

Imports are Adding New Dealerships at an Increased Pace

by : Richard N. Sox, Jr.

One item to fall out from the struggles of the Detroit 3 and the success of the import manufacturers that is not getting much press is the increase in additional dealership points being proposed by the likes of Toyota, Lexus, Mercedes Benz, Honda, Acura, Kia and Hyundai.

Unlike the domestic car dealers who became accustomed to receiving that courtesy visit from their factory representative explaining that the addition of another dealership to the market would benefit all, for the most part the news that a dealership is being added to a market already served by a same linemake import dealer is something new. Over time, after being told it would all be OK, domestic dealers began to almost automatically take advantage of their state franchise law protections by challenging the need for the new dealership. We sense that the import dealers haven't reached that point yet and are reluctant to bite the proverbial hand that feeds them.

Import dealers are justifiably happy with the growth they have enjoyed in selling import vehicles to more and more historically domestic buyers. Without question, times are good. As a result, when the likes of Toyota explain to you that because of the overwhelming units in operation and the population growth in a certain area of your market, a new Toyota dealership is needed in your market, your reaction will likely be to give Toyota its due. After all, it is the one that has consistently put together a great product lineup that is burying the competition and you are reaping the benefits. If this isn't your initial reaction to the news of a competing dealership being added to your market, your Toyota representative will certainly enlighten you!

Caution, caution

Let me remind you that the import manufacturers, with few exceptions, started off having to beg and plead to get you to sign up as a dealer. At one or more points in the life of the import manufacturer, it had to beg you to hang in there (while suffering losses) until it could right the ship. Let me also remind you that it is as much your investment in facilities, employees and processes that have led to the import manufacturers' success as it is their own product development. As is always the case, the dealer is the one with all the money on the line. Like domestic manufacturers, import manufacturers insist upon a certain level of facility investment, capital and personnel from you and, in turn, make absolutely no guarantee that they will manufacture a product that will be saleable or that they will be able to provide you with a sufficient supply of vehicles. There is no other business model in the world like yours! As our founding partner, Dan Myers, always says "... the dealers are the business version of the Last of the Mohicans." You, ladies and gentlemen, have put it all on the line asking for very little in return from your manufacturer.

I hope that this pep talk has reminded you that you do not owe your import manufacturer anything – especially a pass on its ability to bring in a competing dealership. In the vast majority of cases, despite what your factory representative will tell you, a new dealership will take a healthy chunk of sales and service business from you. We have proven over and over in courts across the country that the manufacturers' pater line that "a rising tide lifts all boats" is a fallacy. You are going to take a hit no matter what! Shouldn't you at least be compensated for the market you have built up and will now lose to a new competitor?

Almost every state provides its motor vehicle dealers the right to challenge the addition of a new dealership point where that new dealership is within a certain radius from your store. Every import dealer should be taking advantage of these hard fought protections. You should not be ashamed to use the tools provided to you to protect your investment. Clever factory representatives will challenge your pride by saying that the protest of a new point is an admission by you that you can't handle the

competition. Don't take the bait! There is nothing shameful about holding your manufacturer accountable for the hit you are going to take. Don't forget that at some level the addition of a dealership comes with very little cost to the manufacturer and as long as it returns an incremental increase in sales within the market the manufacturer benefits.

The purpose in challenging the need for a new import dealership within your market is not always to prevent that point from opening. Instead, in many cases your goal should be to use the challenge as a way to hold the factory accountable for the profits you are going to lose. The vast majority (say 90 percent) of the add point protests filed end in a settlement which results in the new point being added, but some compensation coming to the protesting dealer. This compensation can come in the form of a cash payment to offset anticipated lost profits, a letter of intent for the next new point proposed within your area or a neighboring area, advertising restrictions agreed to by the new dealer, or one of many other settlement items contained in the manufacturer's goody bag. For the most part, the only add point challenges that the manufacturer will take to the mat are those where they can clearly make a case for the need for the additional dealership. Even in those cases, the manufacturer would rather settle than risk a ruling finding that the new point is not warranted.

The need to hold import manufacturers accountable for the cost to you of a competing point is ever more critical in these times of increased demands by the import manufacturers for you to drastically increase the size of your dealership facilities and to provide those facilities exclusive of any other linemake. As we all know, to comply with these new image programs costs millions of your hard-earned dollars. The manufacturers will use the same logic as they use in describing the need for a new point when selling you on the need for a larger, fancier facility. They will tell you that due to your own success in putting units in operation in your market and with anticipated new vehicles being produced which target previously untargeted consumer segments (i.e. full size trucks) you've got to build a bigger and better facility. After spending these millions of dollars to sell and service these anticipated additional customers, you should not let your manufacturer get away with adding a competing dealership to your market. Most judges understand the logic behind giving you time to recoup your facility investment before being faced with a competing dealership. This is the case whether you have statutory protest rights or bring a civil action. Because the factory attorneys also know that judges will likely rule in your favor under these circumstances, the likely result of an add point challenge is a swift settlement.

In summary, we strongly encourage import dealers to at least look into the prospects of challenging a new point proposed for your market. When times are tough for the manufacturers, they don't hesitate to emphasize that decisions they make which may harm you are "just business." In these good times, it is incumbent upon import dealers to remind the manufacturers that decisions such as one to challenge a new dealership proposed for your backyard is likewise not personal, but just business. Don't let the manufacturers have it both ways. The value of your dealership is forever impacted once that new dealership is added to your market.

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