



NEWSLETTER

www.dealersalliance.org

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April 2008

FORD DEALERS ALLIANCE SUBPOENAED IN BLUE OVAL CLASS CERTIFIED LAWSUIT

Subpoena Served on the Ford Dealers Alliance

There is nothing like having a subpoena served on an organization that will do more to silence that organization, especially one so broad it would literally have taken months to supply the stipulated documentation. On July 30, 2007, the Ford Dealers Alliance was served with a subpoena requiring us to provide the Ford Motor Company with documentation pertaining to the Blue Oval Program, as well as endless documents we perceived as private to the Ford Dealers Alliance and its membership and irrelevant to the case. Whatever Ford's motivation for choosing this course of action, we can only perceive this move as foolish, confused and certainly desperate. Fortunately, we were able, through months of negotiations with Ford's attorneys and with the cooperation of the court, to dissuade the Ford Motor Company from proceeding any further with this attack on the



Alliance and its members. Although we agreed to provide general information concerning our position on the Blue Oval Program, we refused to provide Ford's attorneys with any information we deemed sensitive and unrelated to the case. The day before scheduled oral argument, Ford Motor Company agreed to our terms.

Blue Oval Lawsuit

It has not been a secret that we have opposed the Blue Oval Program since its inception. We have gladly supported the nine dealers who had the strength and tenacity to file a lawsuit challenging the legality of the Blue Oval Program. The lawsuit alleges that Ford, through

the introduction of this coercive program, imposed on its dealers with the concealed intent to:

- (a) extort a sizeable fund discretionary to Ford and subject to disbursement only to dealers Ford certified;
- (b) set a pattern of discriminatory pricing qualifications, and benefits;
- (c) attempt to increase Ford's control of its dealer distribution system by circumventing state franchise protection statutes;
- (d) expand Ford's right under the dealer Sales and Service Agreements without formal amendment;
- (e) attempt to micromanage the Ford dealerships, and/or;
- (f) eliminate a substantial number of franchised dealerships in the United States without compensation.

Blue Oval Lawsuit is Class Certified

It has been a tough battle, but, fortunately, on January 31, 2007, we were granted class certification by the U.S. District Court for the District of New Jersey on all nine counts of the lawsuit. The counts include: three separate alleged violations of the Robinson-Patman (anti-trust) Act including disparity in pricing and proportionally unequal terms of sale as a result of cash reimbursement paid to Blue Oval certified dealers versus non-certified dealers; an alleged viola-

tion of the automobile Dealers' Day in Court Act for not acting in Good Faith by using price increases to coerce dealer participation in Blue Oval and in turn using Blue Oval as a device for selecting dealers for termination; two counts of alleged violations of state franchise law; and four counts of alleged breach of contract including breach of the franchise agreement by implementing Blue Oval because the franchise agreement does not permit, condone and comprehend such intrusive, expensive and coercive and arbitrary control of all phases of dealers' investment.

Ford appealed the District Court's decision to grant class certification to the U.S. Court of Appeals in June 2007. Oral argument took place in March 2008. We awaiting the decision.

"In terms of dealer-vs.-factory legal issues, this is the biggest deal you can imagine," Eric Chase, the lawyer who represents the dealers, stated in an interview with Automotive News. The suit could extend to all dealers who had Ford franchises from 2000 to early 2005, Chase said.

All Ford and Other-Make Dealers May Benefit

Assuming the court's "class" ruling is affirmed through all the appeals Ford Motor Company will assuredly make, the dealers' attorneys will mail to all Ford dealers their notice of eligibility to participate in the class action. Those Ford dealers who do not exercise their "opt-out" option will be automatically included as a plaintiff in the class.

The question of damages will be

more difficult; however, the attorneys are currently working with a firm that specializes in devising mathematical formulas that would address and satisfy such a wide-spread claim made by such a large group of plaintiffs.

Overall, the greatest benefit of this lawsuit is that it serves as a caution to other manufacturers who have attempted and would attempt in the future to orchestrate similar programs. Volkswagen is one prime example.

