ALLAN JAY KOVITZ
Certified Public Accountant

My name is Allan Kovitz, and I am in charge of the public accounting firm of Allan Jay Kovitz, CPA. As part of my firm's accounting practice, I provide significant services to franchised new automobile dealers. In fact, I represent over 15 individual dealerships.

I am writing with reference to the workshop that the FTC conducted on January 19, 2016 inquiring into the franchise laws that regulate auto retailing and the relationships between the dealers and the vehicle manufacturers in all 50 states. It is my understanding that, at that workshop, a number of the speakers that the FTC invited argued that the economic relationship between motor vehicle manufacturers and their dealers was increasingly balanced, that dealers had grown in stature and size to the point that they had sufficient power in the marketplace to protect themselves, and that, as a result, any manufacturer over-reach was a thing of the past. Based upon these assertions, these speakers argued that the state franchise laws were outdated and unnecessary.

Unfortunately, these assertions do not reflect the realities of this marketplace. Based upon the experiences I have gained from my practice, I can attest to the fact that auto dealers are generally not in a position to effectively negotiate their relationships with their manufacturers. Simply put, the manufacturers routinely retain far too much control over the dealers for this to occur.

In my close to 50 years of representing automobile dealership clients, the following have always held true:

1- The owners of many smaller dealership have too much of their total personal wealth tied up in the dealership to challenge the manufacturer

2- The owners of many larger dealership chains have too much corporate exposure to challenge the manufacturer

3- The franchised dealer's business model is disproportionately capital intensive Dealers, even the largest ones, are heavily credit dependent (the economies of scale for larger dealers are not manifested in reduced credit dependency)

4- The business model has disproportionately more frozen capital (large single purpose real property) for large and small dealers alike]

P.O. Box D, Point Pleasant, NJ 08742 (855) 232-1001 Fax (732) 892-5738

P.O. Box 842, East Setauket, NY 11733 (855) 232-1001 Fax (232-1077)

I do not see this level of economic reach or inherent control in the basic business model of my other clients. Moreover, the economic power that the manufacturers wield over the dealers allows for manufacturer opportunism. Essentially, the dealers live within an involuntary cost structure. The examples of this opportunism are legion. Let me just offer a few:

Parts and tools appearing on the parts statement
Improper warranty chargebacks
Unrequested sign rental
Constant pressure to take excess OEM production (Remember the offloading of inventory from Chrysler immediately pre-bankruptcy)
Constant pressure to take undesirable inventory to obtain desired inventory
Pressure to take excess parts from OEMs
OEM Requirements to pay for dealership employee training
Facilities upgrades requirements (OEM payments insufficient because ROI is not realistic)
During upgrades, requirements to use OEM vendors that are often less competitive than local vendors
During upgrades, requirements to follow detailed specs and use materials that may not be suited for the local market
Denial of succession in a family business, especially at stressful times for the business
Extensive cross-default clauses in the various contracts (franchise agreement and related documents incorporated by reference, various personal guarantees, financing documents, etc.]

Whatever the outcome of this workshop, it should be based on the actual realities of the market and not the theoretical speculation of economists, academics, or lawyers who do not actually work in it. I trust that the information provided here – from people whose jobs involve them in that market every day of the week – will be of assistance to the FTC.

Thank you for your consideration of our comments.

Allan Jay Kovitz, CPA