

CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BIRMINGHAM DIVISION

CROWN AUTOMOBILE CO., INC.,)
)
Plaintiff,)
)
v.) CIVIL ACTION NUMBER:
)
MERCEDES-BENZ USA, LLC,)
)
Defendant.)

COMPLAINT

Plaintiff Crown Automobile, Inc. asserts the following complaint against defendant Mercedes-Benz USA, LLC:

Parties

1. Crown Automobile Co., Inc. (“Crown Automobile”) is an automobile dealer located in Birmingham, Alabama.

2. Mercedes-Benz USA, LLC (“MBUSA”) is a foreign limited liability company headquartered in New Jersey. MBUSA is wholly-owned by Daimler North America Corporation, a foreign corporation headquartered in Michigan. MBUSA is the distributor of Mercedes-Benz passenger cars and light trucks in the United States.

Venue

3. Venue is proper in this County and division because Crown Automobile is located here and a substantial part of the acts and omissions giving rise to these claims occurred here.

Facts

4. Crown Automobile has been in business in Birmingham, Alabama for more than 40 years. During its entire 40 plus years, it has sold and serviced Mercedes automobiles. Crown Automobile has maintained an unwavering, four-decade commitment to Mercedes, investing substantial money and effort in the promotion of the Mercedes brand over that time.

5. Since the mid-1980s, Crown Automobile's dealership has been located just south of the Riverchase Galleria. At MBUSA's request, Crown Automobile has frequently invested substantial money in capital improvements to its dealership facilities in that location in an effort to better promote the Mercedes brand and service Mercedes customers. MBUSA has assured Crown Automobile that its current location is the best location at which to sell Mercedes automobiles in the Birmingham area, and even rejected a suggestion by Crown Automobile to relocate the dealership to Grants Mill Road at I-459 in Irondale, Alabama.

6. Crown Automobile and MBUSA are parties to a Passenger Car Dealer Agreement and a Light Truck Dealer Agreement (collectively the "Dealer Agreements"), among other agreements. Crown Automobile sells Mercedes passenger cars and light trucks pursuant to these Dealer Agreements. Each of the Dealer Agreements defines an "Area of Influence" ("AOI") which is the geographic market area in which Crown Automobile is obligated to promote, sell and service Mercedes vehicles and which is the geographic market area in which MBUSA evaluates Crown Automobile's performance.

7. Crown Automobile's AOI and market area include all of Jefferson County, Alabama. Specifically, its AOI and market area include Grants Mill Road at I-459 in Irondale, Alabama.

8. Crown Automobile has consistently performed well in both sales and service in its market area and otherwise. Recent data and calculations from MBUSA show that, through September 30, 2013, Crown Automobile ranks very high among all Mercedes dealers in the United States in MBUSA's Leadership Bonus Ranking based upon combined sales and service customer index scores. Additionally, MBUSA's own analysis shows that Crown Automobile is currently among the top 25% of Mercedes dealers in the Southern Region for its scores in "Key Performance Indicators" designated by MBUSA. Crown Automobile currently performs above the national average in MBUSA's own calculations of market share, sales effectiveness, sales experience, and service experience. These are merely recent examples of Crown Automobile's superior performance during its 40 year commitment to the Mercedes brand.

9. Crown Automobile has been frequently recognized by MBUSA for its excellent performance. In fact, MBUSA awarded Crown Automobile its Dealer Excellence Award in 2010.

10. In 2013, Crown Automobile began to consider opportunities to sell its dealership. It received three purchase offers, one of which was from a group that included a former employee of MBUSA. Crown Automobile rejected the offer from the group that included the former MBUSA employee.

