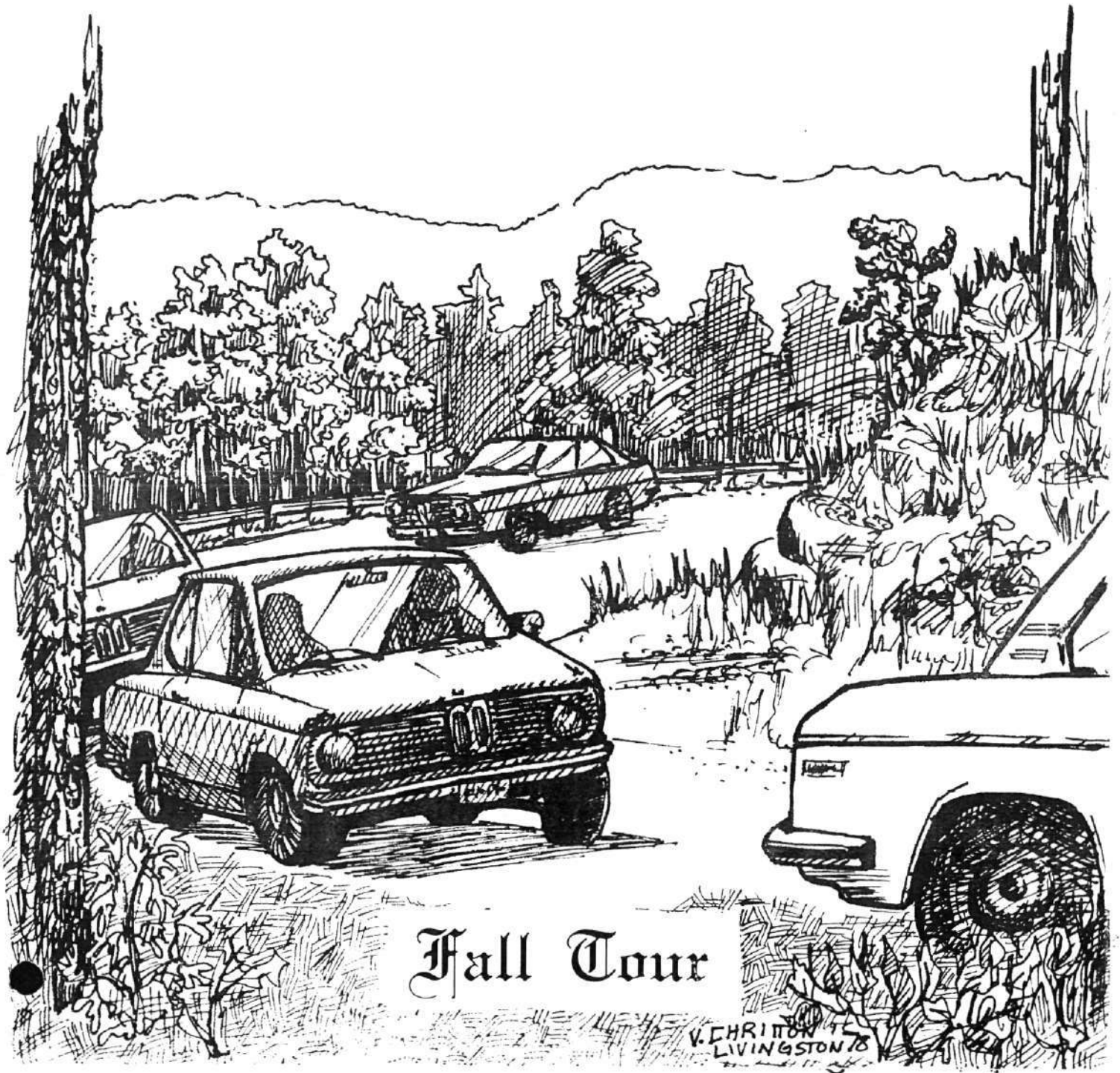


•der bayerische

Vol. 8, No. 10

October 1978



Editor's Notes

Greetings, all! After letting Barry write the last couple of editorials, I've again taken pen in hand. There's a lot happening this month, so I'll start with first things first.

