



THE SOURCE



IN THIS ISSUE:

Steve Stauning | Pg 6

Joe Lescota | Pg 8

Catharine S. Andricos | Pg 14



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Table of Contents



06- Mystery Shops

Steve Stauning

08- Working Smarter

Joe Lescota

14- Optional GAP

Catharine S. Andricos

19- Speaking For Success

David Kain

20- Case of the Month

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What We Learned from 200+ Service Department Mystery Shops

Our team has conducted over 200 service department mystery shops so far this year, and the great news is most were handled properly. Our shops included phone calls, chats, contact forms, and service schedulers – all with the goal of efficiently setting a service appointment with the dealership.

Of course, if everything went smoothly, I wouldn't be writing about it would I?

Let's review the results of these 200+ shops in order of best-handled to worst-handled.

Service Phone Calls

The great news is that of the scores of calls we made to schedule service, just two resulted in hold times longer than 90 seconds. (Studies have shown that people begin to hang up after 90 seconds on hold, and about a third of those who hang up simply won't call back.)

The biggest issues we encountered are worth mentioning – in case your service team is performing similarly:

- Multiple dealership employees who told us "It's probably just a loose gas cap" when we explained that we had a check engine light on and wanted to schedule service. (Yikes! Imagine the lost revenue and the potential liability if the issue turns out to be more than a loose gas cap!)
- A small fraction of the dealership service employees we spoke with were simply not friendly to our shoppers. Described by our shoppers as everything from "she seemed like she was having a bad day" to "he seemed like he didn't want to be there." (While these are minor customer experience annoyances to most people, your team's tone matters. Customers want to feel appreciated, and when they don't, they are less likely to spend money with you in the future.)
- When our calls went to voicemail, the chances of getting a call back were less than 50/50 – despite leaving a name and working phone number with a message that we'd like to schedule service.

Online Service Schedulers

The great news is roughly 90% of the online service schedulers we used were functioning properly and allowed us to (relatively) quickly schedule a service appointment. However, many of these online tools presented the customer with multiple scroll bars – a silly issue given how easily this can be resolved by an attentive website vendor.

The bigger issue with some of the easy-to-use tools was the inability to see the next available appointment via a single click. This isn't a problem for customers if you've got open times this week, but some service departments showed no openings for months. And because their tools make the customer view week-by-week availability, we gave up if we scrolled through more than 60 days of no availability.

Online Chat

Using online chat to try to schedule service was difficult (at best) for most of these shops. From "AI" chatbots that had no real clue what we were trying to accomplish to remote chat agents who provided little to no help, our shoppers concluded that providing a chat option was a net negative for most dealerships' potential service business.

A few remote chat agents were helpful and put the link to the dealership's service scheduler in the chat, though most just gave us the service department's phone number and told us to call. (If the customer wanted to call the dealership, they wouldn't have used the chat feature to try to schedule an appointment.)

In-house dealership chat agents performed much better, with most of them gathering the required customer information and scheduling the service via chat. (This occurred with fewer than 10% of the total chat service shops we performed, unfortunately.)

Contact Us Form

All but one dealer we shopped had some version of a Contact Us form on their website. While a few of the forms were very hard to find on some sites, most were located exactly where a potential customer would expect. Some Contact Us forms even provided a drop-down field where we were able to choose between Service, Sales, and Parts.

That drop-down option was nice, but it didn't seem to matter.

Over 30% of the Contact Us forms we submitted received no response – not even an auto-response. Our contact information and our desire to do business with these dealerships just disappeared into some mysterious black hole.

For those form submissions that did generate a response from the dealership, nearly all were from their sales departments with promises to help us find the perfect vehicle.

Our Conclusions

Because loyal service customers are more likely to become loyal sales customers, when your service team makes it difficult for someone to become a loyal service customer with you, your potential future sales to these prospects will be harder to come by (and much more expensive).

Good Servicing!