In Conclusion

Our achieving class action certification is a monumental step toward stopping Ford Motor Company from continuing or resurrecting a similar program in the future. Should we prevail, the decision will have broad implications on other manufacturers who have already enacted or may be considering enacting a similar program.

It continues to be our position that the Blue Oval Program and similar programs are insidious by nature and threaten the very core of the franchise system. They unilaterally change the Sales and Service Agreement without the benefit of our agreeing to the terms, they are intended to circumvent the franchise laws under the guise of being voluntary, and they create a multi-tiered pricing structure that threatens our very existence.

**These programs
must be stopped!**

MAY UPDATE

LARRY FETTE – A TRUE HERO

It is with deepest regret we announce that on May 9, 2008, Larry Fette president of Fette Ford, Inc., in Clifton, New Jersey, lost his battle with a long-fought illness.

Larry Fette's automotive career spanned over fifty years. He received numerous awards over that time including Ford's Top 100 Club, Ford's Vice Presidents Club, New York Region Top 40, and in 2002 he was the winner of the Time Magazine Quality Dealer Award. He served on the NJ Car Board of Trustees from 1985 through 2001.

Larry was an over fifty-year member of the North Jersey Regional Chamber of Commerce and a loyal supporter of the Boys & Girls Club of Clifton, NJ, since 1959. He has also been a loyal supporter of Eva's Kitchen, Covenant House and Several Sources Foundation.

Larry joined the Board of Directors of the Ford Dealers Alliance on February 28, 1991, where he served as vice president. He was a staunch advocate for dealer rights and a driving force behind our efforts to improve our position as franchised dealers. He was unafraid to challenge the manufacturer when all else failed and was a litigant against Ford Motor Company on the ongoing Warranty Parts Surcharge, as well as the Blue Oval Program issues.

When we think of Larry Fette we cannot help but be reminded of Ed Mullane's, founder of the Ford Dealers Alliance, favorite quote by Edmund Burke, "the only thing necessary for the triumph of evil is for good men to do nothing." Larry can

best be described as a good man who never hesitated to do something whenever necessary – and he did it while always maintaining his wonderful sense of humor.

It is not often in our lifetime we have the good fortune to meet an individual who represents the best in human nature. For us, at the Ford Dealers Alliance, Larry Fette was such an individual. We will miss you, old friend.

Larry is survived by his wife Nancy and their five children.



FORD DEALERS ALLIANCE

Division of DEALERS ALLIANCE, INC



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April 30, 2008

Dear Fellow Ford and Lincoln-Mercury Dealer:

Enclosed is a complimentary copy of our April 2008 Newsletter. The Alliance has been speaking on behalf of dealers for well over thirty years.

Today we ask you for only one thing. Take a few minutes and simply read the enclosed newsletter. Evaluate it on its short and long-term implications on your method of making a living. Or, said another way, evaluate it on its implications on your profitability.

Upon doing so, you have a choice. You can either throw this letter in the wastepaper basket, or, if you agree that Distribution, Warranty Reimbursement, and CSI Scoring and how the factory uses it or misuses it, as in its introduction of the Blue Oval, Advantage and Premier Programs, are major issues that must be confronted, you can join the 1,500 Ford dealers in the country who are already Alliance members.

The Alliance exists with one primary goal in mind—to protect your rights as a franchised dealer. We are constantly sampling programs, both large and small, that affect that equity in your business. And because we are funded solely by dues, we do this without factory influence.

Don't you think it is time you joined your fellow dealers in supporting these programs?

FORD DEALERS ALLIANCE

P.S. Our membership lists are strictly confidential.

FORD DEALERS ALLIANCE, 401 Hackensack Avenue, Hackensack, NJ 07601

Gentlemen: I hereby apply for individual Membership of the Ford Dealers Alliance and attach my check in the amount of \$195.00.

DEALERSHIP _____

Street _____

City _____ State _____ Zip _____

Telephone _____ Fax _____

Dealer Name _____ Region _____

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