Our monthly meeting is being held on Tuesday, Oct. 17th, at 8:00 p.m., at the Diamond Head Restaurant in Bethesda/Chevy Chase.

Next on the list is an Oktoberfest, sponsored by Autoy, Inc. and Auto Werke, Inc., on Saturday, Oct. 21st, at 2:00 p.m. Dave Toy promises a great time for all. For more info, see the invitation in this issue.

Following the Oktoberfest is our annual "Fall Tour." This year's event, entitled "Shenandoah Splendor," is being held Sunday, Oct. 29th. Departure time has been set for 9:30 a.m. — but it is requested you arrive early, to assure on-time departure. For more details, see the article.

This month's deadline is the 24th. In order that we remain on schedule, we need to have all articles before this time. The later I receive articles, the later everyone gets his newsletter. Considering we have to count on a minimum of three days at the typesetters and two days at the printer, we don't have very much "slack time." So — let's try to get those articles in early.

My next announcement concerns the newsletter, also. We are going to need a new editor(s). Barry and I are going to be busy taking care of our first child, and as a result, will be unable to continue to put out this newsletter. The last issue this year will be the November issue. After that, there will be no more issues until January. This gives the new editor(s) plenty of time to work on their first issue. I won't try to deceive you — it does take some time. I work a regular 5 day week, and am still able to gather the articles, get them to the typesetter, pick them up, paste them down, take them to the printer, pick them up, put the labels on (with help from Jane and Barry!), and mail them. So, it does take some time, but it can be done — and is very satisfying. I'm sure that if I could do it, surely someone out there can too. As a matter of fact — it would be best to get several people — thus taking some of the burden off any one person. Looking back over this year, I must admit I was about to "tear my hair out" sometimes; but all in all, I've enjoyed it very much, and have been happy to help in keeping our club one of the best in the nation. If anyone wants to volunteer, or knows someone who may, please let me know.

Hope to see you at this month's meeting and events!

Vicki



der bayerische

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CALENDAR

October

- 14, 15 MARRS Racing
Summit Point, W. Va.
- 17 BMWCCA Monthly Meeting
8:00 p.m.
- 21 Oktoberfest
2:00 p.m.
4952-4 Wyaconda Road
Rockville, Md.
- 22 PCA Championship Rally
- 24 Der Bayerische Deadline
- 26 Washington Rally Club Meeting
8:00 P.M.
Pop's Italian Restaurant
Wheaton, MD
- 29 Fall Tour — "Shenandoah Splendor"
(See article for details)

Auto Dealer Scored

The following is from the "Bethesda-Chevy Chase advertiser," Sept. 27, 1978.

In the first consumer action of its kind in the Washington Metropolitan area, an auto dealer has signed an agreement with the Montgomery County Office of Consumer Affairs (OCA) to fully disclose what services are included in its dealer preparation and handling charges and what portion of the final price of a new car is additional profit or overhead.

The OCA received a complaint against Hersons, 1356 Rockville Pike, Rockville, which stated that the consumer had paid \$390 for dealer preparation and overhead and \$260 for freight and dealer handling on a new Honda Accord purchased in December, 1977. Investigator Steve Silcox learned that Hersons was currently charging \$195.00 for preparation and overhead and \$185.00 for freight and handling. Silcox shopped the other Montgomery County Honda dealership and found that it charged nothing for dealer preparation, \$55.00 for freight, and \$250.00 for additional dealer profit.

Hersons denied the allegations but agreed to itemize the services covered by dealer preparation and handling. Hersons also agreed not to charge more for freight than its out-of-pocket cost for transporting each vehicle and agreed that any other dealer charge would be labeled as profit or overhead.



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FOR SALE: 1968 BMW 1600; Sunroof (does not leak); Good Interior; 85,000 miles, Runs reliably; 25+ m.p.g.; Good Brakes, Exhaust, Pirelli Radials. Some Rust, Needs Some Work. Moving, Must Sell. \$600.00. Call: Tom Jones, Home (Woodbridge) (703) 494-5484; Office (202) 692-1486.

