



Idaho Automobile Dealers Association Inc.

March 4, 2016

FTC Public Comments Re: Auto Distribution

My name is Kevin Hanigan and I am the VP / Executive Director of the Idaho Automobile Dealers Association (IADA) in Boise, Idaho. While I have only been the executive for one year, I have a unique perspective on the automotive industry and manufacturer to dealer relations. I was a former dealer owner and was the general manager of our dealerships that were owned by my brother and me. Our original dealership was founded in 1925 by our grandfather, continued by our father, and to this day is still under my brother's family ownership. My perspective is also unique because I was a former board member and President of the Idaho Automobile Dealers Association, serving in those capacities from 2009 until 2012. I was recruited by the current board of directors to serve as our director and I think I understand the issues that surround dealerships, their manufacturers, and the distribution system that is in place in our country. I represent the interests of all new franchised dealers in our state before the local governments and our state legislature and I have a comprehensive knowledge of how our industry operates in Idaho as well as the importance of our franchise laws and how they protect and maintain a strong system of independent owners throughout the state.

The purpose of my letter is to express my frustration over much of what I heard presented at the workshop the FTC conducted on January 19, 2016. Dealerships are independent businesses with contracts with their manufacturers that are non-negotiable. Because of this, dealers many years ago were forced to work with their respective state legislatures to ensure a level playing field and to require fair treatment from their manufacturer. My interpretation of the FTC workshop was that the FTC wants to tag an industry that they think is a problem, but that I know is not a problem. The franchise system was set up by the manufacturers over the past 100 years because these same companies did not want to invest in land, buildings, employees, and operations in the many towns and cities that these dealers serve throughout the United States. Instead, they allowed independent businesses to "sell their product" and own a franchise. We have 110 dealerships in our state, each owned by an entity with commitments in their community to their customers, to their employees, and to their families. Each of these independent businesses deserves to be treated fairly by their manufacturer, by their state, and by the federal government.

Your workshop focused on the auto distribution and the franchise laws that all 50 states have enacted to regulate certain aspects of the relationship between manufacturers and independent franchised motor vehicle dealers. Instead of being a fact based examination of our industry, your workshop included



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several speakers with clear bias against dealership franchise systems. Your so called experts were chosen to talk about and present one viewpoint. Your forum was not an equal forum. You chose no dealers to be a part of that, and other than the NADA President and one state executive, you virtually had no one present from any of the historical auto manufacturers present. You invited two upstart manufacturers to speak but did not include any of the existing auto manufacturers. There are 17,000+ dealers in our country and yet none were on your panel to present their viewpoint. Why?

These "experts" were generally opposed to the current system of vehicle distribution in the U.S. and the franchise laws that regulate it (and this ultimately keeps the manufacturers from treating their "dealer partners" poorly). And trust me, without franchise laws, these big companies would do just that. The majority of dealerships in the U.S. are still family owned. Mom & Pop stores. While the press points out large corporations and dealer groups that own multiple dealerships, it is untrue that these are the majority and it is so far from the truth that any type of dealership owner has any control over their relationship with their manufacturer. All "dealer agreements" are the same across the board. Manufacturers do not contract with each dealer individually with different terms. One contract is drafted and it had better fit all. But it doesn't. That is why dealers, and their dealer associations in their states, work with their state legislature to ensure fair treatment for these dealers. Without this fair treatment, dealers would be put out of business each day, every day when the direction of the wind (or manufacturer's management) changed. They don't like the color of your showroom tile.....you're out. They don't like that you won't invest \$4 million in facility upgrades.....you're out! They don't like that you don't force all your customers to finance their auto loans through their captive finance company.....you're out! These would all be true if we did not have state franchise laws in place.

Would you like a better example? When two large, well-known manufacturers filed for bankruptcy in 2009, they saw that through the protection of the federal bankruptcy laws, they could shut down dealers, and strip franchises away from those they didn't particularly care for (and other such atrocities) and they could do this because they were allowed. After that calamity, the IADA implemented, with the help of our state legislature, laws that would strengthen the statutes to help protect Idaho's independent dealerships from this ever happening again. Our manufacturer stripped us of two of our five product brands. Why? Because they could.