Steve Stauning
Founder
Stauning Solutions Group

Steve is the author of *Ridiculously Simple Car Selling* and *Ridiculously Simple Sales Management*; as well as a respected automotive industry veteran and founder of Stauning Solutions Group – a leading training & consulting firm. Steve's consulting work puts him in dealerships nearly every week, working side-by-side with managers, salespeople, and internet teams to help them improve their sales, processes, and profits. Prior to this, Steve served in various automotive leadership roles, including as the Asbury Automotive Group's (NYSE: ABG) director of ecommerce, the director of the Web Solutions division of Reynolds & Reynolds, and as the general manager of Dealer Web Services for Dominion's Dealer Specialties.

You may contact Steve directly by calling him at 888-318-6598 or via email at Steve@SteveStauning.com

Salespeople stuck in order-taker mode?

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Working Smarter in 2024

I wish I had a nickel for each time I heard a manager respond to the question, “what are your plans for next year?” and the response I get is, “We’re gonna work a little smarter next year.” Seriously? Were you not working smart this year? What exactly does “working smarter...” really mean?

In my opinion I think working smart is working a plan. When I say, working a plan I mean working specific sales, gross profit and most importantly net profit goals for the dealership. Dealers who only set unit sales goals and gross per retail unit are setting themselves up for a very disappointing year-end result. The beginning of the year is an ideal time to evaluate each expense within the dealership. What was your total dealership net profit (after all expenses and adjustments) on used vehicle sales (before taxes)? Was it less than 8% or more than 15%? I get concerned when a dealer/general manager is unable to answer this very simple question. It tells me the dealer/general manager is not looking at expenses and perhaps only focusing on gross profit per unit sales. Remember, it is very possible to have high gross profit per retail sale and still not be profitable on the bottom line.

The three primary expenses that destroy the bottom line are; Personnel, floor plan interest and marketing/advertising. The most destructive of these is the floor plan interest expense. Take a look at your year-end financial statement and calculate the amount of floor plan you paid out at year-end and divide that dollar amount by the total amount of gross profit (before expenses) you generated. All too often I find that

amount to be in excess of 3.5% of gross profit. If you want to work smarter this year, then carefully consider your inventory needs and inventory management processes. The major contributing factor to floor plan expense being so high is aged inventory. Dealers all too often find themselves worrying about the interest rate and fees being charged by floor plan providers and caring less about which inventory sells in the shortest period of time at the high gross profit earnings. It is imperative to reduce and eliminate inventory that is over 45 days old. Interest typically begins accumulating from the date of acquisition of a vehicle, not from the time it’s ready to sell on the lot Dealers must be able to control; the length of time it takes to recondition a vehicle, the effective market price of the vehicle, how the vehicle is being marketed on the dealer’s lot and most importantly on-line.

This year stop working in the dealership and start working on the dealership. Keep your eyes on the bottom line.



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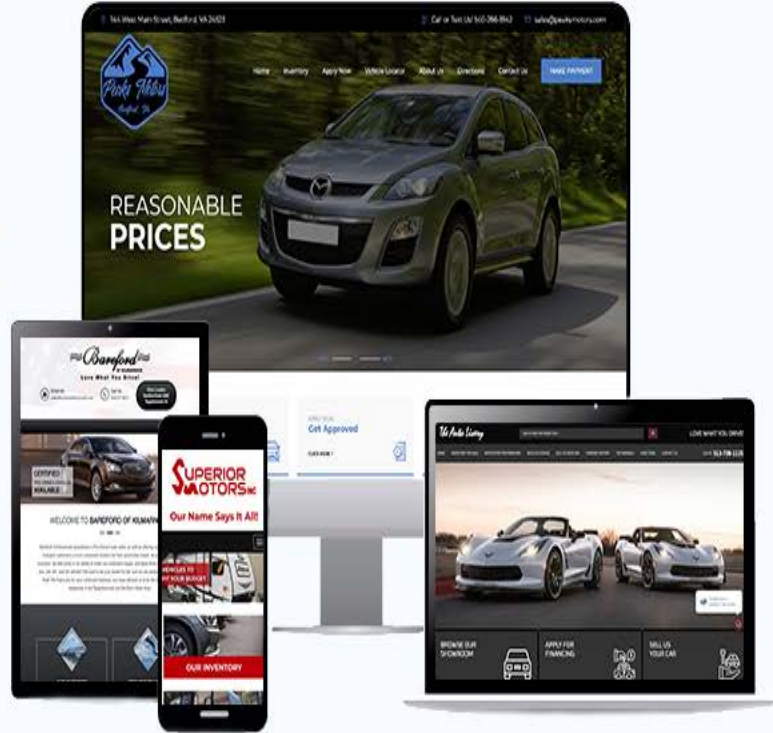
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Optional GAP Coverage

