

Can I Call Them, or What?

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In June, I predicted a coming crackdown on dealer fraud from, among others, state attorneys general. It didn't take long for that prediction to come true.

First, New York AG Eric T. Schneiderman announced a \$298,000 settlement with Pana Nissan, LLC, d/b/a Nissan of New Rochelle, for deceptively charging hundreds of consumers for what the AG described as "unwanted and bogus" anti-theft products that cost up to thousands of dollars per consumer.

The settlement is part of the AG's wider initiative to end a practice he claims is engaged in by many dealers of "jamming," or unlawfully charging consumers for products and services without their knowledge or consent. That practice goes by several names, including "payment packing." In this instance, the AG alleged that this "after-sale" product was often added to the final vehicle cost without the buyer's knowledge or consent, after the buyer had agreed on the purchase price of a vehicle but before the sale transaction was finalized.

The AG's action followed a consumer complaint that Nissan of New Rochelle had fraudulently sold an after-sale product and an investigation into the dealership's practices. The investigation, said the AG, found that Nissan of New Rochelle sold hundreds of consumers a product called "Total Loss Protection," a purported theft deterrent, at prices ranging from \$215 to over \$5,000. The AG claimed that, in many instances, Nissan of New Rochelle added this fee to the final sale price without the buyer's knowledge or consent, inflating the vehicle's final price by the amount charged for the after-sale product.

The AG also claimed that Nissan of New Rochelle failed to clearly disclose the nature of the after-sale product to buyers. The product was advertised as a permanent etch or engraving of the vehicle's VIN on the vehicle's windows, supposedly to deter theft. But Nissan of New Rochelle did not actually etch the VIN onto the vehicles' windows; instead, the dealership placed sticker decals with assigned registration numbers on the inside of the door or door-jamb where no one could see them, a placement the AG claimed had "no deterrent effect." In some cases, the dealership did not even provide stickers or decals.

Buyers were also led to believe that there would be a guaranteed credit up to either \$3,000 or \$5,000 towards the purchase of a new vehicle should their car be stolen. However, the credit was subject to a number of conditions and limitations (the credit would not be applied if it eliminated the dealership's profit on the sale, for example) that rendered the credit illusory. The AG claimed that only one consumer ever received such a credit.

So what will it cost the dealership? Nissan of New Rochelle will refund \$276,127 to 298 consumers who were charged an add-on fee for the Total Loss Protection product and will pay an additional \$22,084 in penalties, fees, and costs to New York State. The dealership also agreed to reform its sales practices, including fully disclosing that after-sale services or products are optional and that the price is negotiable; clearly explaining to each consumer all after-sale services or products offered by the dealership; and adding an after-sale service or product to the final bill *only* with the consumer's knowledge and full consent. And, although it doesn't appear in the settlement, you can bet that the dealership forked over a tidy sum to its lawyers for its defense of the charges.

The second AG action originated three days later and a few miles south of New York, when New Jersey Attorney General Christopher Porrino announced that Sansone Hyundai agreed to pay \$136,000 to resolve charges that it failed to disclose the total price of certain advertised vehicles and charged consumers for F&I products listed at "no charge" on certain leases and sales contracts. The dealership, winner of DealerRater's 2016 and 2017 Consumer Satisfaction Award, also agreed to change its advertising, sales, and leasing practices, including disclosing all costs and fees associated with the purchase or lease of a vehicle before consumers sign their contracts.

Sansone Hyundai and its directors agreed in a consent order not to add and charge for aftermarket products such as window etching and service contracts without the buyer's or lessee's knowledge and/or authorization and not to represent to buyers or lessees that certain dealer-installed options are mandatory when they're not.

The dealership also agreed not to sell buyers or lessees aftermarket products that overlap with or provide similar benefits to products they have already purchased through the sale or lease transaction; to accurately reflect in leases the "gross capitalized cost" as required by the Consumer Leasing Act; to provide buyers or lessees an opportunity to review all sale or lease documents and aftermarket contracts before signing; and not to identify advertised prices of vehicles by reference to the MSRP sticker, when the vehicle includes an MSRP sticker addendum that reflects a higher total price.

In a final, not unusual provision, the consent order requires the dealership to comply with all applicable state and/or federal laws, rules, and regulations, including the Consumer Fraud Act, the Motor Vehicle Advertising Regulations, the Automotive Sales Regulations, and the Consumer Leasing Act.

So, here we go. I warn dealers all the time that these AGs don't live in a bubble. They meet with each other regularly and share stories of their enforcement actions. If these two AGs are pressing cases dealing with ancillary products, you can bet your sweet petunia that other AGs will file similar actions, probably sooner rather than later.

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