



ALAN WILSON
ATTORNEY GENERAL

October 11, 2013

The Honorable J. Gregory Hembree
Senator, District No. 28
1300 Professional Drive, Suite 102
Myrtle Beach, SC 29577

Dear Senator Hembree:

This Office received your request for an opinion determining whether a manufacturer could sell cars to South Carolina consumers over the internet without establishing a physical presence in this state.

LAW/ANALYSIS:

The pertinent statutes are the Regulation of Manufactures, Distributors and Dealers Act (S.C. Code Ann. § 56-15-10 *et seq.*) and the Dealer or Wholesaler Licenses Act (S.C. Code Ann. § 56-15-310 *et seq.*) of the South Carolina Code. Section 56-15-20 of the Code provides:

Any person who engages directly or indirectly in purposeful contacts within this State in connection with the offering or advertising for sale or has business dealings with respect to a motor vehicle within this State shall be subject to the provisions of this chapter and shall be subject to the jurisdiction of the courts of this State upon service of process in accordance with the provisions of Chapter 9 of Title 15.”

S.C. Code Ann. § 56-15-20 (1976 Code, as amended). So, any person who attempts to sell cars in South Carolina is subjected to the jurisdiction of the courts of this state.

Section 56-15-45 states:

(A) It is unlawful for a manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer, or representative of a manufacturer or franchisor to own, operate, or control or to participate in the ownership, operation, or control of a new motor vehicle dealer in this State, to establish in this State an additional dealer or dealership in which that person or entity has an interest, or to own, operate, or control, directly or indirectly, an interest in a dealer or dealership in this State, excluding a passive interest in a publicly traded corporation held for investment purposes. This subsection does not prohibit the ownership, operation, or control of a new motor vehicle dealer by a manufacturer or franchisor:

(1) for a temporary period, not to exceed one year, during the transition from one owner or operator to another, except that on a showing by a manufacturer or franchisor of good cause, a court of competent jurisdiction may extend this time limit for periods up to an additional twelve months;

(2) during a period in which the new motor vehicle dealer is being sold pursuant to a bona fide contract, shareholder agreement, or purchase option to the operator of the dealership; or

(3) at the same location at which the manufacturer or franchisor has been engaged in the retail sale of new motor vehicles as the owner, operator, or controller of the dealership for a continuous two-year period of time immediately before January 1, 2000, where there is no prospective new motor vehicle dealer available to own or operate the dealership in a manner consistent with the public interest.

(B)(1) It is unlawful for a manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer, or representative of a manufacturer or franchisor to compete unfairly with a new motor vehicle dealer of the same line make operating pursuant to a franchise in the State of South Carolina. Except as otherwise provided in this subsection, the mere ownership, operation, or control of a new motor vehicle dealer by a manufacturer or franchisor pursuant to the conditions set forth in subsection (A) of this section is not a violation of this subsection.

(2) For purposes of this subsection, a manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer, or representative of a manufacturer or franchisor is conclusively presumed to be competing unfairly if it gives preferential treatment to a dealer or dealership in which an interest is directly or indirectly owned, operated, or controlled by the manufacturer or franchisor or any partner, affiliate, wholly or partially owned subsidiary, officer, or representative of the manufacturer or franchisor, expressly including, but not limited to, preferential treatment regarding the direct or indirect cost of vehicles or parts, the availability or allocation of vehicles or parts, the availability or allocation of special or program vehicles, the provision of service and service support, the availability of or participation in special programs, the administration of warranty policy, the availability or allocation of factory rebates, or the availability and use of after warranty adjustments, advertising, floor planning, or financing or financing programs.

(C) It is unlawful for a manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer, or representative of a manufacturer or franchisor to own a facility that engages primarily in the repair of motor vehicles, except motor homes, if the repairs are performed pursuant to the terms of a franchise or other agreement or the repairs are performed as part of a manufacturer's or franchisor's warranty. Nothing in this subsection prohibits a manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer, or

representative of a manufacturer or franchisor from owning a facility to perform warranty or other repairs on motor vehicles owned and operated by the manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer, or representative of a manufacturer or franchisor.