Unless you are asleep at the wheel, you know that federal and state regulators are highly focused on the sale and financing of voluntary protection products in consumer credit transactions. A key area of that regulatory focus has been on ensuring consumer understanding of product optionality. Regulators have questioned dealer sales practices as they relate to product optionality. The Federal Trade Commission has specifically expressed concerns about dealers hiding charges for VPPs in the paperwork-heavy vehicle sales process or not telling consumers about VPP costs until late in the transaction. Regulatory concerns about misleading VPP sales practices mean potential liability under federal or state standards for unfair, deceptive, or abusive acts and practices (and the CARS Rule, if it ever takes effect). When selling credit-related VPPs, such as guaranteed automobile protection or other debt cancellation products, misleading sales practices may also mean potential liability under the federal Truth in Lending Act, as a recent case from Connecticut reminds us.

Pablo Castellanos-Hernandez bought a used vehicle from Suburban Subaru, Inc. He traded in his old vehicle for a credit toward the purchase price, made a cash down payment, and financed the remainder of the purchase price by signing a financing contract with Suburban. The contract ("first contract") contained "no condition precedent or condition subsequent to its being fully enforceable." Castellanos-Hernandez took delivery of the vehicle. Suburban attempted to assign the first contract to another creditor but was unable to do so. Suburban informed Castellanos-Hernandez that he could keep possession of the vehicle if he signed a new financing contract ("second contract") and if his wife signed as a co-buyer. Castellanos-Hernandez allegedly offered to perform under the first contract, but Suburban refused. Castellanos-Hernandez ultimately signed the second contract. The second contract required him to pay an additional \$1,000 down payment and obtain GAP insurance. Castellanos-Hernandez allegedly contested the inclusion of GAP insurance. Castellanos-Hernandez sued Suburban for, among other things, violating the federal Truth in Lending Act. Suburban moved to dismiss the claims.

With respect to the TILA claims, Castellanos-Hernandez alleged that the GAP insurance was not properly disclosed as part of the finance charge, in violation of TILA. Suburban argued that the GAP insurance was optional in the second contract, so the coverage was disclosed properly as part of the total amount financed.

TILA allows a creditor to exclude charges for debt cancellation contracts, including GAP, from the disclosed finance charge when: (i) the debt cancellation coverage is not required by the creditor, and this fact is disclosed

in writing; (ii) the fee for the initial term of coverage is disclosed in writing; and (iii) the consumer signs or initials an affirmative written request for coverage after receiving the required disclosures. To comply with TILA, most, if not all, GAP agreements and retail installment sales contracts provide the required disclosures. Forgive me for stating the obvious, but to exclude the GAP charge from the finance charge under TILA, the disclosures must also be true.

In this case, the court found that Castellanos-Hernandez sufficiently alleged that the GAP insurance was mandatory, such that the disclosures may not have been true in this case. He alleged that Suburban "made an offer of credit in the Second Contract that was contingent upon [his] acceptance of gap coverage. When [he] objected to the inclusion of gap coverage, and specifically asked for its removal, [Suburban] told him that his application probably would not be approved without it, and certainly not at the terms offered." These facts were enough to convince the court that there was some question as to the optionality of the GAP insurance. Accordingly, the court refused to dismiss the TILA claim.

This case is a good reminder that actions speak louder than words. Just because the second contract contained the required TILA disclosures about optionality did not mean that the GAP insurance was optional. The dealer's alleged actions were enough to call the effectiveness of the disclosures into question. If the court ultimately concludes that the dealer violated TILA, the dealer faces a penalty of statutory damages up to \$2,000, plus court costs and attorneys' fees. To avoid this happening at your dealership, take action! Train your salespeople and adopt internal controls to help ensure that disclosures about product optionality are made clearly and accurately.

