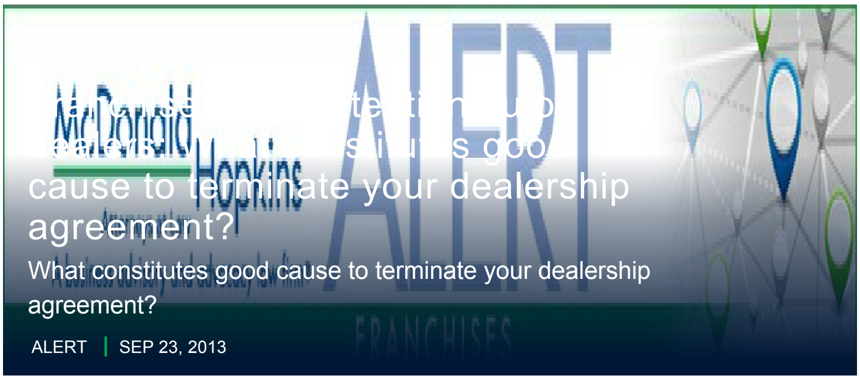

[illegible] dealers: What constitutes good cause to terminate your dealership agreement?

What constitutes good cause to terminate your dealership agreement?

ALERT | SEP 23, 2013

Under Ohio law, a franchisor must have “good cause” in order to terminate a motor vehicle franchise. That good cause cannot include the failure to achieve any unreasonable or discriminatory performance criteria. In order to comply with the law, the Japanese auto manufacturer Nissan instituted a standard benchmark for sales performance known as the regional sales effectiveness or RSE. The RSE applied to every Nissan dealership in Ohio. On June 25, 2013, an Ohio appellate court held, in *Sims v. Nissan North American Incorporated*, that Nissan’s attempt to be non-discriminatory was, in fact, unreasonable and discriminatory because the creation of such a broad standard ignored the different markets in which franchisees in Ohio compete.

The facts of the *Sims* case are not complicated. William Sims operates a Nissan franchise in Warren, Ohio, which is also the home of General Motors’ Lordstown Assembly Plant. Residents of Warren, Ohio are typically very loyal to the GM brand. While other manufacturers, including Nissan, have decided to open dealerships in the area, it is well known the city of Warren has strong ties to GM. Unfortunately for Mr. Sims, his Nissan dealership failed to meet Nissan’s RSE and, consequently, Nissan provided notice to Mr. Sims that it intended to terminate Sims’ dealer agreement. Mr. Sims filed a protest with the Ohio Motor Vehicle Dealers Board and prevailed at the administrative level. After the necessary confirmation by an Ohio Court of Common Pleas, Nissan appealed to the Court of Appeals of Ohio, Tenth District.

The case was decided by examining the statute beyond the “unreasonable or discriminatory” language. In a separate section, the statute requires that a franchisor “take existing circumstances” into account before terminating a dealership agreement. The Appellate Court reasoned that Nissan’s failure to account for GM’s presence in the Warren area failed to account for the existing circumstances that Sims faced. Thus, failure to satisfy the unreasonable and discriminatory RSE did not constitute good cause, and Nissan was prohibited from terminating the dealership agreement on those grounds.

Automobile franchisors and franchisees in Ohio should review their dealership agreements to confirm if such agreements take into account existing circumstances when determining what constitutes “good cause” to terminate a dealership agreement. If the agreement places general restrictions that could discriminate against a segment of franchisees based on the conditions in their market, then those provisions may be unenforceable. Franchisees should specifically examine their performance criteria to determine whether or not such criteria were tailored to their respective market, or if the language suggests that the criteria was indiscriminately applied to franchisees in various areas.

McDonald Hopkins has a team of skilled franchise, business and litigation professionals who can help tailor a specific solution for your company's needs.

For more information, please contact:

Scott N. Opincar
216.348.5753
sopincar@mcdonaldhopkins.com

T. Daniel Reynolds
216.348.5785
dreynolds@mcdonaldhopkins.com

FRANCHISE PRACTICE

We represent manufacturers, distributors, dealers, franchisors, franchisees, licensors, licensees, sales representatives, franchisor and franchisee investors, and franchisee associations in all aspects of franchising. We also assist franchise suppliers, such as banks, insurers, brokers and consultants. When appropriate, we work in close contact with a client’s business lawyer as special counsel.