

**PAYMENT PROTECTION**  
**NOT CREDIT LIFE**

**LOAN/LEASE RATE**  
**NOT APR ONLY**

**SERVICE CONTRACT**  
**NOT WARRANTY**



# Say the Magic Word

*The words used in a presentation or on a menu can have implied meanings that you may not have intended. Beyond being technically inaccurate, you may also be misleading customers and giving plaintiff's attorneys more ammunition.*

BY JAMES S. GANTHER, ESQ.

*But I tell you that men will have to give account on the Day of Judgment for every careless word they have spoken."*

— Jesus of Nazareth (Matthew 12:36)

**A**s the quotation above suggests, the wrong word at the wrong time has been a problem for the human race for at least the last 2,000 years. And while there is no evidence Jesus was complaining about his treatment in the F&I office of Galilee Chariot Sales and Service, his words should resonate with every F&I practitioner.

It is a stone cold fact that the words used in F&I carry precise and specialized meanings, meanings the average customer may not fully understand. So, to misuse those words can lead to confusion and, inevitably, lawsuits.

One obvious example of a commonly misused word is "warranty," most often ex-

pressed as an "extended warranty" when "service contract" is intended. The difference is crucial.

According to the Magnuson-Moss Warranty Act, a warranty is a promise made by a manufacturer or seller of a consumer product (such as, say, an automobile) to a buyer that the product will meet a specified level of performance for a specified period of time, or that the product is free of defects. A service contract, on the other hand, is "a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair (or both) of a consumer product."

What this means in real life is that by calling a service contract a warranty, you may be implying that the coverage is *free*. Although nothing in federal law requires product warranties to be included in the price of the product, it is normal practice and creates a reasonable expectation.

One can imagine the customer who sues a dealer for charging a fee for a service contract that is listed on the buyer's order or F&I menu as an "extended warranty." Coupled with that allegation would be the argument that the coverage of the "warranty" is broader than that of the service contract.

The common misuse of the term warranty is due, in part, to the misuse of that term by the companies that underwrite or administer service contracts. For example, CNA National Warranty Corp., GE Auto Warranty Services, U.S. Warranty Corp., etc. have never sold a warranty, and can't; they are neither the manufacturer nor the seller of the car the service contract applies to.

#### **F&I MENUS: WHERE MAGIC WORDS LIVE**

The place where the most "magic words" congregate, concentrate and propagate is the F&I menu. This is not to say such menus should not be used — they should

—but that they must be used with care.

F&I menus are gaining in popularity because, properly used, they can increase sales of F&I products and create a record of a properly conducted and disclosed transaction. This latter benefit can be a lifesaver months or even years after a transaction has been concluded, when a disgruntled customer claims a particular product (now needed) was never offered. A clean menu in the deal jacket bearing a customer's signature in the appropriate spots can also take the air out of an allegation of payment packing.

Inartfully used, however, menus can cause their own share of dealer heartburn. I have seen some menus bearing the title "Mandatory Disclosures" on the top. This

tion. Three years later, when the customer expresses shock and amazement that he does not own the car, his lawyer will produce the menu and announce that the APR citation at the top proves the dealer told the plaintiff he was buying the car, not leasing it.

If your menu defaults to APR when disclosing options for a lease transaction, make sure it can be altered to read "Lease Rate" when a lease is being discussed. If only one term can be entered in that spot, try fitting "APR/Lease Rate" and circle the applicable term when disclosing the rate to the customer.

A similar problem will arise from the careless use of the term "loan balance." This may show up on a menu in the prod-

again, that a loan was disclosed in a lease transaction. At the very least, it can add weight to an argument that a dealer bamboozled (or flim-flammed, depending on your jurisdiction) an unsophisticated customer. Better to avoid the risk and label the coverage "payment protection" or something similar.

For the reasons discussed above, never ever use the term "extended warranty" on a menu when "vehicle service contract" is intended. Ever.

There are important disclaimers that should appear on a menu form, typically at the bottom. A menu should *always* contain a clear statement that "All terms, conditions, payments and APR are estimates and subject to lender approval" or similar language.

The following disclaimers are also important, and can protect the dealer beyond the issues surrounding F&I products:

"Options listed above have been fully explained to me. I selected the payment option as indicated. I understand the purchase of any option is NOT required. Each product MAY be purchased separately. Purchase will not influence my interest rate and/or credit approval and/or ability to obtain financing. Specific details and coverages are outlined in their respective product agreement. For specific payment information, refer to the Retail Installment Contract/Lease Agreement. I have been advised of the dealer privacy notice law required by the Gramm-Leach-Bliley Act. In accordance with the GLB Act, I authorize the dealer to submit my non-public personal information to the service providers with which it does business."

These disclaimers should appear above the space where a customer signs the menu. Even better, if your menu program has a "print final" page showing options selected and declined, the disclaimers can be reprinted in larger type in the space between the two columns. This would go a long way to obliterate the "fine print was so small I couldn't read it" argument. ■

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is a term that should *not* be used on a menu. True mandatory disclosures would include the Truth in Lending Act disclosures on an installment sale contract. Using the term on a menu could be construed as suggesting a governmentally-required disclosure and endorsement.

"Waiver" is another term best left off the menu. It is often used to create fear in a customer who elects not to choose a particular product when, in fact, the customer is not waiving his *right* to purchase the referenced product. Vehicle service contracts, for example, may be purchased after the date a car is purchased (though financing it is another matter). A clever plaintiff's lawyer could allege that the customer would have purchased the service contract later, before it was needed, had the dealer not misled the customer into believing he had forever waived that right.

A good menu program will clearly state the essential terms of a transaction up at the top. One of those terms, of course, is annual percentage rate, or APR. The problem is: *APR only applies to credit transactions.* It does *not* apply to lease deals. Thus, using the term APR in a lease menu suggests that the dealer was confusing the customer about the nature of the transac-

tion descriptions for GAP or credit insurance. Say a customer leases a vehicle, and the menu presented to him describes GAP as a product that will "pay off the loan balance in the event of total loss or unrecovered theft." "Loan balance" in that context suggests, well, a *loan*, not a lease. A better description would be:

"Pays the difference between actual cash value and loan/lease balance in the event of total loss or unrecovered theft. Some limitations may apply."

With respect to credit life and credit disability coverage, it would be wise to use a similar "loan/lease" phrase. And, in an abundance of caution, why label the product "credit life" or "credit disability" coverage? A creative lawyer could argue that suggests,

**AT A GLANCE**

- To call a service contract a warranty may suggest to a customer that it's free
- Asking customers to sign a waiver can be misleading since products can be purchased after the initial transaction
- Be clear about the terminology used with leases versus loans so customers understand the nature of the transaction