



JONES DAY
COMMENTARY

AUTOMOTIVE ALERT: FEDERAL COURT ENJOINS SALE OF DEALERSHIP PENDING MANUFACTURER’S EXERCISE OF RIGHT OF FIRST REFUSAL

A federal district court preliminarily enjoined a dealer’s attempt to sell the dealership to third parties, finding that the manufacturer would “suffer immediate and irreparable injury” if the injunction motion had not been granted. *Mercedes-Benz USA, LLC v. Star Automobile Co., et al.*, No. 3-11-cv-73, Order For Preliminary Injunction, p. 1 [Doc. 10] (M.D. Ga. June 3, 2011).

Star Automobile Company is an authorized Mercedes-Benz dealer pursuant to car and light truck dealer agreements. The dealer agreements give Mercedes-Benz USA, LLC (“MBUSA”) a right of first refusal over the sale of the Mercedes-Benz “dealership,” according to the court. See *id.* at p. 2.

Star Automobile entered into an asset purchase agreement with third-party buyers, intending to sell the Mercedes “dealership,” together with Nissan and Volkswagen dealerships, as a “package deal” to the buyers. See *id.* at pp. 2-3. MBUSA sought to enjoin the

sale in order to exercise its contractual right of first refusal. See *id.* at p. 3.

The United States District Court found that MBUSA is likely to succeed on the merits of its claim, stating that “[n]ot only do the Dealer Agreements grant MBUSA a right of first refusal, but Georgia law also grants MBUSA a statutory right of first refusal. See O.C.G.A. § 10-1-663.1. Under both New Jersey law, which governs the Dealer Agreements, and Georgia law, deals like the one in this case violate rights of first refusal.” *Id.* The court found that the “package deal” selling the three “dealerships,” including the two over which MBUSA had no power, would likely violate the contractual right of first refusal. See *id.* at p. 4.

The court also found that Mercedes-Benz would likely suffer irreparable harm without injunctive relief. The court explained: “[i]f the Court were to allow the sale of Star’s Mercedes dealership to close, MBUSA

would lose its right of first refusal under the Dealer Agreements. Under such circumstances, monetary damages would be difficult, if not almost impossible, to calculate; thus, an injunction is the appropriate remedy.” *Id.*

The court also found that the harm Mercedes-Benz would suffer by the denial of an injunction would likely exceed any damage that an injunction would cause the defendants. “If the Court does not enjoin the sale of the dealership, MBUSA would lose its right of first refusal under the Dealer Agreements, a loss that would be nearly impossible to compensate with monetary damages. As to Star, although there will be a delay in the transfer of the dealership, Star continues to benefit from the ownership and operation of the dealership and is in no worse position.” *Id.* at p. 5.

Finally, the court found that maintaining the status quo by way of a preliminary injunction would not be against the public interest, noting that “enjoining the sale is in furtherance of the public’s interest in preserving and maintaining contractual relations.” *Id.*

The court subsequently denied the dealership’s motion to remove the preliminary injunction. In so ruling, the court found that allowing MBUSA to preserve its right of first refusal does not nullify a state dealer statutory provision governing the review and approval of ordinary buy-sell agreements as applied to dealers, stating that “[t]he approval provision operates independently from the right of first refusal; the provisions are not contradictory.” Order

Denying Motion to Remove Preliminary Injunction, p. 2 [Doc. 22]. The court also found “unpersuasive” the dealer’s argument that the existence of the approval provision in the statute is an adequate replacement for the right of first refusal: “the rights of first refusal provide a counterweight to the approval provision: it is a less restrictive form of control a franchisor has over the identity of its business partners.” *Id.*

The *Star Automobile* case supports a manufacturer’s right of first refusal as applied to the sale of dealership assets even where other linemakes for other manufacturers are at issue.

LAWYER CONTACTS

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