



# THE WANADA BULLETIN

NEWS AND INFORMATION FOR AND ABOUT FRANCHISED NEW CAR DEALERS IN THE WASHINGTON AREA

WANADA Bulletin # 22-05

June 1, 2005

## 2005 Bobby Mitchell Hall of Fame Classic, July 9 & 10

### 15<sup>th</sup> Anniversary of Nation's Largest Yearly Hall Of Fame Reunion WANADA Aims for Another Fundraising Record for Leukemia and Lymphoma Research



**Bobby Mitchell at last year's record breaking Classic.**

Mark your calendars now for what promises to be the best ever *Bobby Mitchell/Toyota Hall of Fame Classic* sponsored by Washington Area Auto Dealers, at the Lansdowne Resort, July 9 & 10.

This year, Harlem Globetrotter Marques Haynes, Chicago Bears legend Gale Sayers and Redskins favorite John Riggins will join the 15<sup>th</sup> anniversary celebration of the nation's largest annual hall of fame reunion, which includes more than 40 pro football and basketball legends. Participants and spectators can also count on seeing such Redskins legends as

Sonny Jurgensen, Sam Huff and Charley Taylor, who respond every year to the call of their colleague, Bobby Mitchell.

With WANADA as its primary sponsor and strong support from Washington's franchised dealer community, last year's Classic raised a record \$505,000 for the Leukemia & Lymphoma Society, bringing the total raised by the Classic to more than \$3.5 million since the annual event was conceived in 1990.

For 2005, former Red-

skin Bobby Mitchell and co-chair Tammy Darvish are aiming to break the \$4 million mark – and these two dynamo fundraisers seldom fail, having set a record level of \$1.8 million in donations in the past four years under WANADA's sponsorship.

In a recent letter to WANADA dealers, kindred line members and vendors, Darvish, vice president of DARCARS, encouraged their support and participation, pointing out that there are several sponsorship

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## LEGAL UPDATE:

### F&I Employees Exempt From Overtime

The US Ninth Circuit Court of Appeals, in an opinion overturning three Oregon and Washington district court decisions, has confirmed that F&I employees are exempt from overtime under section 7(i) of the Fair Labor Standards Act. The Ninth Circuit opinion involved three cases in which the main question was whether F&I managers, compensated almost entirely through commission, were exempt from the FLSA's overtime pay requirements.

NADA filed friend-of-the-court (*amicus curiae*) briefs on behalf of the dealers involved and also provided financial support through its Legal Defense Fund. In an almost unprecedented move, according to NADA, the US Department of Labor (DOL) also filed *amicus* briefs on the dealers' behalf.

NADA chairman Jack Kain said the decision is a major and complete victory for dealerships and for DOL, too. "If the Ninth

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School's Almost Out :**Know Your Teen Driving Rules**

Dealerships that hire teens for the summer (or anytime) are reminded of the 1998 "Drive for Teen Employment Act," which sets a minimum age of 17 for any on-the-job driving on public roadways. On-the-job driving by employees 18 and older is not regulated, and 16-year olds may not drive on public roads, but may drive on dealership property.

According to the Department of Labor (DOL), 17-year-olds may drive on public roadways as part of their employment **only if all of the following requirements are met:**

- The driving is limited to daylight hours;
- They hold a license valid for the type of driving involved in the job performed;
- They have successfully completed a state approved driver education course and have no record of any moving violation at the time of hire;
- The automobile or truck is equipped with a seat belt for the driver and any passengers and the employer has instructed the youth that the seat belts must be used when driving the vehicle;
- The automobile or truck does not exceed 6,000 pounds gross vehicle weight;

**The driving may not involve:**

- Towing vehicles;
- Route deliveries or route sales;
- Transportation for hire of property, goods, or passengers;
- Urgent, time-sensitive deliveries;
- Transporting more than three passengers, including employees of the employer;
- Driving beyond a 30-mile

radius from the youth's place of employment;

- More than two trips away from the primary place of employment in any single day to deliver the employer's goods to a customer (other than urgent, time-sensitive deliveries which are prohibited);
- More than two trips away from the primary place of employment in any single day to transport passengers, other than dealership employees; and,
- Such driving is only occasional and incidental to the 17-year-old's employment. This means that the youth may spend no more than one-third of the

work time in any workday and no more than 20 percent of the work time in any workweek driving.

The above requirements apply whether the youth is driving a personal or employer-owned vehicle. Employers can guard against unwitting violations of the new requirements by securing documentation from 17-year-old employees who drive as part of their job. Such documentation would include evidence of the employee's age, completion of a driver education course, clean driving record and appropriate state driver's license.

A violation of these requirements can result in a fine of up to \$10,000. For more information go to the DOL website, <http://www.dol.gov/esa/regs/compliance/whd/whdfs34.htm>.

**HALL OF FAME CLASSIC**

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opportunities available at various levels, as well as the need for a wide variety of auction items (see the flyer and donation forms enclosed with this Bulletin).

"As a sponsor, WANADA has opened the door for Washington area dealers and dealer community supporters to be involved in the tournament weekend in a big way through a variety of special opportunities to personally interface with the NFL/NBA Hall of Famers," said Darvish. "It is imperative that we secure all commitments as quickly as possible, and sponsorship packages will be awarded on a first come, first serve basis."

The weekend begins with a "Tournament Practice Round" on Saturday, July 9, 2005, followed by a VIP private reception with all of the Hall of Famers. After the reception, all participants will be hosted at a private banquet that will high-

light all of the sports heroes there and include a silent auction and a raffle for a 2005 Toyota Solara SE convertible. On Sunday, July 10, 2005, the final "Tournament Round" will be held, followed by an awards luncheon/banquet. For those who do not golf, packages are also being offered that include the VIP reception and banquet with the Hall of Famers.

