

Direct to Your Door - More Guidance on the FTC's Cooling-Off Rule

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This is my third article in as many months about remote sales, a topic that is suddenly hot, hot, hot with dealers and finance companies during the COVID-19 pandemic because consumers have been restricted from coming to a dealership to shop for a new car or reluctant to do so. It's amazing how a federal rule - the FTC's Cooling-Off Rule - that's been around since the early '70s is getting such attention almost 50 years after it was promulgated. What's old is new again, it seems.

Likewise, there is an old, but very helpful, FTC staff opinion from 2001 that was issued in response to questions by a state dealer association about the applicability of the Cooling-Off Rule - which regulates a person's ability to engage in sales in places other than the person's permanent place of business by requiring written and oral disclosures, giving a buyer a 3-day right to cancel, prohibiting misrepresentations regarding that right, and restricting a seller's ability to assign the note or contract for a period of time - to two scenarios.

In the first scenario, a dealer maintained a website listing its new vehicles and pricing information. Mr. Smith visited the dealer's website, found a new vehicle he was interested in buying, and emailed his purchase inquiry to the dealer. In response to that inquiry, the dealer contacted Mr. Smith via email and/or telephone, negotiated to sell him a new car, and arranged to have it delivered to his home. The dealer prepared a written sale contract and had the vehicle delivered to Mr. Smith's home on one of the dealer's trucks. The truck driver obtained Mr. Smith's signature on the sale contract while Mr. Smith was standing in his driveway. Mr. Smith never physically visited the dealership, and the sale transaction was consummated (i.e., the contract was signed) at Mr. Smith's residence.

In the second scenario, Ms. Jones visited an autobroker website and identified the specifications of a car she was interested in buying. She emailed her purchase inquiry to the autobroker. The autobroker located a vehicle that met her specifications and obtained a commitment from a dealer to sell her the car for a specific price. The autobroker obtained Ms. Jones's commitment to buy the car and arranged to have one of its trucks pick up the car and a written sale contract from the dealer. The autobroker delivered the car to Ms. Jones at her home. The truck driver obtained Ms. Jones's signature on the sale contract while she was standing in her driveway. Ms. Jones never

physically visited the autobroker or the dealership, and the sale transaction was consummated (the contract was signed) at Ms. Jones's residence.

The FTC staff opinion reiterated that the Cooling-Off Rule's protections were intended to apply to situations where the seller (or a representative of the seller, such as the truck drivers in the proposed scenarios) personally solicits the sale through contact with the buyer at non-business locations. The opinion goes on to state:

If, however, the delivery driver's only function is to obtain the buyer's signature on a fully completed contract that contains terms that have been negotiated before the delivery occurred, then the act of obtaining the buyer's signature at the buyer's residence would not constitute an act of solicitation that would trigger Rule coverage.

Accordingly, the staff opinion recognized that the Cooling-Off Rule did not apply to the two proposed scenarios because obtaining signatures from a buyer at his or her home for a previously negotiated transaction does not, by itself, implicate the Rule.

What would be the outcome under either of the two proposed scenarios if any part of the transaction was solicited at the customer's home, such as negotiating the trade-in or the sales price or pitching a voluntary protection product? The likely result of those types of personal solicitations or negotiations with the customer at non-business locations would be that the Rule would be triggered.

So, if you're a dealer conducting a remote sale, make sure that *all* aspects of the transaction - the trade-in allowance, sales price, and VPPs - are fully negotiated before you deliver the vehicle. Test drives of a car brought to the customer's home for a quick spin can be even trickier to manage. Any personal solicitation or negotiation during a test drive with a customer could trigger the Rule.

Also, make sure that the delivery includes only the ministerial act of obtaining a signature on the fully negotiated contract. Unless required by state law, don't send your salesperson to deliver the vehicle and obtain the customer's signature on the negotiated sale contract. It's important to avoid, as the staff opinion noted, the "circumstances that might make the consumer vulnerable to the types of misrepresentations and high-pressure tactics that formed the basis for the Rule in the first place."

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