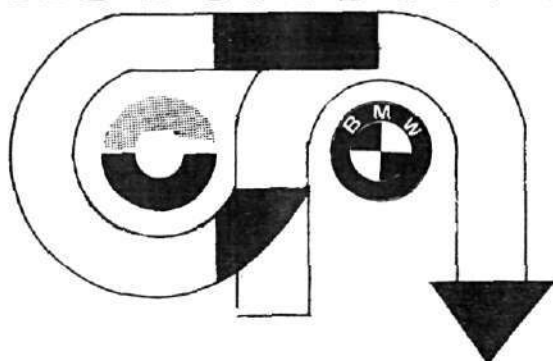
For Sale: Set of Five New XAS Tires Mounted and Balanced on New '78 Steel Slotted Rims for 2002. Includes Hubcaps and Lugnuts. OEM Value Approx. \$500.00. Sell at \$300.00. Set of Four OEM Heavy Duty Rubber Floor Mats for 2002. BMW Logo on Each Mat. Sell Set for \$15.00. AM/FM Stereo Radio. BLAUPUNKT FRANKFURT from New 320i. List Value \$193.00. Sell at \$140.00. Contact Chuck Garrish, Annapolis, (301) 268-5643 after 6 P.M.

For Sale: BMW Workshop Manual for '69 2002 and Later. \$20.00. Call: Tom Kirkendall, (301) 299-4395.

For Sale: '73 Bavaria; maroon w/ tan interior; automatic; power steering; power brakes; air conditioning; AM/FM Blaupunkt; Michelins. Excellent condition, reasonably priced. Also: Rear muffler for '69-'74 2002, \$15 (703) 525-8835.



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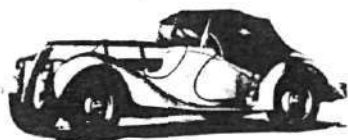
320i Tech Tips

By Jerry Liebes

Imagine this scene: You're driving down a lonely country road in rural nowhere, and you lose a belt or hose on your '77 320i. The only help you can get is from an old city's service gas station, where they think BMW stands for "British Motor Works." What can you do? Well, if you clip this handy cross reference guide, you might save yourself some time, money and trouble.

Gates Rubber Co. is one of the larger suppliers of hoses and belts, according to BMWCCA member Joe Backbee. Rural service stations and commercial supply stores are likely to have these parts which are suitable for your Bimmer:

Belts:	No.	1978 Retail
Fan & Alternator	7335	\$5.05
Air Pump	7312	4.95
Air Cond. Compressor	9341	6.30
Hoses:		
With A/C	21025	5.55
Pipe to Thermostat	26416	6.55
Radiator to Thermo — Stat 1 1/4" I.D.		3.30/Ft.



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(Next to Autoy's New Location—See Above Directions)

The Fall Tour: Shenandoah Splendor

By Bill Via

The Fall Tour this year will take us diagonally (southeast to northwest) through Loudon County, Virginia, thence down by a fork of the Shenandoah River and on southwestward by more country roads to traverse portions of the George Washington National Forest, ultimately winding our way northeastward toward Winchester, Virginia and home again.

