

# CAMERON WORLEY, P.C.

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February 17, 2016

Federal Trade Commission  
Washington, D.C.

I have represented automobile, truck and motorcycle dealers in Tennessee and other states for the past forty years. For anyone to say that the relationship between automotive manufacturers and distributors with their dealers is fair or balanced, is to express a lack of understanding of what actually transpires between manufacturers and dealers on a daily basis.

Let me share a few of the situations I have experienced and why it has been important for Tennessee to have a licensing law that applies to manufacturers and dealers.

**Situation I:** In the mid-1970's in Metropolitan Nashville, both Ford and General Motors decided the only way for them to sell more vehicles was to have more dealerships in the market. Ford determined that the correct number of dealerships was five inside Davidson County. There were four Ford franchised dealerships in Nashville at the time. Those existing dealers fought against the addition of a fifth dealership on the basis that it was not necessary and would have a severe economic impact on the existing franchises. Ford was aggressive and the dealers fought back using state franchise law and the Dealer Council.

Ultimately, one of the existing Ford dealers needed to retire and Ford refused to approve the dealership sale unless all Ford dealers agreed to drop the protest to the fifth dealership. The existing dealers supported the retiring dealer and dropped the protest, Ford approved the sale, and installed a new fifth dealer in the market. After two years of operation that new dealership went broke. Today there are two Ford dealerships in Davidson County, Tennessee. Ford's decision that it needed five dealers in Davidson County, Tennessee was erroneous from the start.

Similarly, General Motors determined that it needed a fifth Chevrolet dealership to adequately service the market. The existing dealers disagreed and protested the actions of General Motors before the Tennessee Motor Vehicle Commission. This gave rise to the seminal case in Tennessee known as *Capital Chevrolet vs. General Motors*. After an extended hearing before the Tennessee Motor Vehicle Commission, the Commission denied GM the right to install a fifth Chevrolet dealership. The case went to the Tennessee Supreme Court who ruled that General Motors was not justified in adding a fifth point and that the Tennessee statute was designed to give a fair hearing to all parties. General Motors continues to this day to argue that its "business judgment" should prevail over any other considerations. When it went into bankruptcy General Motors terminated one of the Davidson County Chevrolet dealers and today there are three Chevrolet dealers serving Nashville. Without the ability of the existing Chevrolet dealers to protest GM's

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action, a fifth Chevrolet dealership would have resulted in the bankruptcy of one or more of the existing dealerships. That would not only have been a tragedy for those dealers but the consuming public who were served by those dealerships.

**Situation II:** It is important to realize that except in unusual circumstances the manufacturer has nothing invested in a dealer's business operations. Dealers provide private capital to build dealerships, purchase equipment, vehicles and parts, and train their personnel. However, recognizing the enormous cost to build new facilities, some manufacturers have responded by creating programs to assist in the construction of new facilities. Without the protection of state franchise laws, manufacturers have demonstrated over and over their willingness to disregard the best interests of the dealer in favor of some business policy. For example, when the manufacturer needed to sell more cars to its dealers, it simply shipped extra inventory. One Ford dealer told me he watched as trucks from Ford Motor Company unloaded two hundred white pick up trucks on his lot. He had not ordered any of them. Our state law was modified to prevent that practice.

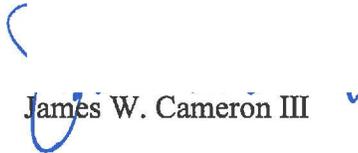
**Situation III:** Within the past few years General Motors thought it was a brilliant idea to relocate one of the Nashville Chevrolet dealers into a fast growing area of an adjacent county. That adjacent county was in the area of responsibility assigned to another dealer. That dealer recognized that the relocation of the Nashville dealer into his market would cut off approximately one-third of his business and result in his business failure. General Motors told the existing dealer "We will give you \$250,000 to allow this relocation, or we will give that money to our lawyers and shove it down your throat." This was live testimony before the Tennessee Motor Vehicle Commission. Does that sound like a balanced relationship? The dealer protested under State law at great expense and eventually won after even more appeals by General Motors. Later General Motors went bankrupt and terminated another of the Nashville Chevrolet dealers who had been in business for 93 years.

**Situation IV:** I do not want it to sound like this activity is reserved to the domestic auto manufacturers. It is not. Currently, we are seeing Nissan issue termination notices to dealers who do not perform as Nissan expects. In middle Tennessee where Nissan's national headquarters are established, there is also a Nissan manufacturing plant and hundreds of Nissan suppliers. Nissan spends a huge amount on local advertising and even has the naming rights to the Tennessee Titans football stadium. The Nissan employees and those of its suppliers are able to purchase vehicles at discounted pricing not available to the general public. This gives Nissan products a significant advantage over other brands in this market. The market share in middle Tennessee for Nissan products is 18-19% where on a national basis Nissan has a market share of only 8.5%. Nonetheless, Nissan takes the position that all dealers in Tennessee, even those in west and upper east Tennessee should meet the same market share standard as in middle Tennessee. Within the past year Nissan has issued many notices of defaults or notice of termination to its dealers who fall below the artificial sales standard, that only a few dealers can achieve. Without state licensing regulation, Nissan would have the power to replace dealers without regard to the dealer's specific situation, and based solely on a sales standard that is proved over and over again to be unfair and based on false premises. Nissan's influence in this market also has ripple effects as other manufacturers pressure their dealers to get market share.

**Situation V:** Heavy truck sales deal more with commercial activities than do consumer vehicle purchases for family and household purposes. Truck manufacturers in Tennessee constantly attempt to bypass existing dealers by setting up big customers such as trucking companies as “house” accounts where they can sell direct. Truck manufacturers also attempt to bypass the law by setting up trucking companies to perform their own warranty repairs. Tennessee law prevents both of those activities because it robs existing dealers of business that is needed to meet overhead and pay for expensive facilities, equipment and personnel.

The point is that a dealer and his family have everything at risk every day the doors are opened for business. The dealer is at the mercy of the manufacturer to build and engineer vehicles the public wants to buy and at a competitive price. The manufacturer sells its vehicle to a dealer the minute it leaves the factory, and it becomes the dealer’s problem to then find customers, take care of those customers and protect those customers in the face of enormous safety recalls. Our Tennessee statute proscribes approximately 15 things a manufacturer cannot do to a dealer without involving the jurisdiction of the Motor Vehicle Commission. Each of those items is in our statute because at one time or another some manufacturer has acted unilaterally to affect a dealer by those actions. The Tennessee Licensing statute has been reviewed for constitutionality by both the Tennessee Supreme Court and by the United States Supreme Court and has been upheld by each of those Courts. The Tennessee Supreme Court in the *Capitol Chevrolet* case made a specific finding that one of the purposes of the Act was to create a level playing field for both dealers and manufacturers. Without the limited protection afforded by the Tennessee law, dealers would be at much more significant risk, the value of dealerships would plummet, and the public would be ill served.

Very truly yours,



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