(D) Except as may be provided otherwise in subsections (A) and (B) of this section, a manufacturer or franchisor may not sell, directly or indirectly, a motor vehicle to a consumer in this State, except through a new motor vehicle dealer holding a franchise for the line make that includes the motor vehicle. This subsection does not apply to manufacturer or franchisor sales of new motor vehicles to the federal government, nor to manufacturer or franchisor leases of new motor vehicles to employees of the manufacturer or franchisor. Nothing in this subsection prohibits a manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer, or representative of a manufacturer or franchisor operating as a motor vehicle lessor from selling a motor vehicle to the lessee at the conclusion of a lease agreement between the two parties. Nothing in this subsection prevents a manufacturer or franchisor from establishing an e-commerce website for the purpose of referring prospective customers to motor vehicle dealers holding a franchise for the same line make of the manufacturer or franchisor.

S.C. Code Ann. § 56-15-45 (1976 Code, as amended).

Pursuant to Section 56-15-45, it is illegal for a manufacturer, except under certain limited circumstances, to sell new cars to South Carolina consumers or to repair cars. A dealer is responsible for selling and repairing new cars in South Carolina.

South Carolina law provides that dealers must be licensed. "Before engaging in business as a dealer or wholesaler in this State, a person first must make application to the Department of Motor Vehicles for a license..." S.C. Code Ann. § 56-15-310 (1976 Code, as amended). Additionally, South Carolina law requires a dealer to have certain premises before obtaining a license. Section 56-15-330 provides:

No dealer may be issued or allowed to maintain a motor vehicle dealer's license unless:

(1) The dealer maintains a bona fide established place of business for conducting the business of selling or exchanging motor vehicles which must be the principal business conducted from the fixed location. The sale of motorcycle or motor driven cycles need not be the principal business conducted from the fixed location. A bona fide established place of business for any motor vehicle dealer includes a permanent, enclosed building or structure, not excluding a permanently installed mobile home containing at least ninety-six square feet of floor space, actually occupied by the applicant and easily accessible by the public, at which a permanent business of bartering, trading, or selling of motor vehicles or displaying vehicles for bartering, trading, or selling is carried

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on, wherein the public may contact the owner or operator at all reasonable times and in which must be kept and maintained the books, records, and files required by this chapter. A bona fide established place of business does not mean a residence, tent, temporary stand, or other temporary quarters.

(2) The dealer's place of business must display a permanent sign with letters at least six inches in height, clearly readable from the nearest major avenue of traffic. The sign must clearly identify the licensed business.

(3) The dealer's place of business must have a reasonable area or lot to properly display motor vehicles.

S.C. Code Ann. § 56-15-330 (1976 Code, as amended).

A manufacturer attempting to sell cars to South Carolina consumers via the internet will never be able to obtain the license which is required under South Carolina law to sell cars because they would not meet the requirement of having a physical premises in South Carolina.

The South Carolina legislature appears to have limited sales of cars in South Carolina over the internet to dealers. "This chapter does not prohibit a dealership located in this State from contracting with an on-line electronic service to provide motor vehicles to consumers in this State." S.C. Code Ann. § 56-15-85 (1976 Code, as amended). "Nothing in this subsection prevents a manufacturer or franchisor from establishing an e-commerce website for the purpose of referring prospective customers to motor vehicle dealers holding a franchise for the same line make of the manufacturer or franchisor." S.C. Code Ann. § 56-15-45(D) (1976 Code, as amended).

CONCLUSION

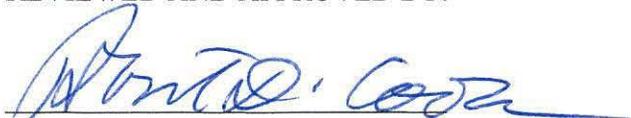
In conclusion, South Carolina law prohibits a manufacturer from selling cars over the internet to South Carolina consumers. Until a court or the legislature specifically addresses the issues in your letter, this is only an opinion as to how this Office believes a court would interpret the law in this matter.

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General