The Leukemia & Lymphoma Society is devoted to finding a cure for blood-related cancers, such as Leukemia, Lymphoma, Hodgkin's Disease, and Myeloma, and to improving the quality of life of patients and their families. The Society funds research, patient services, educational programs, and advocacy efforts.

For more information on participation in and sponsorship opportunities for this year's Hall of Fame Classic, contact Barbara Martin at WANADA, (202) 237-7200 or [bjm@wanada.org](mailto:bjm@wanada.org).

## NADA MONTHLY DEALER OPERATIONS COMMENTARY

### E-mail: Marketing Opportunity or Potential Liability? *What Dealerships Need to Know About the CAN-SPAM Act*

You have a great idea for a quick marketing campaign. You have your customer data files, and you have the “special” ready to go. With one click of the mouse, you send the ad out to your customers. Now what? Maybe your phones will start ringing, or maybe you’ll receive an unwanted phone call – from an irate customer who feels he was spammed. But that wasn’t your intention at all! You just wanted to make sure EVERYONE knew about the special at the dealership. Have you broken a law by sending the e-mail? Perhaps...

#### **What is the CAN-SPAM Act and why should I know about it?**

In 2003, the President signed the “Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003.” This new law imposes restrictions on the use of commercial e-mail messages, excludes “transactional or relationship” e-mail messages from most of these restrictions, and took effect on January 1, 2004.

#### **So, what is a “commercial” e-mail message?**

It is any e-mail whose “primary purpose” is the “advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).”

#### **How do I determine the “primary purpose” of an e-mail message?**

The Federal Trade Commission has issued its Primary Purpose Rule that establishes the criteria for determining the primary purpose of an e-mail message. The rule divides e-mails into four categories.

- **Category 1:** An e-mail is considered “commercial” if its content solely advertises or promotes a product or service.
- **Category 2:** An e-mail with purely “transactional or relationship content” will not be deemed a commercial e-mail.
- **Category 3:** An e-mail that contains both “commercial” content and “transactional or relationship” content is considered “commercial” if either:
  - A recipient reasonably interpreting the subject line would likely conclude that the message advertises or promotes a product or service, or
  - The message’s “transactional or relationship” content does not appear at or near the beginning of the message.
- **Category 4:** An e-mail that contains both “commercial content and other content that is not “transactional or relationship” content is considered “commercial” if either:
  - A recipient reasonably interpreting the subject line would likely conclude that message advertises or promotes a product or service, or
  - A recipient reasonably interpreting the body of the message would likely conclude that its primary purpose is to advertise or promote a product or service.

#### **An overview of the requirements for “commercial” e-mails**

Each e-mail must clearly and conspicuously:

- Identify the message as an advertisement or solicitation.
- Notify recipient of opportunity to opt-out of receiving further commercial e-mail messages.
- Provide a valid physical postal address for the sender’s business.
- The notice must contain a functioning return e-mail address, or other Internet-based mechanism that permits the recipient to submit an opt-out request.
- It must be capable of receiving an opt-out request for at least 30 days after message is transmitted.
- The sender has 10 business days to process an opt-out request.

So, think twice before you click that mouse. Make sure that your dealership e-mails are compliant with the CAN-SPAM Act. For questions regarding the Act, contact your dealership legal counsel or your state association.

**FOOTNOTES****Reminder: New FTC Disposal Rule Takes Effect June 1**

The Federal Trade Commission's Disposal Rule, which implements section 216 of the FACT Act, requires dealers to properly dispose of credit reports and information derived from those reports. The new rule took effect , June 1. For those who may have missed WANADA's Privacy & Security Workshop in March, a summary of the FACT ACT is available at [www.nada.org/factact](http://www.nada.org/factact) (requires NADA member log-in to view).

**Service Managers Reminder:****Make Sure Your Techs Have Their Air Conditioning Certifications**

Avoid fines by making sure your service department technicians are up to date on their Section 609 (motor vehicle air conditioning) certifications, in accordance with EPA regulations. In past cases, EPA officers matched repair orders for the past three to four years against techs' photocopied certification cards. If there is no match or certification on hand, fines can amount to \$32,500 per day, with each repair order considered a violation. Technicians only need to obtain certification once, but because of turnover, service managers should make sure techs doing AC-related work are certified. For comprehensive information on *EPA Regulatory Requirements for Servicing of Motor Vehicle Air Conditioners* go to <http://www.epa.gov/docs/ozone/title6/609/justfax.html>.

**FTC Announces New Format for Pre-approved Credit Disclosures**

As required by the FACT Act of 2003, the Federal Trade Commission has issued a final rule that sets forth the required "format, type size and manner" of the "opt-out" disclosures that must accompany preapproved offers of credit (also known as "prescreened" solicitations) that are sent to consumers based on information contained in their credit files. The new rule, which takes effect August 1, 2005, requires that both a short-form and a long-form notice accompany the solicitation, and it provides sample notices in both English and Spanish. To review a summary of the new requirements, visit [www.nada.org/factact](http://www.nada.org/factact) (requires NADA member log-in to view).

**F&I Employees Exempt From Overtime** *(Continued from page 1)*

Circuit had not overturned the lower courts' interpretations, the potential liabilities for dealers would have run into the hundreds of millions of dollars. This is an excellent example of terrific work by NADA and of NADA Legal Defense Fund money well spent," said Kain.

For details regarding the decision, e-mail [regulatoryaffairs@nada.org](mailto:regulatoryaffairs@nada.org) or call (703) 821-7040.

**Staying Ahead...**

*People want economy and they will pay any price to get it.*

—Lee Iacocca

**Enclosure**

Bobby Mitchell Hall of Fame Classic Sponsorship Information