

MYERS & FULLER, P.A.

ATTORNEYS AT LAW

www.dealerlawyer.com

Robert A. Bass*
Robert C. Byerts
Loula M. Fuller
J. Martin Hayes
Shawn D. Mercer**

Daniel E. Myers
Richard N. Sox, Jr.
R. Craig Spickard
** Frank X. Trainor, III
W. Douglas Moody, Jr.

*Also admitted in Washington, D.C.

**Only admitted in North Carolina

Of Counsel: William R. Pfeiffer

Please respond to: Tallahassee office

ALERT

To: Mercedes Benz Dealer Principle

From: Richard N. Sox, Jr.
For the Firm

Date: February 2, 2007

BEWARE OF POTENTIAL NEW MERCEDES BENZ MARKET SHARE AND FACILITY DEMANDS

Several of our Mercedes Benz dealers have contacted us following recent discussions with their MB representative. Their factory representative stated that until the dealer achieves market share they will be issued a 1 year term Dealer Agreement. Along with the 1 year term Dealer Agreement, these dealers are being asked to execute a "Dealer Improvement Addendum." This Addendum asks the dealer to admit that "Dealer acknowledges its low sales performance with only X units registered is substantially below national levels of Y%."

Some of these same dealers, as well as other dealers who apparently are meeting sales performance requirements, have also received a "Dealer Improvement Addendum" that states "Dealer hereby acknowledges that its dealership facility does not meet MBUSA facility requirements for space and image." According to the Addendum, the dealer has approximately 8 months to construct an acceptable facility.

If the MB dealer doesn't comply with the sales performance and/or facilities requirements they are subject to termination under the terms of the Standard Provision of the Dealer Agreement.

We recommend that dealers NOT ever sign an Addendum to their Dealer Agreement which causes them to admit they have not performed adequately. If MB has a problem with your sales performance, they can take action under the standard terms of your Dealer Agreement. In that case, you have all the protections of your State law to argue that the performance standard is inappropriate as applied to you and, thus, MB does not have good cause to terminate you. If you sign an Addendum, you give these arguments away!

As a general rule, your Dealer Agreement has minimum facility guidelines. By contract, you only have to meet those guidelines. Anything else is to be done at YOUR OPTION. **Our very strong advice is NOT to sign the Dealer Improvement Addendum.** Once you do, it is very

2822 Remington Green Circle * Tallahassee, Florida * 32308
Telephone (850) 878-6404 * Facsimile (850) 942-4869

8410 Six Forks Road, Suite 201 * P.O. Box 97275 * Raleigh, North Carolina * 27615
Telephone (919) 847-8632 * Facsimile (919) 847-8633

difficult to unwind your admission that your facility is not acceptable and that you have agreed to construct a new one within a certain time frame.

Instead of signing the Dealer Improvement Addendum, or 1 year term Agreement where applicable, **we are recommending that you write a letter to your MB representative which puts the ball back in their court.** Ask them what they are basing the facility requirements upon (i.e. expected units in operation), how are they calculating market share and explain to your representative that, as it is, allocation of popular vehicles is limited and, thus, additional sales to either meet required market share or to justify construction of a larger facility is questionable.