



CATA Bulletin

DRIVE **CHICAGO** .COM
official Web site of CATA dealers

a biweekly newsletter

Volume 99, No. 5

March 18, 2002

Troubling legal trend emerging in ads sent to facsimile machines

Dealers who send unsolicited advertisements to telephone facsimile machines should be aware of an 11-year-old federal law that could leave them liable to lawsuits and even class action suits.

The Telephone Consumer Protection Act makes it illegal to use any telephone, fax machine, computer or other device to send an unsolicited ad to a fax machine. Recipients of such faxes can recover the greater of \$500 or their actual damages for each offense, and treble damages if it is determined that the statute was willfully and knowingly violated.

Moreover, the federal act does not require consumers to advise fax-based telemarketers that they do not wish to receive a solicitation prior to suing.

In recent months, several cases have been allowed into the court system as class action suits, thereby increasing one's exposure from \$500 for an individual suit to potentially thousands of dollars, depending on how many faxes were sent.

Dennis O'Keefe, the CATA's legal counsel, said dealer's should not transmit advertisements via facsimile, telephone or even e-mail.

"If your dealership is considering such advertising or is directly involved

SEE FAX, PAGE 2

Save the date!

Circle June 10 on your calendar to participate in the CATA annual meeting and golf outing. The event moves to a new venue, Cog Hill in Lemont, to accommodate the growing attendance. More details in coming editions of this newsletter.

New Illinois law regulates prizes and gifts

Businesses that disseminate written promotional offers, invite people to claim a prize or attend a sales meeting, or invite people to contact a sponsor in Illinois are subject to a new Prizes and Gifts Act that took effect Jan. 1.

The act prohibits any requirement that a person pay money as a condition of participating in a contest or receiving a prize. It also puts a number of affirmative obligations on sponsors when disseminating a written promotional offer. The restrictions might affect dealers who use direct mail pieces.

In particular, each written offer or prize notice must include in a clear and conspicuous statement the true name of the sponsor and its address; the retail value of each prize; disclosures that no purchase is necessary to enter the contest and that a purchase will not increase the person's odds of winning; a statement of the person's odds of receiving each prize; any fees the winner must pay to receive the prize (shipping and handling); any restrictions on receiving a prize; and any limitations on eligibility.

If the contest offers states that a per-

son is a "finalist" or has been "specially selected," the prize notice also must reveal the maximum numbers of persons in the group with that enhanced likelihood of winning.

Dennis O'Keefe, the CATA's legal counsel, said a consumer who suffers a loss by any intentional violation of the new Illinois law can sue. Damages can be the greater of \$500 or twice the amount of the pecuniary loss, and the consumer can recover reasonable attorney fees and court costs.

The new law exempts advertising media that publish or disseminate a solicitation, notice or promotion unless the media had knowledge that the solicitation, notice or promotion violated the law's requirements, O'Keefe said.

"Inasmuch as this is a new statute, there is no evidence yet of any class action being contemplated or filed," he said. "However, that possibility exists and, accordingly, dealers are urged to assure that their advertising is not in violation of this law."

The attorney general and the state's attorney are authorized to enforce the new law.

Internal Revenue Service relieves dealers on parts LIFO

Dealers with the LIFO accounting method for their parts inventories gained relief from the Internal Revenue Service on March 11.

Under Revenue Procedure 2002-17, new-car and -truck dealers may use replacement cost as a safe-harbor method to approximate the actual cost of their parts inventories.

Dealers who were using the replacement cost method as of March 12 may continue to do so without filing for a change in accounting method.

Significantly, dealers who correctly used the replacement cost method as of March 12 receive audit protection for all tax years ending before Dec. 31, 2001, including years cur-

rently under audit. In sum, the IRS will not raise the issue in audits of past or future tax years and will not pursue the issue further if it has been raised in a pending audit for a tax year that ends before Dec. 31, 2001.

Dealers can check that they are properly using the safe-harbor replacement cost method by reviewing Revenue Procedure 2002-17. The information is available on the Web sites of the National Automobile Dealers Association, www.nada.org/ and the IRS, www.irs.gov/

The new revenue procedure is the culmination of an eight-year effort by the NADA, which began in 1994 with Legal Defense Fund assistance for a Western truck dealership.

Fax

CONTINUED FROM PAGE 1

with it, get the facts on how it might impact your dealership," O'Keefe said. "Moreover, never assume that any and all claims arising out of advertising violations will be defended or indemnified by insurance.

"Universal Underwriters Group warns that there are many different classes and categories of these lawsuits and also many different terms, conditions and exclusions that can come into play.

"There are also classes of consumer protection violations that will not allow insurance companies to indemnify or even defend."

ASE testing dates May 7, 9, 14

Registration ends March 29 for spring ASE certification testing, on May 7, 9 and 14. Consumers recognize that competent technicians are certified by the National Institute for Automotive Service Excellence.