And without franchise laws in place, they would continue to do that at any given opportunity. By banding together, dealers have formed strong state and national associations to protect their interests. This is important. Taking this away would most certainly wipe out our economy both in Idaho and nationally. Stripping the franchises from dealers would be catastrophic. Allowing manufacturers to sell directly to consumers.....same thing. But it gets worse. When there is only one seller of a specific product, it is called a monopoly. When that one seller is allowed to do that, do you think the American consumer pays more or less for that product. I know the answer, but I am not sure that the FTC knows or understands that.



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Your workshop did a huge disadvantage to our industry because of the disparaging remarks made by a few persons who truly were not in the know about how our industry operates. The economic relationship between a dealer and a manufacturer are not even today, nor have they ever been, in our industry. The public policy grounds which supported the enactment of these laws originally--the need for consumer protection, the disparity in bargaining power between manufacturers and dealers, and the value of community-based businesses---are as valid today as when these laws were first enacted. Consumers in Idaho are protected by unscrupulous businesses because it is the right thing to do. These laws are designed to protect the consumer and the dealership. These laws drive efficiency by ensuring that a stable and level playing field exists in auto retailing. The speakers at the FTC workshop who said that there is now a fairly equal balance of power between dealers and manufacturers were simply wrong. To the contrary, manufacturers continue to have the clear upper hand in this relationship. Once a dealer has invested millions of dollars to support a particular franchise, the dealer becomes, in a very real sense, the economic captive of the manufacturer. The following examples should help educate the FTC about the continued need for these laws.

1. A dealer wanting to succeed is highly encouraged to adopt his or her manufacturers latest "image program" where they remodel their building to the manufacturer's specifications. This is not where a dealer puts up the sign and says they're open for business. They are required to buy the floor tile from a specific vendor, they are required to have their store look like all other stores. And if they don't, they suffer financial and product availability consequences. When I was a dealer, and one that could not afford a \$1.5 million remodel in our town of 7,000 (it wasn't financially justifiable), we were at a disadvantage--the manufacturer would incent the nearest dealer who did the remodel, and sometimes in terms of thousands of dollars per vehicle sold.....and that put my store at a significant disadvantage. Hard to continue on.
2. Many manufacturers will not provide a dealer with a proper flow of vehicle inventory. I have several dealers presently in Idaho that are fighting this issue. The playing field is not level.

This imbalance in bargaining power paves the way for manufacturers to act opportunistically toward their dealers. With the overarching control that they wield, manufacturers routinely take advantage of their dealers, seeking to transfer costs to them and punishing those who won't comply. And, as you will see, these instances are not from the distant past. Manufacturer overreaches continue to occur today. The stories are legion. Here are just some examples that I have personally witnessed:

- Constant threat of termination by the manufacturer because of underperformance
- Inventory allocation inequities
- Demands for facility relocations or upgrades to the tune of millions of dollars



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- Unreasonable requirements to invest in equipment, training, and other costly "justified" purchases by the manufacturer to 'stay in business'
- Unreasonable incentive programs that often favor a large dealer over a small dealer.....offering thousands more per vehicle to the favored dealer and true 'two-tier' pricing, which can effectively shutter the small dealership.

For these reasons, and for the many more that I chose not to include in this letter, it is not hard to understand why state legislators in all 50 states have voted time and time again to ensure that the system of retailing automobiles remains consumer friendly and fair. The FTC needs to look beyond the theoretical and attempt to understand the actual realities before making unreasonable conclusions about this important industry. Finally, and of the utmost importance, the FTC also needs to appreciate and respect the fundamental role the states play in determining what level and type of regulation these markets need.

Thank you for your consideration of my views on this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kevin R. Hanigan", is written over a faint, light blue printed signature line.

Kevin R. Hanigan
VP / Executive Director
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