

# Menu? We Don't Need No Stinkin' Menu. Yes, You Do!

As you know, the pandemic shelter-at-home orders forced the closing of dealerships across the country. I suspect that the new ways dealerships have developed to continue to move the metal have inspired some dealerships to evaluate their menu-selling process when presenting voluntary protection products to customers. Because I've been getting more inquiries about menu selling lately, I thought it would be helpful to summarize the standards a dealership should adopt before presenting VPPs to customers and beneficial content for a menu.

As a starting point, you should know that there is no federal law that specifically requires dealerships to show the full cost of a VPP product in a menu. However, the Federal Trade Commission and the Consumer Financial Protection Bureau have shown significant interest in how things are disclosed to consumers, and those agencies have authority under federal law to determine when a practice is unfair or deceptive (and, in the CFPB's case, abusive). So, is it unfair, deceptive, or abusive to not disclose to a customer the actual cost of a product being purchased? Given the federal regulators' preference towards transparency and full disclosure, dealerships should adjust their menu-selling standards and practices to meet or exceed federal regulators' expectations.

What are some of the standards that a dealership should adopt before presenting VPPs to customers? For one, a dealership should present VPPs in a manner that will help the customer make an informed purchasing decision, including information about:

- benefits and cancellation and refund rights and procedures;
- the claims process;
- deductibles, if any;
- eligibility;
- limitations;
- price;
- requirements for maintaining coverage; and
- other important terms and conditions.

A dealership should ensure that its employees who offer VPPs understand the products' benefits, limitations, and other terms and conditions before offering them to customers. How can an employee offer and speak intelligently about a VPP if he or she doesn't know these things? A dealership should not offer a customer a VPP for which the customer is ineligible. Similarly, a dealership should not offer a VPP that provides no value to the customer. Although this standard can be a bit tricky to determine, know that the regulators take a very dim view of products that provide no value to the customer.

A dealership should set objective policies for any markup practices on VPPs. Further, in connection with a vehicle sale, a dealership should offer every customer the opportunity to buy or decline every VPP the dealership sells for which the customer is eligible and then document that offering in writing. Any sales script and menu the dealership uses should be reviewed by knowledgeable counsel prior to their use. I'm often asked if it's possible to develop a menu checklist to be used to compare a dealership's menu against standard menu practices. The standard menu format should be simple and, at a minimum, prominently disclose:

- that the purchase of any listed VPP is optional;
- that any listed VPP may be purchased separately, if true;
- that the purchase of any listed VPP is not required as a condition to purchase or lease a vehicle or to qualify for financing, obtain warranty coverage, or receive financing on particular terms;
- that the listed VPPs or the protections they provide may be available from other sources, if true;
- that the dealership may retain part of the sale price of the listed VPPs, if true;
- the price of - and monthly payment for - the vehicle with and without the purchase of a VPP or service selected by the customer;
- the price of - and monthly payment for - each VPP if purchased separately; and
- the price of - and monthly payment for - each product bundle if VPPs are purchased as a bundle (e.g., the "Platinum Package")

What about the practice of actually offering VPPs to a customer? Prior to the sale of a VPP, a dealership should provide the customer with a copy of, and an opportunity to review, each selected VPP's terms and conditions as well as any other required disclosures. In addition, a dealership should obtain the customer's acknowledgement of the menu disclosures and his or her election to either purchase or decline each selected VPP or VPP bundle.

Now you have a smooth process for offering VPPs to a customer and a transparent menu. What should a dealer do post-sale? Don't forget to provide your customer with any required post-sale forms of the selected VPPs. A good dealership will have its menu and menu-selling process audited every so often to ensure its employees are using the approved script and menus the way they are supposed to be used. Regardless of whether your showroom is open or closed to the public, to combat a claim of unfair, deceptive, or abusive practices, you need standards and an approved and vetted script and menu-selling document when offering VPPs to your customers.



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