



Hyundai's Equus Requirements Ignore Many State Franchise Laws

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Hyundai is the latest import manufacturer to insist that dealers provide a number of specific items at dealerships before the dealer will be eligible for allocation of the new Equus luxury vehicle.

- Provide a separate Hyundai Showroom
- Be 100% or greater Sales Efficient of Genesis sedan for a rolling 12-month period
- Purchase and participate in a Brand Image Facility Survey process to determine appropriate showroom upgrades
- Purchase an applicable Premium Showroom Kit
- Purchase the Equus Initial Parts and Tool Kits
- Attend an Equus product immersion in Seoul, South Korea
- Commit to an annual Equus allocation volume

As you might expect, *in making these requirements Hyundai has completely ignored the vast majority of state franchise laws.* Most state franchise laws specifically provide that a manufacturer may not withhold a model vehicle being sold under the brand for which a dealer has a franchise. Under these franchise protections, Hyundai may not require dealers to comply with anything outside of items necessary to sell and service the new model vehicle. Thus, items like a model-specific display and model-special tools would not be considered a violation of state franchise laws.

It is not entirely clear what Hyundai is asking for with regard to the "separate Hyundai showroom." Whether Hyundai is talking about a dealer providing an exclusive Hyundai showroom facility not dualled with a non-Hyundai franchise or providing a "showroom within a showroom" for the Equus vehicle, in either case Hyundai has violated most franchise laws.

Dealers do not have to provide an exclusive showroom or a new space within the existing Hyundai showroom in which to display the Equus in order to receive the vehicle.

Similarly, Hyundai dealers do not have to participate in any new Brand Image Facility Survey with Hyundai's designated architects and proceed with showroom upgrades in order to receive the Equus model. Nor does the dealer need to purchase and install an expensive "Showroom Kit."

Likewise, there is no reasonable basis to tie a dealer's Genesis sales performance to the dealer's receipt of the Equus product. If Hyundai takes issue with a dealer's sales

performance then it can take action under the Sales and Service Agreement, but it cannot withhold the allocation of new product.

As it relates to the Showroom Kit, Initial Parts Kit and Tools Kit, dealers should make the determination of whether these Kits are reasonably necessary to properly promote the sale and service of the Equus vehicle. If these Kits are in fact reasonably necessary then Hyundai is likely within its rights under state franchise laws in requiring a dealer to purchase those Kits before receiving an allocation of Equus vehicles.

As long as there have been major foreign manufacturers operating within the United States there has been a tug-of-war with dealers over whether certain types of training and dealer meetings should occur in the United States or in the manufacturer's home country. As a result, some states have enacted franchise legislation which expressly prevents a manufacturer from forcing an unreasonable training expense upon its dealers. *Being required to send personnel to South Korea for "product immersion," at the dealer's expense, would very likely fall with the definition of "unreasonable" training expense.* From a practical standpoint, dealers will need to pick their battles on this particular point. Dealers may want to begin the discussion by requesting that a training option be provided at a central location within the United States.

Finally, Hyundai will find itself crossways with many state franchise laws if it requires dealers to commit to an annual allocation of vehicles that goes beyond what would be considered a reasonable number of vehicles which to hold in inventory. The question of a reasonable number of vehicles will center on the size and demographic characteristics of the dealer's market. A Hyundai dealer located in a small, primarily blue collar town will not be in a position to sell as many Equus vehicles as a dealer located in, say, Los Angeles.

In communicating concerns dealers have with regard to the Equus vehicle launch program our experience with foreign manufacturers like Hyundai indicates that dealers should strike a tone of appreciation for Hyundai's effort in creating this new vehicle while pointing out that some of these requirements are unnecessary and/or too costly. Where available, dealers should also point out that certain of these requirements run counter to state motor vehicles franchise laws.