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States Respond to the FTC's Notorious 97 Letters: The Sequel No Dealer Wanted

SPEAKERS

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In this episode of *Moving the Metal: The Auto Finance Podcast*, hosts [Brooke Conkle](#) and [Chris Capurso](#) break down two significant state-level regulatory responses to the Federal Trade Commission's (FTC) March 2026 wave of 97 warning letters targeting auto dealers — examining how Louisiana's Motor Vehicle Commission is formally updating its advertising regulations to align with FTC guidance on total price transparency, and how the Massachusetts Attorney General's Office issued a sweeping advisory putting dealers on notice that hidden documentation fees violate state law, with potential double exposure under both motor vehicle dealer regulations and the Massachusetts UDAP statute.

Transcript

Podcast: *Moving the Metal: The Auto Finance Podcast*

Episode: States Respond to the FTC's Notorious 97 Letters: The Sequel No Dealer Wanted

Hosts: Brooke Conkle and Chris Capurso

Aired: June 30, 2026

Brooke Conkle (00:10):

Welcome to *Moving the Metal*, the premier legally focused podcast for the auto finance industry. I'm Brooke Conkle, a partner in Troutman Pepper's Consumer Financial Services Practice Group.

Chris Capurso (00:20):

And I'm Chris Capurso, of counsel in Troutman Pepper's Consumer Financial Services Practice Group.

Brooke Conkle (00:25):

Today we'll be discussing two new state regulatory developments in Louisiana and Massachusetts following the FTC's notorious 97 letters. But before we jump in, let me remind you to please visit and subscribe to our blogs. We have two great ones that may be of interest to you, troutmanfinancialservices.com and consumerfinancialserviceslawmonitor.com and also we have a bevy of other podcasts that you might find interesting. *The Consumer Finance Podcast*, which as you might guess, is all things consumer finance related. *The Crypto Exchange*, devoted to trends, challenges and legal issues in Bitcoin, blockchain, fintech and regtech. *FCRA Focus*, a podcast dedicated to all things credit reporting. And finally, *Payments Pros*, a great podcast focused exclusively on the payments industry. All of these insightful shows are available on your favorite podcast platform, so check them out. And speaking of those platforms, if you like what you hear, please leave us a review

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Chris Capurso (02:23):

It would have fit, especially just with something called the Notorious 97. I mean, the Ides of March would be just so fitting.

Brooke Conkle (02:30):

It would have worked, guys. FTC, get on board. 97 warning letters to auto dealer groups across the country. A really sort of broad and simultaneous enforcement signal that the agency directed at the auto retail industry. FTC Director Christopher Mufarej was direct. Dealers cannot lure consumers with low advertised prices and then add mandatory fees at the end of the purchasing process. The legal hook of course is section 5 of the FTC Act, not a new law. But you know, Chris, what we're seeing is more and more emphasis on total price advertising. Advertised price must include mandatory dealer fees such as doc fees, dealer add-ons and administrative fees. Prices cannot be conditioned on rebates that are not available to all buyers. And the internet price or the drive-out price still has to have those required charges. So why does this matter beyond the 97 recipients? Chris, one of the things we're looking for is where do states pick up the mantle that the FTC has thrown down? And Chris, we're seeing that specifically in Louisiana. So tell us a little bit about that.

Chris Capurso (03:43):

Yeah, I mean, you don't want to say out loud that sometimes the crystal ball doesn't reveal the right things. Anytime you're asked what does the crystal ball say, what do the tea leaves say? And we say what we think is going to happen based on prior history. We're two for two now because we had said, you know, there's the chance Chairperson Ferguson has shown an interest in at least maintaining actions in the auto industry. Check that box because we've got these letters. We've got the Lindsay Automotive Action, we've got that one down. Then the second one... In the aftermath of that we were asked where does this kind of go? And we thought this is a UDAP directive from on high, from the FTC, the granddaddy of the UDAP authority. And we now have the Republican administration saying, hey, these things are UDAP. States have that same authority. Where does it go? Check another box. We're two for two because the states have started to act and Louisiana is a very interesting one. So this is a bulletin that the state released in late May. It's from the Motor Vehicle Commission. And it interestingly starts out saying, hey, our current advertising rules.

And these aren't just guidelines or pieces on their website. These are the actual promulgated regulations. They're not up to date with what the FTC is saying. So we're going to use a formal rulemaking process to fix those to

mirror what the FTC is saying. And you know, Brooke and I were talking about this earlier. It's an interesting thing because with the price advertising back out to the macro level with anything right now, there's the question, okay, if the administrations change in 2028, does this all go away. Do we have the sort of whiplash that we've been having over the last eight years where 2016 to 2020 to 2024 has just been this wild ride? This, you know, we were discussing it is the baseline of what we can expect in this dealer advertising regulation. This is what a relatively laissez-faire regulatory state has come up with for dealer advertising. So we should expect that this might be the lowest of what we can expect, the baseline. So the fact that Louisiana is saying we need to change our rules to align with what the FTC has said is pretty significant because that's going to be there.

