

You AUTO KNOW[®]

September 2013



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Scenario:

Obviously, every dealership has a web site which provides various levels of information regarding the dealership, its history, personnel, inventory, and sales promotions. You have an individual that is tasked to keep the web site and content up to date. Your sales people also have their own form of communication through texting, Facebook, e-mails, blogs, and a multitude of other electronic communications. One of your sales people is texting a potential customer who sees an advertisement on your web site and the sales person indicates he can beat that deal by \$200. The customer comes in and attempts to purchase the vehicle at the price the sales person has texted him; however, the dealership refuses to sell it at such a low price. Thereafter the consumer buys the same vehicle at another dealership and sues your dealership for the difference. What are the dealership's responsibilities?

Several recent issues of *You Auto Know* have dealt with social media and employees' use of same. However it is important to get back to the rest of the issue. There is great potential for a consumer lawsuit to be brought against a dealership as a result of a sales person texting a potential customer. Social media is the myriad of electronic forms of communication, not only web sites, but e-mails, text messaging, Facebook, Myspace, Twitter, LinkedIn, Plaxo, Scribd, YouTube, Yahoo Video, and a host of others.

Further, blogs are everywhere discussing a variety of topics and opinions. Should this be of concern to the dealership? In very simplistic terms, yes. The fact of the matter is, any and all of these forms of communication are both a benefit and a boon to a business. Surprisingly, many people post items on their Facebook account or other accounts that they would never put in a

letter or mail to someone. There have been stories of individuals who have posted statements on their Facebook page that have been picked up by other interested parties - employers, boyfriends, girlfriends, husbands, wives - that have all proved ill for the individual who posted the comment. For example, an individual who was just hired by a company, posts a comment on his Facebook page that he is making big bucks, but hates his job. This was picked up by the human resources manager who ultimately brought the employee to task regarding his comments. Twitter has been notorious when people have sent tweets regarding their vacation plans and the tweets have been forwarded to unscrupulous people who have robbed the homes during the vacation. The same can occur with employees regarding comments about the dealership, its operations, its personnel, and/or its customers. In fact, many companies when hiring an individual will immediately attempt to access the prospective employee's Facebook page to see exactly what type of person they are dealing with. Again, this has proven to be detrimental to a prospective employee and very beneficial to the hiring employer when a derogatory lifestyle or other comments have been discovered on the individual's social media page.

The dealership is truly caught between a rock and a hard place since it cannot prevent an employee from tweeting or e-mailing a customer or prospective customer. However, employees must understand that in their capacity as an employee, they are representing the dealership and as such must be held to certain parameters and standards. The dealership must have policies in place in its employee handbook. In fact, the Financial Industry Regulatory Authority (FINRA), the unofficial regulator of U.S. securities firms, has released a social media guidebook. In essence, the guidebook is an attempt to prohibit the use of social media from false advertising, claims, and misrepresentations. It is also an attempt to set parameters for those employees who utilize social media as a form of communication with their customers. The primary question is how does the dealership control, or more importantly, protect itself from the use of social media by an employee? There is absolutely no bulletproof formula. The best that the dealership can do is to set policies and procedures and enforce them. The dealership should decide which social media it officially endorses and utilizes. It should state whether or not it has an official web site, e-mail site, Twitter, LinkedIn, or other site that it will sponsor; further, it should have one individual who is responsible for the content that is placed on those sites. In this regard, that individual is responsible not only for the content of the site, but also which individuals have access to the site. For example, will the dealership permit a sales person or service manager access to the site to post certain comments, thoughts, or individual advertising? If access is permitted, then the employee needs to follow specific guidelines as to what can be posted to the dealership's social media site. Obviously, the individual who is responsible for the content of the site would be ultimately responsible for the employees' postings. The dealership should have a strict compliance rule. If unauthorized content is placed on the dealership's site, the employee who placed it must be brought to task regarding same. Procedures for reprimands, warnings, and terminations contained in the dealership's employee handbook should be followed. Finally, all dealership personnel should be trained regarding the use of social media and the use of the dealership's name in comments that are posted.

The standards to be used will differ from dealership to dealership; however, there needs to be absolute limitations on what can and cannot be posted. Social media must be viewed as a form of written advertisement. If you would not place it in an ad for fear of a consumer or other type of violation, do not post it on your social media site. If you would not place it in an e-mail, then do not post it on your social media site. If you are utilizing the site as a form of advertisement, then you must comply with all advertising laws regarding the content. It is strongly suggested that the individual who is in charge of the social media site constantly reviews it to make sure that the site has not been tampered with and/or unauthorized or derogatory comments have not been posted

by an employee or a disgruntled ex-employee. It should be noted that your employees should be counseled as to comments they may make about the dealership on their own personal blogs, Twitter feeds, Facebook pages or other sites. Remember that confidential information regarding a consumer is just that, confidential and cannot be broadcast by an employee on his or her site. Also, derogatory comments about a particular customer should be avoided and derogatory comments about the dealership or an employer by an employee should be handled appropriately.

It will be necessary to update your employee handbook to take into consideration this new form of social media. As to employee postings, the rule of thumb is very simple; don't post anything you don't want your customer, your fellow employees, your boss or your business to see. Likewise, the dealership should not state anything that is misleading, not truthful or doesn't comply with any and all of the various advertising, financing, and consumer laws. Remember, anything that is posted is fair game and can be used as evidence in any future litigation. Therefore, training employees as to what they can say on their own personal sites regarding the dealership is as important as the dealership's own official postings.

At one time, communications with your customers was simple. The dealership placed an ad in the local newspaper or radio and had complete control over the content; once in a while, an ambitious sales person would place an individual ad in the local newspaper. Today, it is difficult to control what each and every employee does. Therefore, it is imperative that you set parameters that your employees have to follow and if an employee steps outside of those parameters, the dealership must take action. Further, the dealership can use its policies and procedures as a defense in any future litigation. Again, the many forms of communication are a boon and a bane. It provides the dealership with a myriad of ways to get its advertising message out; at the same time it can be a boon due to unscrupulous customers, employees or others.



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