

A Warning Sign to Massachusetts Auto Dealers



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On September 15, 2022, the Massachusetts Attorney General brought an action against Jaffarian Volvo-Toyota in Haverhill for alleged violations of the Consumer Protection Act (MGL Chapter 93A, Section 2) and the Public Accommodations Act (MGL Chapter 272, Section 98) alleging discriminatory pricing. Specifically, the AG contends that, because Jaffarian gives its employees unfettered discretion in pricing ancillary products, such as GAP, service contracts, Lojack, paint protection shields, key replacement, and wheel/tire repair agreements, Jaffarian's customers may be charged "wildly different markups" for the same product, which has purportedly resulted in racial discrimination.

The AG alleges in her Complaint that Jaffarian's sales records indicate that they charge higher markups on ancillary products for Black and Hispanic customers than White customers. This conclusion was arrived at by using Bayesian Improved First Name Surname Geocoding (BIFSG) methodology to analyze first names, last names, and addresses of customers, along with census data, to determine each customer's predicted race and ethnicity. BIFSG standardizes the customers' last names and then they are matched to the census surname list. For each name that matches the surname list, the probability of belonging to a given racial or ethnic group is constructed. The same method is used for the customers' first names, and the lists are merged. Addresses are then used and mapped into census geographic areas using a geocoding and mapping software application. From the

addresses that are geocoded, the proportion of the U.S. population for each race and ethnicity residing in the geographic area associated with a given zip code is calculated.

From a sample size of less than 2,500 transactions, the AG contends that the markups were 54 percent and 45 percent higher for Black and Hispanic consumers, respectively, than those paid by White customers. The AG maintains these markups created approximately \$170,000 in extra profits from Hispanic and Black customers' overpayments during the 27-month review period. Consequently, the AG is seeking injunctive relief against Jaffarian as well as civil penalties, disgorgement of purported ill-gotten profits, attorneys' fees and costs, and restitution to the customers involved.

In her Complaint, the AG cites the substantial disparity in "family wealth" between White families on the one hand, and Black and Hispanic families on the other, and asserts that numerous studies demonstrate that discriminatory pricing generally occurs when salespeople are given discretion in pricing. Because auto purchases are often the largest expenditure made by non-homeowners, regulators are laser-focused on the pricing disparity in retail auto sales between White and non-white customers, particularly with regard to the sale of ancillary products. With respect to the Jaffarian case, even though the sample group for "All Add-on Products" consisted of only 2,418 customers and only included 1.24% of Black customers or 30 such customers, the AG has forged full-steam ahead with its discrimination claims against Jaffarian. Interestingly, the alleged pricing disparity for "service contracts" is significantly less for Black customers than Hispanic customers, though there are far fewer Black (1.5%) than Hispanic (17%) customers in the total customer sample. The AG alleges Jaffarian charges Hispanic customers on average \$225 more for a service contract than White customers and \$168 more for Black customers.

Recent Wave of CIDs issued to Dealers

In recent weeks, there has been a wave of Civil Investigative Demands (CIDs) issued by the AG's office to auto dealers across the Commonwealth as well as their DMS providers relating to add-on products and financing terms. These CIDs are the equivalent of subpoenas requiring the production of voluminous records relating to the sale of service contracts and add on products, as well as retail financing terms. Like most government requests, these CIDs are overbroad in both the scope of information and time period requested, with some seeking five years' worth of records. Compliance with these CIDs is undoubtedly time consuming, disruptive to dealership operations, and often expensive. However, dealers must ensure that they have a competent and diligent employee to handle the retrieval of all such requested information.

More importantly, dealers should not be lulled into a false sense of security because the target of the investigation appears to be Ally or any other finance company from the face of the CID. The reality is that the AG is looking at individual dealer practices as well, just as she did in the Jaffarian case. This is all the more reason that dealers should consider engaging counsel before responding to CIDs. With the assistance of counsel, a dealer can often negotiate a reduced scope and time period for at least the initial production, to minimize the pain to the dealership's daily operations associated with retrieving such a voluminous number of records. The bottom line is that dealers need to take this issue seriously and review their pricing and training practices to ensure that they do not engage in discriminatory pricing.



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