



Automobile Dealers Association of Indiana, Inc.

BULLETIN

Bulletin #1102 - January 12, 2011

Attorney General Investigates "Spot Delivery" Programs

The purpose of this Bulletin is to inform you of the Indiana Attorney General, Consumer Protection Division's ("CPD") current efforts to investigate spot delivery programs. Below you will find a brief background of CPD's efforts, a list of items of which you should be mindful if you receive a Civil Investigative Demand ("CID"), and information regarding the action we plan to take to address this situation.

A. Background

CPD has recently undertaken an expansive effort to investigate the propriety of spot delivery processes in dealerships. CPD is motivated by its belief that dealers have abused the spot delivery process in violation of Indiana's Deceptive Consumer Sales Act. As of January 1, 2011, CPD is investigating the spot delivery practices of a particular dealership when it receives a consumer complaint about that dealership.

If a consumer complaint is filed with the CPD against a dealership, the dealership can expect to be served with a CID. By statute, an investigative demand may require the dealership to produce documents for inspection, answer interrogatories under oath, or possibly appear and testify before CPD. Information provided in response to an investigative demand may trigger further investigation and legal action.

B. What you should know if you receive an investigative demand

1. You are not being singled out

CPD's endeavor to investigate spot delivery practices is part of a broad effort targeted at the auto dealership industry as a whole, rather than the practices of any one dealership. If you receive an investigative demand, CPD may not have received a complaint related directly to your spot delivery program; the complaint simply provides CPD with the legal authority to launch its investigation.

2. Do not immediately respond

If you receive an investigative demand from CPD, you will likely find a demand to produce certain documents, a set of interrogatories, and/or a requirement to appear and testify. **Do not immediately respond to these demands.** Instead, you should contact counsel, the Automobile Dealers Association of Indiana ("ADAI"), or Michael Shanahan at Stewart & Irwin, P.C., whose contact information is as follows:

Michael P. Shanahan
251 E. Ohio St.
Suite 1100
Indianapolis, IN 46204
(317) 639-5454
mshanahan@silegal.com

Continued ...

3. You have rights

CPD's statutory authority to pursue investigative demands is not unlimited. First, a dealership may object and be afforded a hearing to be heard in opposition to CPD's demand. At this hearing, CPD has the burden to show that its demand is proper. Even if CPD meets its burden, the court may modify the scope of CPD's investigative demand. Second, CPD's demand to produce documents or things must be described with sufficient clarity so that the dealership may identify those items. Third, CPD's demand must be reasonable. Finally, the attorney-client privilege applies to the information demanded by CPD.

C. What we are doing

In the very near future, the ADAI and Mr. Shanahan will meet with CPD to discuss, on a global level, the handling and necessity of CIDs regarding spot deliveries. We intend to raise several issues with CPD related to the appropriateness and scope of its CIDs, and alternative investigatory methods that CPD may employ in its information-gathering efforts.

More information regarding this matter is forthcoming. Should you have questions in the meantime, you may contact Mr. Shanahan at Stewart & Irwin, P.C. via the contact information provided above.