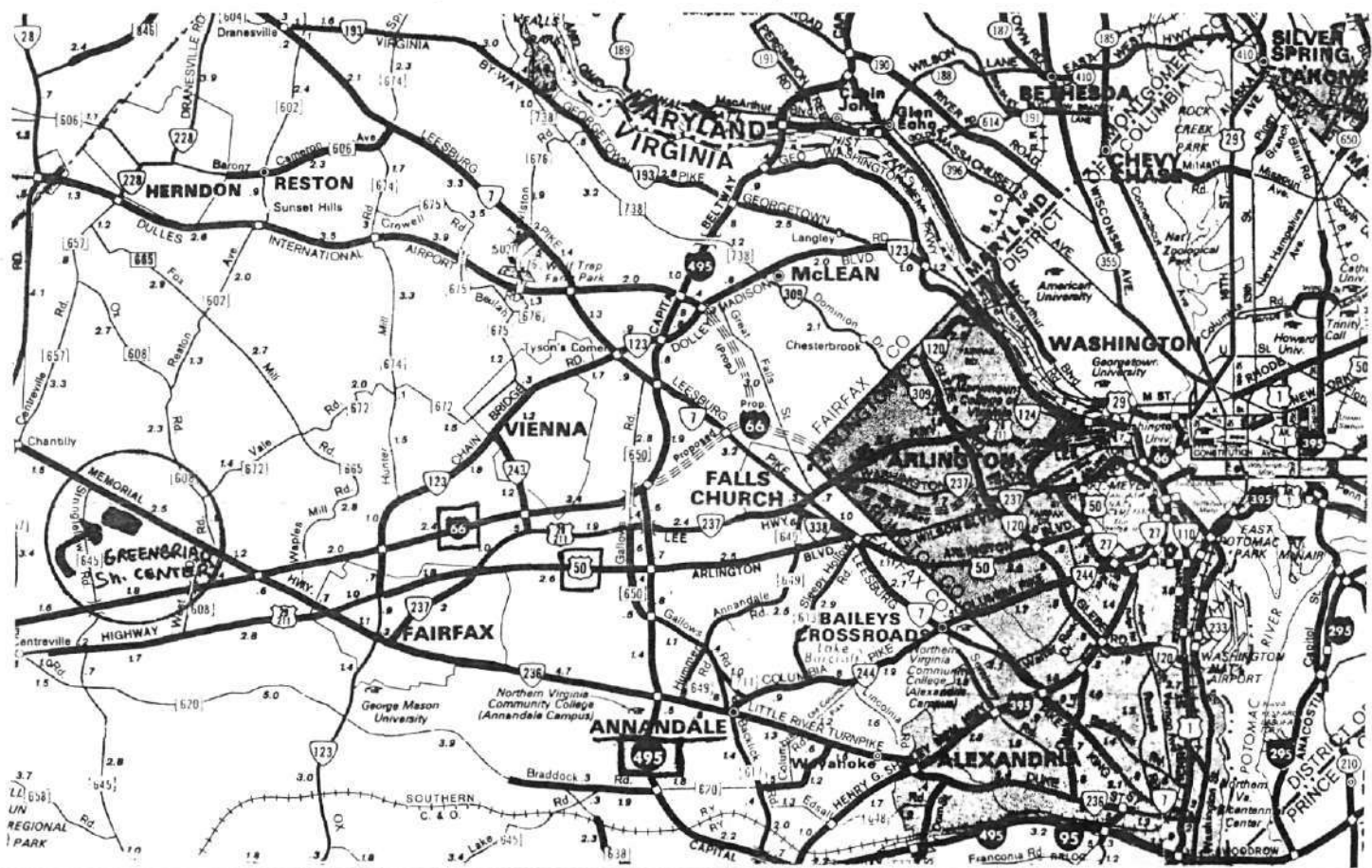
Most of the roads on the tour have been utilized at one time or another by local area rallyists. Nature willing, the foliage should be at its autumnal zenith and an absolute delight to behold.

The tour runs for approximately 188 miles, about the length of a good rally, and includes six or seven miles of unpaved (but good) roads in the George Washington National Forest. There will be rest stops in the morning and afternoon, as

well as a lunch break. You can, of course, bring a picnic if you like, but it isn't necessary. If we leave on time and all goes well, we should be finished with the tour, passing the point from whence we started, and on our way home no later than 4:30 p.m.

The tour starts at 9:30 a.m. on Sunday, October 29. So that we can get under way on time, we ask that you arrive at the start at about 9:15 a.m. We will start from the Greenbriar Shopping Center, which is located in Virginia on Route 50, about 3.5 miles west of the intersection of Route 66 and Route 50. To reach the start from Washington, D.C., (i) take Route 495, (ii) then go west on Route 66, and (iii) take Route 50W for about 3.5 miles to the parking lot adjacent to Gino's at the west end of the Greenbriar Shopping Center.

See you there.





Jim Atwell
SALES REPRESENTATIVE

HEISHMAN BMW, INC.
3154 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22202

684-8500



Of Deceptive Sales Practice and BMW Dealers

By Bill Via

The fantasy of pervasive excellence —

Our esteem for the relatively high quality of BMWs and, fortuitously, our satisfactory, or perhaps even excellent, experience with the only dealer whose services we have engaged, might have led some of us to assume that BMW dealers in general adhere to higher ethical standards than those typically attributed to the common herd of automobile dealers, a group that is not renowned for its veracity and trustworthiness. Unfortunately, however, there is considerable evidence that such an assumption is naive, at best. The unpleasant truth is that some — perhaps, many — BMW dealers will cheat you if they can.

