



# Automobile Dealers Association of Indiana, Inc.

BULLETIN

## “TrueCar” Discussion

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By now, you might be familiar with TrueCar and its promise to provide transparent pricing information to consumers and to create a “no haggle” environment in which consumers will receive the best available deal when negotiating a vehicle purchase. TrueCar’s model and practices have sparked controversy in the industry and resulted in several state regulatory agencies and/or dealer associations issuing warnings of potential unlawful practices, including without limitation: Colorado, Kansas, Virginia, and Wisconsin.<sup>1</sup> Prior to entering an agreement with TrueCar, members should consider several issues that the TrueCar model raises and seek legal counsel.

**A. Brokering Laws.** Indiana law prohibits a person from arranging or offering to arrange twelve or more transactions involving the sale of a motor vehicle per year in exchange for a fee or commission. A preliminary assessment of TrueCar’s activities suggests that TrueCar may be in violation of this law. Dealers participating in TrueCar’s program may also be violating Indiana law. It is unlawful to aid a person in violating the law prohibiting brokering. Thus, a dealer participating in TrueCar’s program may be considered in violation of Indiana law. If so, the dealer’s license may be suspended or revoked, and/or the dealer may be fined.

**B. Deceptive Advertising.** Indiana law prohibits deceptive advertising including without limitation “bait and switch” tactics and false representations of price advantages. TrueCar solicits consumers with price guarantees on behalf of dealers. If the dealers do not deliver on those guarantees, “bait and switch” allegations can follow. Additionally, TrueCar’s price guarantee could be construed as a representation of a price advantage on behalf of the dealer. These potential interpretations could mean trouble for participating dealers. Admittedly, dealers face these issues with all advertising; however, given the increased scrutiny of TrueCar it is even more important to pay close attention to these potential issues. Dealers are well advised to have someone on staff familiar with advertising sales and regulations and/or to seek advice and review from their legal counsel.

**C. Privacy.** TrueCar asks dealers for access to their DMS systems. TrueCar uses dealers’ DMS sales data primarily to operate its performance-based billing model and to ensure accuracy of its pricing information. Dealers should be wary of sharing data with outside parties – particularly an outside party that intends to share information with the public which is derived from the dealers’ DMS data. Once a dealer allows an outside party access to its DMS system, the dealer loses control over its data. Dealers should consider the potential consequences if its data falling into the wrong hands. Another concern is whether TrueCar is being provided access to non-public personal information that is protected by the FTC’s Safeguard’s Rule or governed by other privacy rules. Dealers should review their privacy policies, the FTC’s Safeguard’s Rule, the Red Flag’s Rule, and State Privacy Rules<sup>2</sup> in deciding whether to do business with TrueCar.

The biggest legal concern with TrueCar’s model is whether it violates Indiana’s prohibition against brokering without a license. Advertising and Privacy are other concerns but these typically exist with most dealership endeavors. Through due diligence and monitoring the advertising and privacy issues can be managed to alleviate serious concerns. Brokering, however, would require substantive changes that may not be possible. Dealers would be well advised to thoroughly review TrueCar’s model and contact their legal counsel prior to proceeding.

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<sup>1</sup> To our knowledge, the State of Indiana has not considered TrueCar’s model or issued any opinion thereto.

<sup>2</sup> Currently, the State of Indiana does not have a specific consumer privacy rule except that which involves disclosure of breaches to computer systems.