

Automobile Dealers – Do You Really Have a Right to Refuse New Vehicles?

By [John Pico J.D.](#) | Submitted On October 27, 2006

When I began representing car dealers, they had a name for where they stored built, but unordered vehicles. That name was: "sales bank."

A "sales bank" is a group of cars the factory had not been able to sell during the model year and, at the end of the year, they would lay them off on dealers who do not really want them.

It is a practice that the manufacturers and distributors allegedly abandoned after being ravaged by the system during the oil crises of the 1970s.

By the early 1980s, when the dust settled, Automotive News was running stories like:

Ernest D'Agostino of Rhode Island filed suit, in the U.S. District Court against Chrysler Corporation, alleging Chrysler terminated his franchise because he refused to buy "gas guzzlers" -- large cars with low gas mileage. A federal court jury found against Chrysler and Chrysler, in an unreported case, appealed. Chrysler agreed to drop its appeal and paid D'Agostino a settlement (Automotive News, October 1982); and

Fred Drendall, of Drendall Lincoln-Mercury/Pontiac sued Ford Motor Company alleging that when he attempted to cancel orders he was intimidated by Ford spokesmen and when he bowed to the pressure and ordered the vehicles, the high flooring costs forced him to refinance his dealership. He was eventually was terminated and suffered a heart attack. (Automotive News, December 1982).

Those were hard times in the car business.

Today, most Sales and Service Agreements have provisions such as the following:

2. (D) STOCKS. The dealer shall maintain stocks of current models of such lines or series of VEHICLES, of an assortment and in quantities as are in accordance with Company GUIDES therefor, or adequate to meet the Dealer's share of current and anticipated demand for VEHICLES in the DEALER'S LOCALITY. The Dealer's maintenance of VEHICLE stocks shall be subject to the Company's filling the Dealer's orders therefor. (Ford Motor Company, Mercury Sales and Service Agreement, Standard Provisions.)

Most states, however, have Dealer Day in Court Acts with provisions such as:

Art. 4413(36), SUBCHAPTER E. PROHIBITIONS. Sec 5.02. Manufacturers; Distributors; Representatives. (b) It is unlawful for any manufacturer, distributor, or representative to: (1) Require or attempt to require any dealer to order, accept delivery or pay anything of value, directly or indirectly, for any motor vehicle, appliance, part,

accessory or any other commodity unless voluntarily ordered or contracted for by such dealer. (Texas Motor Vehicle Commission Code)

It shall be unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to coerce or attempt to coerce any dealer in this state: (a) To order or accept delivery of any motor vehicle, part or accessory thereof, appliance, equipment or any other commodity not required by law which shall not have been voluntarily ordered by the dealer. (Section 11713.2 California Vehicle Code)

In addition to state laws, the National Dealer Day in Court Act also proscribes manufacturer and distributors from coercing a dealer into accepting "automobile, parts, accessories, or supplies which the dealer does not need, want or feel the market is able to absorb." 1956 U.S.Code.Cong. & Admin.News, page 4603.

But, the law is always a two-edged sword and there is generally a fine line drawn between actions that are proper and actions that are improper. For example, it has long been settled that a dealer's refusal to take all of the manufacturer's line of vehicles, choosing instead to sell a competitor's models, is grounds for termination. See, for example: Randy's Studebaker Sales, Inc. v. Nissan Motor Corporation, 533 F.2d 510 (10th Cir. 1976), at 515.

Consequently, prior to deciding whether to accept or reject delivery of vehicles, a dealer should check with a competent automotive attorney, that is familiar with the laws in the jurisdiction where the vehicles are to be delivered, with respect to his or her particular circumstances.

Note: This article is not intended to provide legal advice, nor should it be interpreted as so doing.

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