Illustrative dishonest practices —

Phantom freight charges are seemingly a current favorite among the revenue producing ploys utilized by the less scrupulous BMW dealers. I have seen dealer prepared "extensions" to the "Monroney" price stickers (which are required by Federal law) that listed freight charges for BMWs ranging up to three and four times the amount the dealer was actually required to pay for freight, which is ordinarily the trucking charge from the port of entry. Another tactic employed by some dealers is to list an amount for a "Port Charge", which when paid by a BMW purchaser reimburses the dealer for an expense that he did not incur.

When I purchased my 530i in August 1977 I paid a freight charge of \$50. At that time, I had occasion to see an extension sticker on a 530i at another dealership in the Washington, D.C. metropolitan area that listed a freight charge of \$150, or three times as much. On August 3, 1978, I visited still another dealership in the local area and observed extension stickers on a 530i and a 320i in the showroom, both of which listed a

freight charge of \$202. These two stickers also listed a charge of \$125 for "Undercoat & Glaze" — but more about undercoating in a moment.

Some manufacturers charge a uniform amount for freight and list that figure on the Monroney sticker. Such a practice provides at least some impediment for those dealers who would charge for freight expenses that they do not incur. BMW does not follow that practice. The Monroney sticker on BMWs includes the following statement in very small print at the bottom: "Transportation from P.O.E. is paid for and charged by the dealer. BMW of North America, Inc. makes no charge for inland freight."

While I haven't yet observed it in the local area, I am informed that some BMW dealers are so brazen as to list an additional charge for "Dealer Preparation" in their extension price stickers, notwithstanding that a generous amount for this service is itemized in the officially required Monroney sticker. Some of the more imaginative — and more cautious — miscreants attempt to disguise the nature of this unwarranted additional charge by calling it something else, such as a "Preparation Pak".

Another lamentable practice is the imposition by some dealers of an additional charge for undercoating, even though BMWs are undercoated at the factory and the value of that service included in the price of each car. Undercoating is not, however, listed by BMWNA on the official price sticker as a standard feature on BMWs and, therefore, even reasonably cautious customers can be misled on this item by unscrupulous dealers. Some dealers, perhaps, in part, to assuage such

(Con't. on pg. 8)

Metallic Paint Legend

By John Hartge

There's no paint surface quite like the smooth, sparkling finish of a new metallic BMW. My new 1975 Siennabraun 2002 drew admiring glances and praise from friends and strangers. Sure, I read about metallic paint "crizzle", but my Bimmer was garaged most of the time, washed in clear water only, frequently waxes — I would have NO trouble. But, I did; in the 30th month. At first, I thought someone had soured my roof with steelwool.

After my initial panic, I calmed down and contacted the appropriate BMW factory rep. BMW/NA said, "This car must be completely stripped and repainted: we'll pay 50%." That is the figure for BMWs 24-36 months old. 36-48 months old gets you 25%, older than that, good luck getting anything. Having already paid \$244 for the metallic option, I was disgusted. I have information on frustrated BMW owners from Florida to Wisconsin to California who have tried to make a better deal. Even individual court action seems fruitless. The FTC does not appear interested. I accepted the 50% offer.

Dealing through Heishman's factory rep, BMW/NA directs you to Wagonwork. BMW will back up the work done there. I was told I had my choice of painters, but if I got a lousy job, tough luck. I accepted Wagonwork. \$600 (including

stripping paint, priming, sanding, metallic paint, and clear top coat) was relatively cheap. It's \$900 for a 6 cylinder BMW (Since the engine is 50% bigger, the paint job is 50% more??). I saved the additional cost of repairing all the "dings" by removing and replacing all the trim myself. Even with that assistance, my Bimmer was in the shop two full weeks. After the paint hardened for 30-days, Wagonwork had my car two more days to touch up two minor rough spots. The result is good, although not a duplication of the factory finish. The "newly formulated" Siena is smooth and very glossy, but the urethane top coat did attract some dust, something only BMW fanatics notice. Once again my Bimmer gets praise from friends and strangers. I just hope the paint lasts this time.