ASE offers more than 40 certification tests in eight specialties, including Automobile, Collision Repair and Refinish, Engine Machinist, Parts Specialist and Advanced Series.

To register, call ASE toll-free at 877-564-8661 or visit the institute's Web site at www.asecert.org/



Support CATPAC; it supports you

Lobbyists for the Chicago Automobile Trade Association are busy at the state capital, advancing the association's interests before the Illinois General Assembly. (See the March 4 edition of this newsletter for details of bills currently under debate.)

All area dealers benefit when pro-dealer legislation is enacted. Please contribute to CATPAC, the association's political action committee. Contributions may be made using a company check payable to CATPAC.

The CATA has identified lawmakers who are sympathetic to the association's interests. Money donated to CATPAC is contributed to state and local politicians in Illinois who can guide new legislation that is favorable to the dealers the CATA represents.

CATA dealers are encouraged to help shape the political agenda of CATPAC. Dealers who believe legislative efforts can help them with an issue should call the CATA's Erik Higgins at 630-495-2282.

The CATA Bulletin is published by the
Chicago Automobile Trade Association

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The CATA Bulletin is published and mailed every other Friday except during the Chicago Auto Show, when it is not published.

Listings of items for sale are subject to the approval of the CATA. Candidates for employment must submit a full résumé to the Editor.

Review past editions at <http://cata.drivechicago.com/>

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Interest in hybrid technology is high, especially among women

Hybrids wanted in nearly all vehicle segments

Hybrid vehicle technology is getting a solid “green light” from consumers, especially among women, with 30 percent of new-vehicle buyers indicating they would “definitely” consider a hybrid electric vehicle and another 30 percent indicating a strong consideration, a J.D. Power and Associates study released this month found.

Concern over fuel prices, the high level of the country’s dependency on foreign fuel supplies, a federal tax incentive and concern for the environment are the primary motivators behind consumer consideration to purchase a hybrid vehicle.

The study, according to J.D. Power, answers three core industry questions about hybrid vehicles: 1) In which vehicle segments do consumers want hybrids offered? 2) What will cause them to purchase? and 3) How much are they willing to pay?

Survey respondents said overwhelmingly that they want a hybrid powertrain option in the same segment as their current vehicle.

For example, a hybrid SUV is the most popular first choice vehicle segment for a hybrid option among current SUV owners, while a minivan hybrid is the first choice among minivan owners. However, regardless of the vehicle they currently own, nearly all consumers surveyed would select a midsize car as their second most popular choice for a hybrid.

“A hybrid option in the high-volume midsize car segment would provide manufacturers a broad-based growth path to the mainstream market,” said J.D. Power’s Thad Malesh.

The No. 1 reason for considering a hybrid is concern over high fuel prices, and a detailed analysis of fuel prices indicates that, as expected, consumer interest in hybrid vehicles increases as

gasoline prices rise.

Though price and costs play critical roles in the acceptance of hybrid vehicle technology, the study shows there is a greater willingness to pay for hybrid vehicles than previously believed. Consumers expect to pay more for a hybrid than they would for a traditional gasoline-engine vehicle.

Some consumers, such as small-car owners, are willing to pay more than other buyers. Of those who would consider a hybrid electric vehicle, nearly one-third indicate they still would buy one even if the savings from reduced fuel costs during their ownership period would be less than the extra cost of purchasing the hybrid option.

Consumers also indicate that their appetite for hybrids would increase if the federal government helped offset some of the additional costs.

Consumers not only see federal tax credits as important to their decision to purchase a hybrid, they also expect the credit to be nearly equal to the additional cost for the hybrid option over that of the gasoline-engine version.

While women tend to be substantially more interested in hybrids than men, the lack of available information and education is the main barrier for purchasing one, female respondents said.

“Women definitely are interested in hybrid vehicles but are deferring their decision to purchase because they don’t know enough about them,” Malesh said.

“Manufacturers should be working to better educate consumers on hybrid technology, especially among women.”

On the other hand, male new-vehicle buyers surveyed also indicate a strong interest in hybrids but are concerned that these vehicles will lack strong performance.

“The lack of consumer understanding underscores the challenges automakers face in gaining acceptance of hybrid technology,” Malesh said. “Many people still think hybrid vehicles are the small, expensive, limited-range electric vehicles that they saw or heard about in the 1990s.”

Approximately two years after the launch of the first hybrids in the United States, nearly one-half of the survey respondents still incorrectly believe a hybrid vehicle needs to be plugged in to recharge the battery pack.”

The introduction of two gasoline-electric hybrid models into the U.S. market has increased awareness of hybrid technology.

The Honda Insight and Toyota Prius, as well as other announced hybrids such as the Ford Escape, have fueled this awareness of hybrid technology to more than 80 percent of new-vehicle buyers surveyed.