That's not guidance that can get wiped away. They are going to change their rules. And the reason they have to change their rules is because in Louisiana, the regs, as they are currently stated, say that you can exclude documentary fees from the total price. And as Brooke, you just said, the FTC not on board with that. So the first big bullet in this bulletin, see what I did there, is that the total advertised price of the vehicle must include all mandatory dealer fees. They are saying, even though our regulation says what it says, that you can exclude them. We're saying you cannot. And we are going to change the regulations to align with what the FTC has said and the Notorious 97 as we're calling them. And in all the follow-up webinars and all the follow-up correspondence that the FTC has put out there, don't leave the documentary fees out of the total advertised price. They go on to say that when a required government fee is excluded, that exclusion must be disclosed in the sale advertisement. And that's notable because you know, in the warning letters and again, all the follow-up discourse, it's been the discussion, well, it's gotta be the total price except for the government fees.

You know, they're going to be charged to everyone. They're not negotiable. The government imposed fees, those can be left out. Louisiana is reminding its dealers, you have to disclose that those are left out. You can't just put the price there and then say later, oh yeah, there's government fees. They're advocating that. You need to put that there. The advertisement's most prominent price must be one that 100% of consumers can walk in and write a check for the vehicle. That is straight out of the NADA webinar with Chris Mufarej. He said that exact thing, in fact, right down to you should be able to write a check for the vehicle based on what you see in the advertisement. So that's just straight away from those webinars and proof that what regulators say in videos that may not be gospel. Some people may take it as that and Louisiana has taken it as that. And they are reminding their dealers to keep that in mind. The Louisiana Motor Vehicle Commission reminds its dealers that a failure to post a total sales price online could be a deceptive practice on its own.

So they're advocating that dealers do not advertise a standalone reference with or without a total sales price, such as click for your best price. Call us for the most current price. Call for today's price. You get it. The Motor Vehicle Commission warns that a failure to include any mandatory dealer add-on accessory costs in the total advertised price is considered deceptive and misleading advertising and they specifically do not... And again this is going to the webinar and all this follow-up discourse that dealer added accessories could be considered mandatory if they were pre installed and could not be removed. So part of the car in the advertisement, if those costs are already there, they can't be removed. They need to be included in the total cost. If we remember it came up on the NADA webinar, what happens if they choose something afterwards? They've seen the advertised price, they come into the dealership and they say oh, we want other things. That's not an issue because the consumer has asked for it at the dealership. They were not lulled in there by a "false advertising price." They came in based on an advertising price that was the total advertising price. Then they asked for more. There's no issue with that. The Motor Vehicle Commission reminds its dealers that the use of the word free or complimentary could be a

deceptive act according to the FTC.

That goes with the FTC's free advertising guidance and rulemaking. And finally, just this is guidance, feels like a plea. Review all current vehicle advertising on your websites, social media, radio, television, mailers, etcetera. Which is the point that we've been consistently harping on that advertising takes a lot of different forms and you know social media is the one that we typically highlight is that post you put up about the car is advertising. The etcetera use makes it clear that advertising can take a lot of different forms. You got to be careful what you're putting out there into the universe because it could be an advertisement. And the Motor Vehicle Commission is saying you need to make sure that that advertising complies with not only our bulletin, all these points that we've made, but also every FTC regulation, the warning letters, what have you. Obviously we're going to be on the lookout for when they actually do change the regulation to align with the FTC. But for now, you've got the Motor Vehicle Commission saying you need to follow these basic tenets. And I suppose if there's a silver lining, there isn't a private right of action for these types of violations.

At least the violation of the motor vehicle trade regulation for advertising, which we cannot say for Massachusetts, which Brooke, you're going to discuss a little bit later. But at least there's that little silver lining. I think the interesting part for me is obviously the Motor Vehicle Commission could bring an action and you know, they can enforce this how they will. But think back to the FTC webinar with Chris Mufarej and the now infamous quote, does the FTC have the horses? Yes, we do. But also you could highlight when your competitors are complying with these advertising regulations, essentially you could rat out your competition-type guidance. And we're talking here about a motor vehicle commission. Could we see the same type of thing? Could we see in Louisiana if a dealer doesn't like what their competitor down the street is doing, could we just see those kind of complaints go in at the state level as well as the FTC? And then could we see dueling actions against the same type of thing? Something interesting to see. But you know, that's a lot about Louisiana. And I guess before we move on, I would just say Louisiana, not thought of as a heavy blue state, right? And yet we have this guidance now, Brooke, we move on to a heavy blue state in Massachusetts. What have they said?

