

Legal issues of selling online

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'Digital Retailing' is the Future?

Online startups offer dealers faster, cheaper ways to wholesale vehicles

(Automotive News, 2015)

TECH

Tesla is closing stores, shifting all sales online

PUBLISHED THU, FEB 28 2019 • 5:20 PM EST | UPDATED THU, FEB 28 2019 • 9:20 PM EST

(CNBC, Feb. 2019)

How Carvana restored my faith in online vehicle retailing

(Automotive News, Apr. 2019)

The Effect of Ride-Sharing on the Auto Industry

(Moody's Analytics, July 2017)

Areas of concern for selling cars online

- 1) Complying with State Law
- 2) Complying with Federal Law
- 3) Creating Enforceable Contracts Online



Legal issues of selling online – State Law

- **Licensing/Franchise Laws**
- State Sales and Use Tax
- **Collateral Liquidation Issues**
- Advertisement Restrictions
- State Required Vehicle Sales Forms
- Titling/Registration
- **Privacy and Cybersecurity**

State licensing law

License to Sell Wholesale or Retail

Examples:

- In New York a “Dealer” is “a person engaged in the business of buying, selling or dealing in motor vehicles, motorcycles or trailers . . . at retail or wholesale.”
- In Virginia, a “salesperson” is (i) an employee of a dealer working on commission; (ii) their supervisors; (iii) persons who negotiate security agreements, or (iv) dealers who also sell.

License to Contract for Services

- Warranties
- Indemnity for Vehicle Repair
- Maintenance of Vehicles for Durational Period

State licensing continued - Dealer franchise laws

Still a hurdle to OEM and OEM-directed sales online

Proponents:

- Protects Consumers
- Promotes Competition
- Prevents Low-Margin Retailing

Opponents:

- Stifles Innovation
- Binds Manufacturers
- Stifles Competition



Collateral liquidation issues

Commercial Reasonableness and the UCC:

“Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable.” UCC § 9-610.

Uniform Practices Safe Harbor and the Public Private Distinction

“[A] private auction conducted on the internet is not substantially different from a private auction conducted when all parties are physically present in the same location.” Ohio Ct. App. Mar. 14, 2015.

Privacy and cyber issues

Compliance with Consumer Privacy Acts

Case Study: Compliance with the California Consumer Privacy Act

Impacts businesses:

- (i) with revenues exceeding \$25 million
- (ii) using personal information of 50,000 or more consumers
- (iii) 50% or more of revenue from selling personal information

More than half a million US companies will be impacted by the law

Nevada, New York, Maine and Massachusetts are among the states adopting similar legislation

Compliance considerations:

- (i) update privacy agreements
- (ii) retain collected personal information
- (iii) keep lists of vendors with access to personal information

Eversheds Sutherland has devoted a webpage to CCPA developments to assist businesses in compliance efforts: <https://www.californiaconsumerprivacy.com/>

Legal issues of selling online – Federal Law

- Advertising Regulations
- Open Recalls
- Truth in Lending Act

Advertising regulations and open recalls

- Enforcement by the FTC
- FTC Advertising Rules
 - The Used Car Rule
 - The Consumer Leasing Guide
- Open Recalls
 - According to the FTC, failure to disclose, or adequately disclose, that a vehicle is subject to an open recall constitutes a deceptive act or practice
 - CarMax Consent Order



Enforcing online sales contracts

- Providing Clear Terms in Online Contracts
- E-Signatures
- Choice of Law/Arbitration Issues

Enforceable E-Signatures

Major legislation: the E-Sign Act and the Uniform Electronic Transactions Act

Requirements:

- (1) Clear Terms
- (2) Affirmative Demonstration of Assent
- (3) Traceable and Storable Proof

Choice of law/Choice of forum/Arbitration issues

Most convenient (reasonable) law/forum?

Damage/jury/class limitations? ADR?

In light of the Federal Arbitration Act, do contracts need to comply with State Arbitration Laws?

When do state laws conflict with the FAA?

How does a business navigate FAA and state law arbitration concerns?

Brave New World





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