BMW claims to have improved the metallic paint during the 1976 model year. If you have a '76 or newer BMW that has crizzled, you should let your fellow CCA members know immediately, so we do not throw away still more money on the allegedly reformulated paint. If its any consolation, Mercedes, Porsche, and other German cars experience similar metallic paint problems.

Deceptive, Con't.

guilt twinges as they are capable of feeling for such practices, make matters infinitely worse by actually applying Detroit style, tar-like undercoating to the BMWs they sell. That is not only messy, and adds weight to the car needlessly, but may cause the factory applied undercoating to separate from the metal and, in time, effectively result in the loss of all under body anti-rust protection. I understand that one enterprising BMW dealer in Pennsylvania charges \$150 per car for this mandatory "service" and privately boasts that the necessary glop for the operation costs him only about \$2.

Legal sanctions —

These and other similar deceptive — and larcenous — practices, engaged in by some BMW dealers, not only (i) provide the basis for a civil action for damaged by a victimized BMW purchaser and (ii) constitute criminal violations under the laws of most states, but (iii) also transgress the Federal Trade Commission Act. The applicability of the FTC Act is illustrated by a consent order (FTC Docket C-2852, November 15, 1976) agreed to by Haleakala Motors, Ltd., Mailuku, Maui, Hawaii, a dealer in a make of automobiles not identified in the FTC's announcement of the consent agreement.

The allegations that led to the consent order were, first, that Haleakala altered the manufacturer's "delivery order" invoices — which closely resembled the required Monroney stickers — by substantially increasing the suggested retail price and then using the invoices to misrepresent the suggested retail price to consumers. In addition, it was alleged that Haleakala attached extension price stickers next to the Monroney stickers that itemized additional charges, certain of which duplicated charges already included in the Monroney sticker and which did not represent additional expenses actually incurred by the dealer; and, it was alleged that the extension stickers failed to itemize certain other charges which were imposed on consumers.

The consent order agreement prohibits Haleakala from: (i) misrepresenting the suggested retail price; (ii) misrepresenting that it has incurred charges in addition to those shown on the Monroney sticker; and (iii) including the amounts shown on its extension stickers any charges that it does not "specifically itemize".

Reporting the deceptive and dishonest practices of dealers to the Federal Trade Commission may result in corrective action, or it may not, depending on the FTC's assessment of the relative importance of the case in the context of its finite budget and personnel resources. Of course, the more complaints received, the more likely it is that action will be instituted. The dealer has some advantage in that even if he is caught red-handed by the FTC, he only has to agree not to do it again — there is no other sanction, unless he violates the specific terms of the order to "cease and desist" issued against him, in which case a civil penalty (up to \$10,000 per violation) may be imposed, *if he is caught again*. Still, the FTC's authority, when exercised, can be a reasonably effective sanction. The FTC is empowered to issue and publicize a set of particularized rules governing the sales practices of automobile dealers in implementation of its general authority to order the cessation of "Unfair methods of competition . . . , and unfair or deceptive acts or practices in or affecting commerce" If the FTC could be persuaded to exercise that authority, it ought to be conducive to a meaningful reduction in the cheating of automobile purchasers.¹

While a disgruntled purchaser can pursue his civil remedies against the dealer that has cheated him, it can be an expensive and time consuming process and one that he may conclude is not worth the effort, even though he has clear, hard evidence that he has been unlawfully deprived of, say, three hundred dollars. The possibility of bringing a class-action suit with other, similarly victimized, purchasers may not occur to him, or may not appeal to him, for that, too, entails expenditures of time and money, although it affords significant economies. In addition, many people are reluctant to admit that they have been swindled and, thus, pride may prevent them from pursuing their rights. Similarly, that same pride may be enough to keep them from complaining to the cognizant prosecutor — and, they know that if there is a criminal trial, they must testify, which, even in the absence of personal pride considerations, is not a pleasant prospect for most people. Also contributing to their dissuasion may be the fact that even if there is a criminal proceeding and a conviction, the penalty in "white-collar" crimes is typically a "slap on the wrist".

