

## A Kinder, Gentler Chrysler?

by : Rich Sox

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On July 6, 2007, Chrysler sent out a letter under J.W. Dimond's signature to hundreds of Chrysler, Dodge and Jeep dealers which places the dealers on notice of deficient sales performance. These letters are virtually identical except for citing to specific state franchise notice provisions and different MSR, sales and lost sales figures for each dealer. So much for a kinder, gentler Chrysler!

If you are in receipt of one of these lovely letters, we strongly recommend that you respond in writing. This letter is a default letter which is the first step that Chrysler must take before proceeding to attempt to terminate a dealer for failure to meet sales performance obligations. Whether or not Chrysler takes the drastic step of giving you notice of termination remains to be seen. Nevertheless, you must document your opposition to the premise that you are deficient in sales in order to, at the least, let Chrysler know that you are not going to be an easy target for consolidation of its dealer network and, at worst, to create a paper trail for use in a future termination dispute with Chrysler.

In our work with many other Chrysler dealers prior to this July 6th letter being sent, we have learned that (as everyone suspected) MSR is not always a fair and accurate goal for your dealership's sales performance. After many requests for the methodology used to arrive at MSR, on behalf of one of our clients we received Chrysler's written formula. MSR is arrived at by way of a formula that is driven in large part by what geographic area your dealership is assigned as its sales locality or trade zone. In the situations we have looked at it appears that certain census tracts should have been assigned to a neighboring dealer. The market experts who work for our dealer clients can run relatively simple distance analysis and drive-time analysis to determine who should properly be assigned those tracts. We have discovered that the improper assignment of even a small part of your territory can drastically escalate your MSR target.

As a result of what we have learned related to the MSR calculation, we are recommending that any dealer receiving the July 6th default letter, should respond with a specific request for the formula used to calculate their MSR and the maps which show what territory is assigned you the dealer as well as surrounding Chrysler, Dodge and Jeep dealers.

Apart from the MSR calculation itself, there may also be unique circumstances in your market that explain the appearance of poor sales performance. These circumstances can include being a market which is dominated by a customer demographic that does not typically purchase Chrysler vehicles, the distribution of Chrysler, Dodge and Jeep dealers within your market or having to compete against a dealer who is meeting their VPA incentive goals and, in turn, is able to lower the vehicle prices to a level with which you can't compete. One example of a unique circumstance for a dealer we recently assisted in responding to the July 6th letter was that over the past 12 months the state highway commission had been doing major construction on the road in front of his dealership that severely limited customer access to the dealership. Any unique circumstance that applies to your dealership or market should be included in your written response to the default letter.

Time is running out for the bottom 50 Hyundai dealers who received a performance default letter. Back in late April of this year, Hyundai sent out performance default letters to the bottom 50 Hyundai dealers. Hyundai piled on in these letters with reference to deficient facilities, management, advertising and inventory. Dealers were informed that they had 180 days to cure these deficiencies beginning May 1, 2007. The deadline falls sometime in late October. By the time this column is published there will not be much time left.

No surprise, we strongly urge you not to put your head in the sand but to respond to these default letters

in writing. Similar to our discussion above concerning the Chrysler default letter, it is critical that you put the ball back in Hyundai's court by asking them to give you details of your primary market area, give you details of the methodology as to how expected registrations are calculated for your dealership, and by describing any unique circumstances impacting your ability to sell Hyundai vehicles. If you have changed management or upgraded your facility in recent times prior to receiving the default letter or since receiving the default letter, those actions should be documented. If you have had difficulty with obtaining allocation of vehicles in demand by your customers then that should absolutely be included in your response. You don't want to wait for the termination notice to begin to tell your story.

Our friend, Ernst Lieb, is on a tear again. I hope I am not stealing Jim Ziegler's thunder here, but one of our loyal Mercedes-Benz dealers reported to us that Heir Lieb is at it again. At the recent dealer meeting on the French Riviera, Ernst announced three new dealer initiatives. We think our clients will like the first two but not necessarily the third. The first initiative is that Mercedes-Benz will be enforcing its existing policy against vehicles being sold outside its area of influence via a broker. The second initiative is that Mercedes will be instituting a loaner reimbursement enhancement to encourage dealers to provide alternate transportation to its service customers. Last, but not least, Mercedes plans to review dealers' individual advertising to ensure that brand value is being maintained. Ernst made it clear to the attendees of the dealer meeting that distress pricing would not be tolerated.

Although it could be difficult to enforce the brokering initiative, most state franchise laws prohibit new vehicle sales through brokers so dealers should not have a problem with this. Certainly, any additional money paid to the dealer to help cover the cost of providing loaner cars is a good thing. Some state franchise laws already require full reimbursement for the expense. But policing the dealers' pricing may not be so popular. Up until recently, there was very little question that manufacturer could not tell a dealer at what price to sell a vehicle. This was true especially for any minimum or floor price.

What may be urging Mercedes on in a renewed effort to monitor distress pricing is a recent United States Supreme Court case which holds that it is no longer a per se violation of the Sherman Antitrust Act for a manufacturer to set minimum resale prices. The Supreme Court stated that there could be circumstances where a manufacturer would be justified in setting minimum resale prices for its retailers. Those circumstances could include an effort to distinguish the product in the marketplace or an effort to increase overall revenues for its retailers which would, in turn, enable the retailer to maintain top-of-the-line facilities and customer service. Sounds very familiar!

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