11. Upon information and belief, MBUSA was aware of Crown Automobile's efforts to sell the dealership.

12. On August 26, 2013, Crown Automobile entered into a letter of intent ("the Letter of Intent") with a purchaser (the "Purchaser") to sell the dealership. The Purchaser owns at least three other Mercedes dealerships and, like Crown Automobile, has a demonstrated track record

of successfully promoting, selling and servicing the Mercedes brand. That Letter of Intent included a specific purchase price for the goodwill of the company and specified the manner in which the purchase price for the company's assets and inventory would be determined. The Letter of Intent provided the sale was subject to Mercedes approval. Crown Automobile and the Purchaser later entered into a Dealership Asset Purchase Agreement ("the "Asset Purchase Agreement") consistent with the terms of the Letter of Intent.

13. On September 11, 2013, Ms. Kari Lang, MBUSA's Regional Franchise Manager for the Southern Region, and Mr. Jeff Dulik, MBUSA's Area Manager for the Southern Region, wrote a letter to the President and Vice-President of Crown Automobile. The purpose of the letter was to update Crown Automobile on its performance in MBUSA's designated "Key Performance Indicators." Ms. Lang and Mr. Dulik advised in that letter that Crown Automobile "rank[ed] 26 of 104 within the Southern Region" and that it had performed above the national average in market share, sales effectiveness, sales experience, and service experience.

14. Shortly after sending that letter, Ms. Dulik arranged a meeting at Crown Automobile with Crown Automobile's General Manager. Mr. Dulik represented that it was a routine visit to review Crown Automobile's performance. Despite his recent letter to President and Vice-President, Mr. Dulik did not advise them of or invite them to the meeting. Based on Mr. Dulik's representation that it was a routine meeting, the General Manager of Crown Automobile was led to believe by MBUSA that there was no reason to include the President and Vice-President in the meeting.

15. That meeting occurred on September 25, 2013, at Crown Automotive. Despite the representations upon which the meeting was arranged, the meeting was not routine. Ms.

Lang arrived with Mr. Dulik, and they met with Crown Automobile's General Manager. Ms. Lang presented a PowerPoint presentation which reviewed Crown Automobile's superior performance but concluded with the announcement that MBUSA had reached an agreement with another Mercedes dealer to open a dealership at Grants Mill Road an I-459 within Crown Automobile's AOI and market area. When asked why Crown Automobile had not been offered an opportunity to open a location there, Mr. Dulik and Ms. Lang represented that MBUSA never allows the same owner to own more than one dealership in the same market area.

16. After the meeting, Crown Automobile asked Ms. Lang for a copy of the PowerPoint presentation. Ms. Lang and MBUSA have refused to provide that information to Crown Automobile.

17. On October 8, 2013, Crown Automobile formally notified MBUSA of the Asset Purchase Agreement, and requested that MBUSA begin the process of approving the transfer of the dealership to the Purchaser.

18. Shortly after MBUSA was notified of the Asset Purchase Agreement, Mr. Stephen Cannon, President and CEO of MBUSA, appeared at Crown Automobile unannounced. During that visit, Crown Automobile's General Manager told Mr. Cannon that Crown Automobile's President had been told Mr. Cannon was there and that he was on the way to the dealership to meet with Mr. Cannon. Crown Automobile's General Manager told Mr. Cannon that he was surprised and frankly shocked by the prior meeting with Mr. Dulik and Ms. Lang and the revelation that MBUSA had reached agreement with another Mercedes dealer to open and operate in Crown Automobile's AOI and market area. In response, Mr. Cannon confirmed

MBUSA's decision. Mr. Cannon refused to wait on Crown Automobile's President to arrive and to meet with him.

19. Crown Automobile advised the Purchaser of MBUSA's stated decision to place an additional dealer in Crown Automobile's AOI and market area. Upon information and belief, the Purchaser contacted MBUSA and was told by MBUSA that the decision was a "done deal" and that another Mercedes dealer would open in Crown Automobile's market area. As a result of MBUSA's representation, on October 21, 2013, the Purchaser terminated the Asset Purchase Agreement and received a refund of earnest money that it had paid into escrow toward its purchase of Crown Automobile's dealership.