Castellanos-Hernandez v. Suburban Subaru, Inc., 2024 U.S. Dist. LEXIS 57573 (D. Conn. March 29, 2024).

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On June 26, the Consumer Financial Protection Bureau issued its annual fair lending report describing the agency's fair lending activities in enforcement and supervision, guidance and rulemaking, interagency coordination, and outreach and education for calendar year 2023.

On July 2, the Consumer Financial Protection Bureau published its Summer 2024 edition of Supervisory Highlights, which, among other topics, focuses on the collection of consumer debt and the servicing of vehicle financing contracts. The current edition shares key findings from recent examinations completed by the CFPB from April 1, 2023 through December 31, 2023. Recent CFPB examinations of debt collectors identified violations of the Fair Debt Collection Practices Act and its implementing Regulation F. Some of the CFPB's findings concerning debt collection included: (1) failing to provide debt validation notices to consumers; (2) using false, deceptive, or misleading representations in connection with the collection of a debt by: (a) using a business, company, or organization name other than the true name of the debt collector's business, company, or organization, and (b) failing to disclose in initial communications with consumers that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose; (3) communicating with consumers at inconvenient or unusual times or places, such as communicating with a consumer before 8 a.m. in the consumer's time zone and continuing a conversation with a consumer after the consumer informed the debt collector that it was an inconvenient time to talk to discuss the debt in question; (4) harassing, oppressive, or abusive conduct in connection with the collection of a debt, such as using verbally abusive language in a phone call with a consumer and placing over 100 phone calls to a consumer after being asked to stop collection communications; (5) failing to cease communicating with a consumer through a specific medium after the consumer requested that the debt collector not use that medium to communicate; and (6) failing to disclose, in each communication after the initial communication with a consumer, that the communication is from a debt collector. Recent CFPB examinations of auto finance servicers identified unfair acts or practices in violation of the Consumer Financial Protection Act related to collecting a consumer's final payment under a vehicle financing contract. Specifically, examiners found that, for consumers enrolled in a preauthorized electronic fund transfer payment system to pay their regular monthly payments, the servicers did not debit consumers' final payments when they were a different amount from their regular monthly payments. Servicers failed to adequately communicate to consumers that they must remit the final payment manually, despite being enrolled in autopay.

On July 2, the Federal Trade Commission reached a proposed settlement with an online used car dealer to resolve allegations that the company violated the FTC Act, the Used Car Rule, the Pre-Sale Availability Rule, and the Mail, Internet, and Telephone Order Rule ("MITOR"). The FTC alleged that the company failed to deliver purchased cars within the advertised timeframe, failed to conduct the thorough inspection process as advertised, and failed to provide the requisite Buyers Guide until late in the purchase process. The FTC filed a joint motion for entry of the FTC and the company's stipulated order for permanent injunction, monetary judgment, and other relief to resolve allegations of misleading consumers who purchased used vehicles through the company's website. Specifically, the FTC alleged that the company misrepresented that it thoroughly examined the vehicles before listing them for sale, in violation of Section 5(a) of the FTC Act. The FTC also alleged that the company's website and advertising told consumers that cars would be delivered in 14 days or less, but the company often did not meet this delivery timeline and regularly failed to give consumers the opportunity to consent to a longer delivery timeline or to cancel their purchase and receive a refund, as required by the MITOR. The FTC's Used Car Rule requires that the dealer prominently display on each used car a Buyers Guide, which discloses warranty information. The FTC alleged that the company failed to provide the Buyers Guide until late in the purchase process and that the Buyers Guides were often missing required information. The FTC further alleged that the company violated the Pre-Sale Availability Rule by failing to post the terms of its warranty on the company's website in close proximity to the warranted used vehicle offered for sale. The company neither admitted nor denied the allegations but agreed to pay \$1 million to the FTC for consumer refunds, to document all claims about promises it makes regarding shipping times, to refrain from making misleading claims about inspections and shipping times, and to comply with the MITOR, the Used Car Rule, and the Pre-Sale Availability Rule. The proposed order is with the U.S. District Court for the Southern District of Texas for consideration and entry.