These first-in-market introductions have given Honda and Toyota the clear lead among new-vehicle buyers as the most technologically advanced manufacturers in the development of environmentally friendly vehicles.

The results of this consumer-based study support the sales outlook outlined in a separate J.D. Power hybrid vehicle forecast, in which hybrid sales are expected to increase dramatically in the next few years and approach 500,000 vehicles per year shortly after mid-decade.

“We expect to see as many as 20 hybrid vehicle models, including cars, trucks and SUVs, at dealerships and on the road in the next four to five years,” Malesh said.

The Hybrid Vehicle Consumer Acceptance Study is based on responses from more than 5,200 recent new-vehicle buyers.

À la Letterman, AAA ranks top cars of 2002

The Mercedes-Benz S-Class was the highest-rated vehicle overall, with 173 of a possible 200 points, and the Ford Thunderbird was voted "cool car of the year" in the American Automobile Association's Auto Guide Awards announced March 11.

A panel of AAA experts tested more than 200 vehicles under everyday driving conditions and awarded points based on ride and handling, acceleration and braking, fuel economy, comfort and convenience, storage space and value.

The "cool car of the year" award is based on unique characteristics such as the Thunderbird's wedge-shaped body and porthole windows that are true to the original T-bird design, said AAA spokeswoman Jennifer Mack.

"Any car we evaluated was a contender," she said, "any car that's out there that's unique, trend setting, and makes people sit back and say, 'Wow.'"

Last year's "cool car" was the Chrysler PT Cruiser.

Aside from scoring the most points overall, the Mercedes-Benz S-Class was the leader in the \$50,000-and-higher class.

2002 AAA Auto Guide Awards

Category	Winner
Cool Car	Ford Thunderbird
Over \$50,000	Mercedes-Benz S-Class
\$40,000-\$50,000	Cadillac DeVille
\$35,000-\$40,000	BMW 5-series
\$30,000-\$35,000	Lexus ES 300
\$25,000-\$30,000	Acura 3.2TL
\$20,000-\$25,000	Buick LeSabre
\$15,000-\$20,000	Nissan Altima
Under \$15,000	Ford Focus
SUV over \$25,000	Cadillac Escalade
SUV under \$25,000	Toyota Highlander
Minivan	Honda Odyssey

Other passenger car winners in their classes were: Cadillac DeVille, BMW 5-series, Lexus ES 300, Acura 3.2TL, Buick LeSabre, Nissan Altima and Ford Focus.

The Cadillac Escalade was the top sport-utility vehicle in the over-\$25,000 class, the Toyota Highlander was the top SUV under \$25,000, and the Honda Odyssey was the highest-rated minivan.

"AAA Auto Guide winners stand out from the rest by offering the best balance of performance, quality and value," said Dave Van Sickle, director of AAA Automotive and Consumer Information.

Several vehicles made the AAA list for a second consecutive year: the Mercedes-Benz S-Class, Cadillac DeVille, Acura 3.2TL and Buick LeSabre.

OSHA has its sights set on eye safety

As consideration that March is Workplace Eye Safety Month, it is important to remember that it is not simply a good idea for employers to institute an eye safety program, it is the law.

According to the U.S. Labor Department's bureau of labor statistics, of all facial injuries which result in lost workdays, nearly three-fourths of the incidents involve eyes. Other statistics:

- 60 percent of workers who suffer eye injuries were not wearing eye protection at the time;
- 25 percent of workers wear the wrong kind of eye protection.

The Occupational Safety and Health Administration requires dealers and other employers to assess their workplaces for hazards to eyes and to have a safety gear program if any such hazards are identified.

One local dealer said he thought eye injuries were routine and unavoidable. Then he instituted a simple safety gear program. Eye injuries there dropped from an average of six a year to zero—and have stayed there for three years.

Having an encompassing eye safety program also defrays insurance costs because it demonstrates that the business is pro-active about loss control.

Eye wash station requirements have been changed by OSHA. Stations now must be located within 10 seconds of any known eye hazards. Safety glasses and eye wash stations also must meet certain standards.

Dealerships waste lots of money each year buying the wrong materials, said Phil Troy, president of ComplyNet, a CATA allied member.

Troy said dealers who want more information on the matter can send a fax to ComplyNet at 847-823-9778. Indicate "Eye Safety" on the fax subject line.

Marketplace

CFO/Controller Manage staff and projects for dealer groups. Earned Controllers Award for Excellence last 10 years. Fluent with Reynolds & Reynolds, ADP, Universal Computer. Anonymous. Call CATA for résumé.

For lease 18,745 sq. ft. building on 3.1 acres in Countryside that formerly housed Acura dealership. Zoned B-1 "special use." \$20,000/month rent. Mario Melone, 630-573-7112.