20. Prior to September 25, 2013, MBUSA never informed Crown Automobile that it was considering another dealership in Birmingham. Despite Crown Automobile's excellent track record and its 40-year commitment to the Mercedes brand, MBUSA never offered Crown Automobile the opportunity to own or operate the new dealership location being placed in its market area.

21. To this date, MBUSA still has not formally notified Crown Automobile that it intends to place a new dealership in Birmingham. However, based upon MBUSA's presentation, Crown Automobile understands that the new dealership will be located within its AOI and market area at Grant's Mill Road and I-459 - - the very location to which Crown Automobile previously offered to move but which MBUSA rejected as not as suitable as Crown Automobile's current location.

22. The State of Alabama has enacted the Motor Vehicle Franchise Act, stating as its purpose:

The Legislature finds and declares that the distribution and sale of motor vehicles within this state vitally affect the general economy of the state and the public interest and the public welfare, and that in order to promote the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate motor vehicle manufacturers, distributors, dealers, and their representatives and to regulate the dealings between manufacturers and distributors or wholesalers and their dealers in order to prevent fraud and other abuses upon the citizens of this state and to protect and preserve the investments and properties of the citizens of this state.

Ala. Code § 8-20-2(a).

23. In furtherance of its stated purpose to prevent “abuses upon the citizens of this state and to protect and preserve the investments and properties of the citizens of this state,” the Motor Vehicle Franchise Act prohibits MBUSA from unreasonably allowing another dealer to open a Mercedes dealership in Birmingham, Alabama. *Ala. Code* § 8-20-4(3)(l).

24. MBUSA’s decision to place an additional Mercedes dealer in Birmingham is unreasonable pursuant to the Motor Vehicle Franchise Act for the following non-exclusive reasons:

- a. The establishment of an additional dealership is not warranted by economic and marketing conditions or anticipated future changes;
- b. Crown Automobile has excellent past, present and anticipated retail sales and service of Mercedes automobiles;
- c. Crown Automobile has made substantial investments and incurred significant financial obligations at MBUSA’s request and direction to promote, sell, and service Mercedes automobiles; and
- d. MBUSA cannot show that it would be beneficial to the public welfare for an additional dealership to be established in Crown Automobile’s market area.

25. Additionally, prior to granting a license to an additional dealer in Crown Automobile's market area, MBUSA must give 60 days prior written notice to Crown Automobile. *Ala. Code* § 8-20-4(3)(1). Despite representing that the new dealership is a "done deal," MBUSA has never provided any written notice to Crown Automobile.

COUNT ONE
INJUNCTION

26. Crown Automobile adopts and incorporates herein the allegations set forth in paragraphs 1 through 25 above.

27. MBUSA cannot meet its burden of proof of demonstrating that the appointment of additional dealer in Birmingham is not unreasonable, as required by the Alabama Motor Vehicle Franchise Act.

28. MBUSA has not complied with the statutory requirements for placing an additional dealer in Birmingham, including the requirement that it provide 60 days prior written notice to Crown Automobile.

29. Pursuant to *Ala. Code* § 8-20-4(3)(1), Crown Automobile is entitled to an injunction prohibiting MBUSA from violating the Alabama Motor Vehicle Franchise Act. More specifically, Crown Automobile is entitled to an injunction prohibiting MBUSA from the unreasonable appointment of an additional Mercedes dealer within its relevant market area, including from appointing a Mercedes dealer at Grants Mill Road and I-459.

30. Crown Automobile has suffered, and will continue to suffer, immediate and irreparable harm as a result of MBUSA's decision to add an additional Mercedes dealer in Crown Automobile's market area. The value of Crown Automobile's has been diminished as

evidenced by the termination of the APA by the Purchaser. Crown Automobile will also suffer lost profits from lost sales and service opportunities. In contrast, MBUSA's decision gives the new dealer an immediate windfall by appropriating to it a portion of the going concern value of Crown Automobile's business.