On July 25, the U.S. Department of Justice (DOJ) announced that it had filed a civil complaint under the Financial Institutions Reform, Recovery, and Enforcement Act against National General Holdings Corporation and its subsidiaries (collectively, "National General"), alleging that, between October 2005 and September 2016, National General force-placed its collateral protection insurance product on vehicles financed through Wells Fargo Bank, N.A., even though it knew or recklessly disregarded the fact that car owners already had insurance through other insurers. Wells Fargo contracted with National General to identify whether a car owner had the requisite car insurance and referred to this process as loan "tracking." The DOJ alleged that National General knew or recklessly disregarded the fact that its tracking efforts were deficient, yet it continued to improperly force-place insurance on car owners. According to the DOJ's complaint, National General's tracking efforts were deficient for a variety of reasons, including that it repeatedly mailed letters seeking insurance information to car owners at addresses to which mail had previously been sent but had been returned as undeliverable, made no phone calls to insurance carriers, agents, or car owners to obtain outside insurance information despite internal requirements to make a certain number of phone calls, and failed to match insurance information in its possession to financed vehicles. The complaint alleges that this conduct resulted in car owners paying premiums and other fees associated with the insurance, car owners defaulting on their financing contracts leading to vehicle repossessions, and negative impacts on car owners' credit scores. The DOJ is seeking penalties under FIRREA.

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Speaking for Success...time to Modernize your Dealership Sales Language

It's kind of nostalgic to listen to car salespeople talk with customers on the phone, either in live calls or when leaving voicemails, and hear language that I was taught back in 1982 when I started in the auto business. As difficult as it is to teach adults new strategies and tactics, I marvel when I think of the words, we just can't shake that have been around seemingly forever. They must have just hit at the right time when car salespeople were willing to absorb and commit to the updated language. As I type this, I imagine that some more experienced salespeople can weigh in and say, "that was around in the 60's, 50's, 40's... (fill in the era)."

One of my personal ambitions in the industry is to assist our clients in updating their sales language in an effort to help them separate from the long-standing reputation that sandwiches car salespeople between Members of Congress and Lobbyists in the latest Gallup Poll on Professions Ranked on Ethics. By the way, the aforementioned professions are at the bottom of the December 2017 Gallup poll. Just like dressing for success can change the way you are perceived, "speaking for success", can have the same impact.

I've often heard that the way you can tell a salesperson is lying is when they open their mouth, and as a salesperson for my entire career, I think this can work in my favor by behaving differently, and that starts with the sales language I choose to use. Let's start with some of the industry language stalwarts and think of another approach.

"Your presence is your leverage" – in the digital age, I can almost imagine a sales agent for any online retailer contacting you after you agree to purchase online

sending a message or calling to let you know, "if you can make it down to the warehouse this evening, we can knock another 5 bucks off your book order because your presence is your leverage." With the ability to gather all the details about purchasing (specs, price, trade value, financing options, incentives, etc.) from dealership websites, independent consumer sites as well as 3rd Party marketing platforms, one can imagine that consumers contact a dealership to firm up the deal or confirm the details.

When auto shoppers reach out from down the street, across town or across the country, shouldn't they be able to depend on the information they just read online? I think yes. I also think salespeople and managers should be able to depend on that same information too. So, my recommendation is to suggest a simple update for salespeople to use..." My presence is your leverage!" If you can convince shoppers that you are their advocate, and differentiate yourself and your dealership, I believe you'll enhance your value and build more trust. And, keep in mind, it is still ok to suggest that they come in, so your manager can fall in love with their trade in and offer a bit more.

"Great News" – this phrase left on voicemails and typed into emails and messages is perhaps used more than any other. I can almost hear sales managers right now sharing this strategy in a sales training class..." just tell them you have great news and they'll call you back every time." Let's say you stick with the Great News strategy but perhaps offer a glimpse of what the great news really is to enhance it..." I have great news about the (price, trade, incentives, etc.) that I believe you'll find valuable."