While legal remedies that are theoretically effective against dealer dishonesty exist, pragmatically, flaws in the actual workings of the legal system give the dishonest dealer an advantage which encourages him to run the risk of cheating. If, for example, he defrauds each new car purchaser of say, \$300, that provides a substantial total addition to gross sales revenues. At the same time, it is improbably, given economic realities and human nature, that the defrauded individual will cause legal proceedings to be instituted, even assuming he realizes that he has been cheated. And, dishonest dealers, being about as clever as they are greedy, are fairly adept at concealing their thievery from the typical purchaser. But, even if he is caught and a successful legal proceeding instituted, he can usually expect the penalty for his cheating not to be great, most especially when weighed in juxtaposition with the revenue generated by it. And soon after the adverse publicity attendant upon the legal proceedings subsides, the dishonest dealer can be expected to revert to hornswoggling and fleecing his customers — albeit, he may revise his modus operandi.

Responsibility of the manufacturers —

The automobile manufacturers cannot be faulted, of course, for the flaws that exist in the workings of our legal system that are conducive to cheating by dishonest dealers. At the same time, the manufacturers possess the most effective potential weapon for coping with dealer dishonesty. Specifically, if the dishonest dealer knew that his cheating of car purchasers could result in the loss of his franchise, the probability of getting caught would not have to be very great to cause him to refrain from the practice. Put another way, the potential loss of the whole golden goose would not be a risk many would want to assume.

What can the manufacturers lawfully do? First, we must recognize that a manufacturer cannot dictate the prices at which independent dealers (as contrasted with factory-owned outlets) sell their cars. Any attempt to do so would violate our Federal antitrust laws, specifically the prohibition against price fixing. Even the use of suggested retail prices by manu-

¹ The authority of the FTC is probably sufficient for it to forbid the practice by some dealers of installing "mandatory options" on popular models and changing outlandish prices for them.

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facturers may be suspect in some circumstances. The fact that automobile manufacturers are required by Federal law to affix suggested retail price stickers to their products grew out of the practice of many dealers in charging purchasers' additional amounts for equipment that was standard, and engaging in other similar fraudulent practices. The suggested retail prices and list of equipment in the Monroney sticker are intended to enable the purchaser to deal from a less disadvantageous position than was formerly the case.

A dealer can charge — or seek to charge — whatever he chooses for the cars in his inventory, either more or less than the Monroney sticker price, if he is honest and straightforward about what he is doing. What he cannot lawfully do is misrepresent and deceive. Thus, it is perfectly lawful for a dealer to show that he is adding a premium or surcharge to the suggested retail price, which he may do simply because the model is in high demand. But it is unlawful for him to alter the suggested retail price to include a premium and represent that it is in fact the suggested retail price, and it is unlawful for him to add phantom charges though extension stickers or otherwise. Such practices are proscribed because they enable the dealer to deceive the purchaser, who can be expected to conclude that all dealers are charging the same inflated false price; the inflated false price also enables the dealer to misrepresent the amount of "discount" he is willing to give off the sticker price, if any.

Automobile manufacturers are wont to disclaim responsibility for the sales practices of their dealers on the ground that dealers are independent businessmen and solely responsible for their own behavior. That, I submit, is a specious argument. The manufacturers not only select their dealers, but include provisions in their franchise agreements that allow them to take sanctions, including lifting the franchise, if the dealer fails to perform his part of the bargain insofar as the perceived interests of the manufacturer are concerned. There is no reason why the manufacturers cannot similarly retain in the agreements the authority to discipline a dealer, including lifting his franchise, for deleterious conduct by the dealer attendant upon the selling (or servicing) of the franchised product. And, it is highly probable, I suggest, that every extant automobile franchise agreement in fact allows the manufacturer to lift the franchise if the dealer engages in unlawful conduct in the course of selling (or servicing) the franchised product. It would be a poorly drafted document, indeed, that did not so provide, and automobile manufacturers and their lawyers are far too sophisticated not to provide for such authority.

