Definition -- this is the lawyer definition, based on one state's statute:

Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

Layman's Definition

I am not an attorney. I am not an accountant. I am just a simple guy. I need to understand complex issues in a simple way. I have translated the legal definition into a simple term that makes sense to me and most of my clients:

If it appears confusing, it is probably deceptive.

Examples

Used Car Buyers Guides – One case alleged that the dealer was participating in a deceptive practice because the Used Car Buyers Guides were not being completed in accordance with the Used Car Rule's instructions. In the sales person's deposition, the plaintiff's attorney grilled the sales person for a good five minutes trying to find out why the dealership's contact was left blank on the back side of the form.

Sounds petty, and quite frankly, it is petty. But the point is that pettiness has made many an attorney wealthy.

Solution – Establish a process to ensure that the Buyers Guides are properly completed and a full and complete copy is provided to the consumer at the time of purchase. The instructions for completing the guide are straight forward and available at the FTC's website (<http://www.ftc.gov>).

Privacy Notices – Another case put forth the argument that the dealer was being deceptive because it was providing the customer with a FTC approved privacy notice. It seems that the dealer was complying with the Privacy Rule and giving the proper notice, yet had not fully complied with the Safeguards Rule. The dark side felt that giving a notice to a consumer that states that the dealer will "...maintain physical, electronic and procedural safeguards that comply with federal regulations to guard your nonpublic personal information." and then does not have those safeguards in place is

deception.

Solution – Review your safeguards program as required by the FTC Safeguards Rule. While you are at it, take a look at some of the potential requirements in the soon to be required Red Flags Rule and incorporate them into your Safeguards program.

These are just a few of the ways the dark side will take a seemingly innocent or technical violation and turn it into a fraud claim. The proper execution of the forms associated with the requirements imposed on car dealers is the best defense.

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