I recently read a great book called "Exactly What to Say: The Magic Words for Influence and Impact" by Phil M. Jones at the suggestion of my friend John Gottschalk. It was enlightening to hear someone who's passion for using the right language, I shared. In fact, I plan to encourage my clients to use the suggestions in the book to update their own scripts. Scripting works great and yet, when we pass down for generations, language that encourages consumers to feel we behave the same as our reputation suggests, there is an opportunity for improvement.

Consider the impact of the words your team uses, and you personally use each day in conversations with your dealership guests and start the update process. I think you'll be impressed with how positively consumers react.

If you'd like to share some updates you've made, please send them my way or if you'd like a thought partner as you update your scripts, just let me know. I'd love to help.

Thanks for reading!



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The CARLAWYER[®]

Case(s) of the Month

Breach of Express and Implied Warranty Claims Against Dealership Were Improperly Dismissed: An individual bought a used Subaru Impreza from a dealership after being told that the car was in excellent condition and was covered by a warranty. In addition, dealership salespersons provided the buyer with a report indicating that the car had been through a certified inspection process of all major systems, including the cooling system and engine, and that the systems passed the inspection process and met the dealership's standards. The car malfunctioned. When the buyer brought it in for repairs nine to 10 months after she bought it, she learned that there were issues with the intake manifold and the passenger side of the engine camshaft. The buyer sued the dealership for, among other claims, breach of warranties and violation of California's Song-Beverly Consumer Warranty Act. The trial court dismissed the breach of warranty and Song-Beverly Act claims, finding that the buyer's allegations that the car was unsafe and not roadworthy were not warranted because she had been able to drive the car nearly 15,000 miles during the nine to 10 months she owned it.

The Court of Appeal of California reversed and remanded. The buyer argued that the dealership breached the implied warranty under the Song-Beverly Consumer Warranty Act because the car was unmerchantable, yet the dealership certified through its inspection that the car was safe, in good condition, and roadworthy. The dealership argued that the implied warranty is only good for the duration of the express warranty, if reasonable, but in no event less than 30 days nor more than three months following the vehicle sale. Because the buyer's claims arose nine to 10 months after she bought the car, the dealership argued that her claims were time-barred. The appellate court found that the buyer's complaint could be read to allege that the car malfunctioned and was presented for repairs numerous times, including before she learned of the intake manifold and engine camshaft issues nine to 10 months after the purchase. More importantly, however, the appellate court found that the car could have had a defect that was existing yet undiscoverable at the time of sale. Therefore, the appellate court concluded that the trial court should not have based its decision on the breach of implied warranty claim on the number of miles the car had been driven during the time the buyer owned it. Because the appellate court found that the buyer alleged sufficient facts to show that the vehicle she purchased was not safe to transport passengers at the time of purchase, it determined that her breach of implied warranty claims should not have been dismissed. The appellate court also found that the buyer alleged that the dealership provided her a written warranty and later failed to repair the vehicle after a reasonable number of attempts and then refused to repurchase it. The appellate court found that these express warranty claims were sufficient and also should not have been dismissed. See *Clay v. Carmax Auto Superstores California*, 2024 Cal. App. Unpub. LEXIS 3829 (Cal. App. June 21, 2024).

This Month's CARLAWYER[®] Compliance Tip

Have you heard the news that the NADA/TADA v. FTC case challenging the FTC's Vehicle Shopping Rule (aka the FTC's CARS Rule) has tentatively been set for oral argument in the U.S. Court of Appeals for the Fifth Circuit the week of October 7th? The date could certainly change as this is just tentative for now. Once the hearing has been set and the Court's calendar page has been updated (possibly 6 weeks prior to the hearing), the Court may post a link to listen to the oral arguments live. Be sure to mark the date on your calendar(s) and grab a bag of popcorn as the outcome of the case could have a significant impact on your dealership.

So, there's this month's roundup! Stay legal, and we'll see you next month.



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