Some automobile manufacturers might contend that the Automobile Dealer Franchise Act is a bar to their "interference" with the sales practices of their dealers. That, too, would be specious — indeed, flagrantly erroneous — argument.



Dick Chichester
SALES REPRESENTATIVE
AUTO INSURANCE AGENT

HEISHMAN BMW, INC.
3154 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22202

684-8500

That Act, by its own terms, became law in 1956 "... to balance the power now heavily weighted in favor of automobile manufacturers, by enabling franchise automobile dealers to bring suit in the district courts of the United States to recover damages sustained by reason of the failure of automobile manufacturers to *act in good faith* in complying with the terms of franchises or in terminating or not renewing franchises with their dealers." (*Emphasis added.*) The cases construing the Automobile Dealer Franchise Act make it clear that to violate the Act a manufacturer must make a "wrongful demand" — the dealer must show that he was coerced to do something that he had a lawful right not to do. Obviously, dealers have no right to cheat their customers, in violation of state and Federal law, and manufacturers would be well within their legal rights to insist that dealers not engage in unlawful sales practices on penalty of loss of franchise.

Some automobile manufacturers might argue that they don't want to get into the business of "policing" their dealers' sales practices and, besides, it would be expensive. Yet, manufacturers already police their dealers' practices when it is in the manufacturers' interest to do so. Requiring dealers to refrain from unlawful sales practices, and engaging in some modicum of spot checking for compliance, would not be unduly burdensome and ought, in fact, to redound to the benefit of the manufacturers in the form of consumer confidence and goodwill. Considerable useful feedback could probably be obtained by mailing to each new car purchaser — or to statistically significant samplings — a statement on sales practices, together with a questionnaire designed to ferret out unlawful practices and unscrupulous dealers. At the very least, manufacturers could go on record (through their advertisements and in their owner's manuals) as being solicitous of, and responsive to, properly documented cases of unlawful sales practices by their dealers.

But if it is so easy, why haven't the manufacturers taken any action at all? The real reason may well be that the manufacturers — foolishly, I think — are simply not interested in stamping out unlawful sales practices and unscrupulous dealers.² That lack of concern stems, perhaps, from the manufacturers' intense desire to have at all times a financially healthy dealer network. If a few of them cheat to fill their coffers, so what; the victims have their legal remedies. A central flaw in such thinking is that when the remedies are inadequate in practice and the cheating is sufficiently egregious, corrective Federal legislation may be forthcoming, the terms of which may make the recalcitrants fervently wish that they had cleaned their own house when they had the opportunity.

Possible action by BMWCCA—

The BMWCCA could, if it wished, marshal hard evidence of cases of unlawful sales (and service) practices by BMW dealers throughout the country, which could be presented to BMWNA, the Federal Trade Commission and to the cognizant Senate and House committees, along with a request for corrective action. If the club is more than a golly, gee whiz, admiration society — and I believe it is — the governing body ought to take this matter up at the earliest opportunity. Contributing to a material reduction in dishonest dealer practices might well be the best service the club could perform for the membership.

² If a manufacturer tolerates dealers who cheat, then obviously it puts considerable pressure on dealers who prefer to be straight to take up dishonest practices and enjoy the spoils of cheating.

BMW CAR CLUB OF AMERICA, INC.

345 Harvard Street
Cambridge, Mass. 02138

MEMBERSHIP APPLICATION

Please accept this application for membership in the BMW Car Club of America and the National Capital Chapter.

Signature: _____

Date: _____

Name: _____

Address: _____

City: _____

State: _____ Zip _____

Model of BMW: _____

Year: _____ Ser. No. _____

Model of BMW: _____

Year: _____ Ser. No. _____

Your check payable to BMWCCA must accompany this application.

Joining during:

NOV—FEB 23.50; MAR—MAY 19.00; JUN—OCT 14.50

This covers your initiation fee of \$2.50 plus both National Capital Chapter and National dues to the end of the current calendar year.



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NEXT MEETING:

DATE: TUESDAY, OCTOBER 17th

TIME: 8:00 P.M.

PLACE: Diamond Head Restaurant
6900 Wisconsin Avenue
Chevy Chase, MD
656-3161

PROGRAM: Dave Toy on Suspension Systems