31. No bond is required as a precondition to such an injunction under *Ala. Code* § 8-20-4.

32. Crown Automobile is entitled to an award of its costs and attorneys fees pursuant to the *Ala. Code* § 8-20-11.

WHEREFORE, plaintiff Crown Automobile Co., Inc. requests that the Court enter an injunction prohibiting defendant Mercedes-Benz USA LLC from: (a) violating the Alabama Motor Vehicle Franchise Act; and (b) from adding an additional Mercedes dealer in Crown Automobile's market area including at Grants Mill Road at I-459, and for an award of the attorneys' fees and costs incurred in prosecution of these claims and obtaining an injunction.

COUNT TWO
VIOLATIONS OF THE ALABAMA
MOTOR VEHICLE FRANCHISE ACT

33. Crown Automobile adopts and incorporates herein the allegations set forth in paragraphs 1 through 32 above.

34. MBUSA has violated the Alabama Motor Vehicle Franchise Act in the following non-exclusive ways:

- a. MBUSA has acted in a manner with respect to Crown Automobile that is arbitrary, unconscionable, unreasonable, or not in good faith and has damaged Crown Automobile, in violation of *Ala. Code* § 8-20-4(2);

- b. By its actions, MBUSA has effectively attempted to prevent Crown Automobile's sale of its dealership to the Purchaser, in violation of *Ala. Code* § 8-20-4(3)(k);
- c. MBUSA has unreasonably and without notice to Crown Automobile entered into a franchise with an additional dealer in Crown Automobile's relevant market area, in violation of *Ala. Code* § 8-20-4(3)(l).
- d. MBUSA has effectively changed Crown Automobile's AOI and therefore materially changed the Dealer Agreements without 60 days prior notice by certified mail, in violation of *Ala. Code* § 8-20-4(3)(t); and
- e. MBUSA has effectively changed Crown Automobile's AOI arbitrarily and without due regard to the present or projected pattern of automobile sales within the AOI and without first having provided Crown Automobile with written notice of the change and the reasons therefore, in violation of *Ala. Code* § 8-20-4(3)(z).

35. Each of the violations described above is an "unfair and deceptive trade practice" pursuant to *Ala. Code* § 8-20-4.

36. Crown Automobile has been damaged by MBUSA's violations of the Alabama Motor Vehicle Franchise Act. Among other damages, Crown Automobile lost the opportunity to sell its dealership at its fair market value and the value of its dealership has been diminished. Additionally, these violations will result in lost future profits for Crown Automobile.

37. Crown Automobile is entitled to an award of its costs and attorneys fees pursuant to the *Ala. Code* § 8-20-11.

WHEREFORE, plaintiff Crown Automobile Co., Inc. requests that the Court enter judgment in its favor and against defendant Mercedes-Benz USA, LLC and enter an award of damages in favor of plaintiff Crown Automobile Co., Inc., plus costs and attorneys' fees.

COUNT THREE
DECLARATORY JUDGMENT

38. Crown Automobile adopts and incorporates herein the allegations set forth in paragraphs 1 through 37 above.

39. This claim is brought pursuant to the Alabama Declaratory Judgment Act, *Ala. Code* § 6-6-220 et seq.

40. There is a justiciable controversy between Crown Automobile and MBUSA.

41. Crown Automobile is entitled to a declaration that MBUSA does not have a right to place an additional Mercedes dealer within Crown Automobile's market area.

WHEREFORE, plaintiff Crown Automobile Co., Inc. requests that the Court enter a declaratory judgment declaring that defendant Mercedes-Benz USA, LLC do not have a right to place an additional Mercedes dealer within Crown Automobile's market area, plus an award of the costs and attorneys' fees incurred in obtaining the declaratory judgment.

Dated: November 15, 2013

/s/ James W. Gewin

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Please Serve Defendant Via Certified Mail

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