

In Times of Peace, Prepare for War

I just finished up a very active conference season. I've been on the "conference circuit," as some would say, since early January. Being on the conference circuit has enabled me to reconnect with friends, colleagues, clients, and federal and state regulators and to meet potential new clients along the way. One thing I've learned from being on the circuit is that some of you are not using your time wisely.

Ever heard the phrase "In times of peace, prepare for war"? The saying has been around forever but is often attributed to Niccolò Machiavelli, the father of modern political philosophy and political science, who stated, "War should be the only study of a prince. He should consider peace only as a breathing-time, which gives him leisure to contrive, and furnishes as ability to execute, military plans."

What he meant was that the time to prepare for war is not when war is imminent but rather when times are peaceful. One of the most effective ways to ensure peace is to be armed and prepared to defend yourself at all times.

How does that quote relate to legal compliance? I listened closely while on the conference circuit and heard some people say that the Consumer Financial Protection Bureau has been "neutered" and/or is going to disappear. I also noticed that as I began to tell some folks how being compliant can actually benefit them and their organizations, their eyes glazed over, they shifted their focus, and they started backing away. They weren't ready to hear what I had to say because they think the war is over.

Had they listened, I would have told them that although the perception is that the CFPB has shifted its focus from enforcement to education, the Bureau is still an active enforcer. A quick scan of the CFPB's posted enforcement actions will confirm this. And the Federal Trade Commission has ramped up its efforts against dealers and others in the auto finance industry. Not to be outdone, state regulators and attorneys general have picked up the perceived slack in the federal enforcement efforts, vowing to hold alleged bad actors liable for crimes against consumers in their states.

So, how can you prepare for war in this perceived time of peace? If you're a dealer, think about the last time you had your consumer-facing documents reviewed by knowledgeable counsel. You're using these documents every day with hundreds of customers. If things go south with the purchase or financing, do you know what a state regulator, attorney general, or plaintiff's attorney will want to review? Your dusty old documents that haven't been reviewed or updated since forever.

Because these documents are mass-produced for use in all your transactions, where there's one affected consumer, there are others, making a nice little class action possibility for a

plaintiff's attorney. A deal jacket review doesn't take that long to perform, and it'll show you where you may have holes in your defensive front.

Another way to prepare is to appoint a compliance officer and set up a compliance budget. No money allocated for compliance means no compliance. Your officer also needs some compliance training because he or she doesn't know what he or she doesn't know. It's like sending your troops into battle without armor, a shield, or a sword.

What about your advertising? Do you know the federal and state rules that apply to your advertising, and have you had your advertising reviewed recently? It's really easy (and cheap) for the FTC or a state attorney general to see your advertisements on TV, on YouTube, on the web, or in the newspaper and notice that they aren't compliant. A review of your advertising and marketing materials will show where your lines of defense may be weak. You also can use this review as an opportunity to create a standard process for creating and approving all advertising and marketing content before it is launched.

Another hot area right now is repossession. Do you know the state rules that apply to maintaining buyers' property post-repo? What does your retail installment contract say? Do you or your repossession company charge the buyer a fee to store the property or to get his or her personal property back?

If you're like one of those people that I heard or met on the conference circuit who thinks the war is over and you can conduct business the way you've always done it, think again. Don't wait until the battle has started to properly prepare your lines of defense. In these times of perceived peace, start preparing for war.

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