



NEWSLETTER

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BLUE OVAL LAWSUIT REFILED!

On May 9, 2002, a federal lawsuit challenging the Blue Oval Program was again filed in the United States District Court of the District of New Jersey. Four courageous dealers have joined the already five dealers named on the original lawsuit filed.

You may recall that in February 2002 the lawsuit was dismissed **without prejudice** on a procedural issue - **not the merits of the case**. The attorneys had not perceived presenting "actual damages" as a prerequisite to getting into federal court and the judge disagreed.

The nine counts have remained as follows:

COUNTS 1 THROUGH 3

(Violation of Robinson Patman Act: 13(d), 13(e), 13(a).)

The lawsuit alleges that Blue Oval Certification is not attainable for all dealers on proportionally equal terms. By definition there always must be dealers who fall below the VOC Index average and who cannot qualify, and who, consequently, will suffer constructive termination.

In short, the suit alleges that the Blue Oval Certification Program constitutes unlawful price discrimination and will substantially lessen a dealer's ability to be competitive.

COUNT 4

(Dealer's Day in Court Act)

The lawsuit alleges that by the coercive acts imposed by Ford Motor Company, it has violated its obligation of good faith under the federal Dealer's Day in Court Act.

COUNTS 5 AND 6

(Violation of State Franchise Statutes)

State Franchise Statutes prohibit coercive bad faith, prejudicial and/or discriminatory conduct; predatory acts or practices; unreasonable standards of performance; regulation of performance standards based on customer surveys, just to name a few.

The lawsuit alleges the purpose of Ford's Blue Oval Program is to circumvent and nullify the variety of protections of the state franchise laws against the very kind of impositions the Program has foisted on its dealers.

COUNT 7

(Breach of Sales and Service Agreement)

The Franchise Agreements acknowledge that the franchised dealer makes important investments or commitments in retail sales and service facilities and equipment, in working capital, in inventories of vehicle parts and accessories and trained sales and service personnel.

The suit alleges the Franchise Agreements do not comprehend such intrusive, expensive, and coercive control of all phases of the deal-

ers' investment. The Agreements do not comprehend tiered, discriminatory pricing. The dealers had no expectation that Ford would breach its agreements by injecting the rigors of the Blue Oval Program into the dealers' competence in running their own operations.

COUNT 8

(Wrongful Unilateral Amendment of the Sales and Service Agreement)

The suit alleges the Blue Oval Program constitutes a material change to the Agreement and its alleged voluntary nature is illusory because of the anti-competitive nature of the pricing provisions.

COUNT 9

(Breach of Implied Covenant of Good Faith and Fair Dealings)

Ford, as well as dealers, must observe reasonable commercial practices of fair dealings. Ford is obligated to refrain from any actions that would destroy or injure the dealers' rights to receive the fruits of the Franchise Agreement.

The suit alleges that by the imposition of the Blue Oval Program, Ford has violated its duty of good faith and fair dealings.

The nine dealers will seek damages, including statutory treble and other punitive damages, and costs and legal fees of suit.

We are currently waiting for Ford Motor Company to respond to the Complaint. We will keep you posted as the lawsuit progresses.

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NEW JERSEY FORD AND LINCOLN-MERCURY DEALERS WILL CHALLENGE THE LEGALITY OF DEALER SURCHARGES ON WARRANTY ISSUE!

Ford Motor Company continues to challenge the warranty provision of the New Jersey franchise law. As previously reported, in January 1998, Liberty Lincoln-Mercury won the lawsuit seeking retail rate warranty parts reimbursement against Ford Motor Company. Following this victory many of the New Jersey Ford and Lincoln-Mercury dealers requested and began collecting on warranty parts at their prevailing

retail rate and have been doing so for approximately three years.

In April 2002 top Ford Motor Company officials invited and met with Ford and Lincoln-Mercury dealers to discuss possible solutions to recouping its "additional costs of doing business in the State of New Jersey." Ford introduced the following options:

- Accept a similar deal given to New Jersey GM dealers, which involves an increase in the percentage of the mark-up with corresponding surcharges depending on the model;
- Be surcharged, if New Jersey law remains as is; or
- Accept a proposed amendment to New Jersey law, which involves a 50 percent mark-up with no surcharge; a provision adopted by the Illinois and Indiana dealers.

The overwhelming response of the New Jersey Ford and Lincoln-Mercury dealers was the suggestion that Ford simply obey the New Jersey law.

On May 21, 2002, Ford Motor Company sent every dealer in New Jersey a letter informing them that

effective June 1, 2002, "a \$125 surcharge would be applied to all retail vehicles." As a result of this letter, the Alliance and several dealers are currently in discussion with the law firm of Bressler, Amery and Ross as to the legality of such a surcharge. It is the opinion of Eric Chase, an attorney with the firm, that a surcharge to the dealer violates New Jersey franchise law. We are currently discussing legal remedies to address this issue. As you may recall, the Bressler firm represented Liberty Lincoln-Mercury in the warranty case.

It is the consensus of the dealers in the state of New Jersey that we have all worked too hard to strengthen New Jersey franchise laws. To do nothing, is to allow Ford Motor Company to simply ignore the New Jersey statute and that is a mistake. A lawsuit is imminent.

Over forty states have warranty provisions in their state franchise laws. Over thirty states have addressed parts reimbursement in their warranty provision. Dealers should contact their state association and request information about their individual state franchise laws.

DEALER WARNING!

A dealer has contacted the Alliance in reference to a possible scam being perpetrated on dealers.

Last month the dealer received a collection notice from Transworld Systems, Inc., a collection agency working on behalf of Sutter Mill Specialties. The debt was incurred by the alleged order approval of a "sample" watch with the Ford logo. The salesperson at the Company claimed that the owner of the dealership had approved the shipment on the telephone. In fact, the day the salesperson claimed he/she spoke with the owner, he was out of town.

Fortunately, the dealership operates on a "purchase order" basis only and because no purchase order number was attached to the bill, the dealership was able to have the charge reversed.

The dealer has asked that we alert all dealers of this possible scam. Although the problem was resolved, the amount of time expended on the resolution was extensive. Beware of unsolicited shipments.

Blue Oval Lawsuit continued from front page

BLUE OVAL BAR RAISED AGAIN

1) The latest results of the NADA Attitude Surveys prove that Ford and Lincoln-Mercury dealers remain opposed to Blue Oval. Ford continues to rank at the bottom of the list of manufacturers in Dealer Satisfaction.

2) Year two of the J. D. Power facility evaluation is much more stringent. Many dealers are reporting that the score of their year-two evaluation is **far below** their first-year results. Several dealers have reported that the year-two J. D. Power evaluation was inaccurate, subjective, and

inconsistent with year-one evaluations. Dealers failed the same criteria that were acceptable in year one.

As predicted, now that the first year grace period is over, Ford and J.D. Power have started to raise the bar on Blue Oval criteria. Some dealers were not recertified as a result. We should ask ourselves, what or who will be next?

If you have a story you would like to share, please call.