Brooke Conkle (11:55):

Heavy blue. That's exactly right, Chris. And just as we've been talking about, the trigger here is that notice from the FTC and the Massachusetts Attorney General's Office did something extremely similar, which was to issue a formal letter not directed to any particular dealerships, but just a formal advisory to put dealers, in their own words, on notice that certain advertising practices violate Massachusetts law and must cease immediately. So strong unambiguous language coming out of the Attorney General's office. The legal backdrop is the advisory is grounded in the Massachusetts Consumer Protection Act and its implementing regulations. And critically, Chris, the Attorney General's Office has opened what we call the big scary doors, the consumer complaint channel. So consumers are directed to file complaints with the Attorney General's Office's Consumer Advocacy and Response Division, which means the pipeline for enforcement referrals is active and ready. So when we're asking, do you have the horses? Massachusetts is saying at the state level, we 100% do. So what is the consumer harm that the attorney general is addressing. And really the letter describes the problem in terms that resonate with everyday consumers. You know, a vehicle is one of the most expensive purchases that many people will make outside of purchasing a home.

Consumers spend significant time researching and comparison shopping only to arrive at the dealership and discover a mandatory doc fee that was never reflected in the advertised price. And the attorney general is explicit

about why consumers complete the purchase anyway because there are immediate transportation needs, there's the pressure of an in person sale and frankly, just it's an exhausting process. And the attorney general views this dynamic as a harm in and of itself, not just a technicality. So this type of framing that we're seeing, Chris, here like this matters because regulators are not treating a doc fee as a minor disclosure issue. They're treating it as a structural market failure that inhibits consumers ability to comparison shop meaningfully. So what is the core rule? It's 940 Code Massachusetts Regs. 5.02(3), say that fast, requires that all advertised prices must include any fee the dealership necessarily charges, which of course includes doc fees. The rule forecloses any sort of workarounds, meaning that a dealership does not comply by separately listing the doc fee elsewhere in the advertisement. Even if that separate disclosure is prominent. The fee has to be baked into the advertised price. And one of the wrinkles that Massachusetts explicitly addressed is the tension between a stated price regime and the Monroney label.

And specifically, if you've got a Monroney label being displayed and the dealership's actual selling price differs from that price, the dealer must affix an adjacent label that shows the full total price. And this is a significant operational point. Consumers treat that Monroney sticker as sort of the authoritative price on the lot. But that is not going to satisfy Massachusetts regulations if mandatory fees push the actual price higher. Now, Chris, when we talk about the exposure under this regulation, in particular, the attorney general adds kind of an escalation warning that is really important because failing to comply with this sort of stated price regime exposes dealerships to liability under the regulations, but also liability under the Massachusetts UDAP statute. So that means a dealer who does not properly disclose a doc fee has potentially two separate regulatory violations from a single practice. An unfair advertising violation and an unfair fee violation. And why is that important? Well, Chris, as you mentioned, the Massachusetts UDAP statute, attorney's fees, that's always important. So those two channels are really critical for sort of understanding this advisory from the Massachusetts attorney general's office.

Chris Capurso (16:26):

And Brooke that's very interesting talking about the double exposure risk, because in a prior podcast we talked about the Massachusetts junk fee rule and we had said that there was an exception for complying with the motor vehicle dealer regulations. And we said that's all well and good, but what if you violate the motor vehicle dealer regulations? Are you subject to both? And the Attorney General says, you sure are.

Brooke Conkle (16:50):

That's right.

Chris Capurso (16:51):

I mean, that's exactly what they're saying. You're saying, okay, you can get the violation for the motor vehicle dealer regulation and you get the junk fee one.

Brooke Conkle (16:57):

Right.

Chris Capurso (16:58):

So this is kind of a throwback to an older podcast. But that double exposure risk is real.

Brooke Conkle (17:04):

That's right, it's real. And the words of death, attorney's fees. So what are our practical takeaways for Massachusetts? Remember, there's no sort of footnote fix. A prominent separate disclosure of a doc fee does not satisfy Massachusetts law. Monroney compliance. If your doc fee or any other mandatory charge is not reflected on the Monroney label, you need an adjacent label on new vehicles displaying the total correct price. And monitor this closely. The Attorney General's reasoning could be applied to mandatory bundled products or finance-related fees. So a lot to digest today, Chris.

Chris Capurso (17:42):

Yes, and you know, we're going from the land of the Saints to the land of the Patriots and everybody is looking at price advertising and we're probably going to be seeing even more. And we'll see if I can similarly use my NFL knowledge to make some nice sentences. And with that, we'll wrap it up for today's podcast. Thank you to our audience for tuning in. Don't forget to check out our blogs where you could subscribe to the entire blog or just the specific content you find most helpful. That's the consumerfinancialserviceslawmonitor.com and the troutmanfinancialservices.com blogs. And while you're at it, why don't you head on over to troutman.com and sign up for our Consumer Financial Services mailing list. You can stay abreast of current issues with our insightful alerts and advisories and receive invitations to our Industry Insider webinars. And of course, please mark your calendars for this podcast, *Moving the Metal*, which we will be releasing every two weeks in 2026. That will be generally on the second and fourth Tuesdays of each month. And we realize that we've kind of happened into a bizarre holiday edition again. We had a Memorial Day edition.

We now have a Fourth of July edition. So hopefully everybody is having a wonderful Fourth of July weekend and obviously listening to us while you're watching fireworks because who doesn't? But as always, if you have any questions or if we can help in any way, please reach out to us. Until next time.

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