

# First-time car buyers are older than they look: Maritz

BY LAWRENCE PAPOFF

First-timers aren't what many in the industry think they are. They're not between the ages of 20 and 24 and fresh out of college. Well, they may be fresh out of college, but the debt they carry from those student loans may explain why they're not buying as many cars as supposed or hoped.

On average, the first time buyer in Canada is 38. That's according to a Maritz Research study done in 2011. A Maritz study done in 2007 showed the average first-timer was 36. So they've grown older.

Chris Travell, Maritz' V-P, automotive research group, said the results should make automakers and dealers be careful when they direct their efforts entirely at youngsters.

"It's not the young person you might think," Travell said in an email. "I'm not certain if older buyers are put off by a younger strategy. It just may not be as efficient."

For example, he cautioned that relying too heavily on a social media strategy may mean your message won't get through to older customers who may not rely on this as an information source.

"If you have a strategy aimed at youth, you may be aiming a bit low."

That's not to say those young buyers should be ignored. Young buyers drove off with nearly 16.5 per cent of the new cars sold in Canada last year. So there's volume there, he said.

That 38-year-old belongs in the 35-39ers who bought about six per cent less, or 10.21.

Maritz said it surveyed 50,000 first-time buyers for its 2011 survey.

## NADAP rules: Can you rely on them for protection?

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The National Automobile Dealer Arbitration Program, or NADAP, was established in late 2006 providing a process for dispute resolution as between manufacturers and dealers.

It does not apply to disputes between one dealer and another or between one manufacturer and another.

As between a manufacturer and a dealer, however, it is mandatory that any disagreement arising out of a dealer agreement or its interpretation or application, including the question as to whether or not the dispute itself does arise under the terms of the dealer agreement, must be mediated and then arbitrated under the NADAP rules.

If a manufacturer or a dealer starts a lawsuit in connection with such a disagreement, the defendant can bring a court motion to have the lawsuit stopped and the plaintiff forced to proceed under the NADAP rules.

While it is impossible to list every single type of dispute that might arise under the dealer agreement and be subject to the NADAP rules of mediation and arbitration, the rules do list a number of examples.

The examples suggest that to a significant extent, the rules exist to protect dealers by permitting dealers to challenge what may be arbitrary or unreasonable decisions on the part of manufacturers. Some of these would include:

- The reasonableness of the length of the cure period provided by a manufacturer to a dealer to cure or remedy a default.
- A manufacturer's refusal to act reasonably in approving a dealer's request to sell or transfer an interest in a dealership, including the manufacturer's conditions and if the prospective new dealer meets them.
- Whether any specific written requirements established by the manufacturer for the prospective new dealer are unreasonable.
- Whether the factors established by the manufacturer for the continued operation of the dealership by the proposed new dealer are reasonable.
- Whether the dealer or prospective new dealer is able to cure a default under the dealer agreement existing at the time of the proposed sale or transfer.
- The proposed creation by a manufacturer of a new dealer point abutting an existing dealership under certain circumstances.
- A manufacturer's (or dealer's) failure to carry out the dealer agreement in good faith including the manufacturer's termination or refusal to renew or extend the dealer agreement.
- A manufacturer's attempt to terminate a dealer agreement under a variety of circumstances which may be unfair or

unreasonable.

For the most part, dealers are fortunate to have the NADAP process available to them. For example, complaints that a dealer can raise under the NADAP rules are simply not available in contract or common law to business owners in other industries.

There are circumstances in which a dealer can actually challenge the reasonableness of provisions set out in a dealer agreement. In other circumstances, contracting parties generally can't.

Unfortunately, as of Jan. 1, the applicability of NADAP rules to disputes between dealers and manufacturers cannot be taken for granted.

When the rules were created, they envisioned the parties' entering into what is defined in the rules as an "implementation agreement" whereby the parties agreed that the rules would apply to disputes between the parties.

The rules specifically provide that "any implementation agreement between a manufacturer and one of its dealers shall be for a term from its date of execution to January 1, 2012 and thereafter shall continue to enforce unless terminated by the dealer on 30 days' written notice to the manufacturer or UNLESS TERMINATED BY THE MANUFACTURER ON 30 DAYS' WRITTEN NOTICE TO ALL OF ITS DEALERS IN THE PROVINCE OR TERRITORY WHERE THE DEALER IS LOCATED (emphasis added)."

As a result, as of Jan. 1 2012, any manufacturer is at liberty to terminate its participation in the program by giving 30 days notice to all of its dealers in the province.

Any manufacturer doing so would then be at liberty to behave as would any contracting party in any other industry, and dealers would be deprived of the advantages of NADAP both procedurally and substantively.

As a result, if you are a dealer who receives such a notice from the manufacturer, be alert to the fact that the NADAP rules will no longer be available to you.

If that happens, it would be wise to contact your manufacturer's area representative to find out why the manufacturer made this decision and specifically as to whether the decision was made as a result of any anticipated problems with your dealership.

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