

VEGAS LEX

# CONSUMERS BLACKMAILING THE CAR DEALERS

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MAY 2013



Nowadays such thing as a blackmail by consumers is becoming a more frequent phenomenon in the sphere of retail car sales. The scheme is very simple. The consumer blackmails the car dealer into sale of a car at disadvantageous conditions, threatening a lawsuit and bringing the car dealer to responsibility for infringement of his rights and breach of effective laws. On a formal level such actions of a consumer are legal and at the most may be considered to be unethical. However, for the car dealers such actions may result in considerable financial and reputational losses.

## The buyer's tricks

The consumer forces the seller to sell him a car on conditions that are favorable for him and abuses his rights of a «weaker party» in retail sales deals.

The car dealer receives an offer from a natural person to conclude a contract for a purchase of a car, which contains as fundamental conditions the information the company shared on its official site or in the advertisements. Such information (in particular, the price of car) does not always reflect the actual terms of its sale, as such information may be published by the website configurator leaving out some peculiarities of the final price formation, and could be outdated.

For a car dealer a retail sales contract is compulsory, that is the company is required to conclude it with any customer. The only issue that remains is the terms of such deal. And such terms are formulated by the consumer in his offer and are taken as a rule from the information published by the seller.

Very often the consumers acting in bad faith threaten in their offer or otherwise to make the life of the car dealer harder through the supervisory (regulatory) authorities or the court in case the dealer refuses to conclude an agreement on their terms and conditions.

In most cases the purpose of the blackmailing consumer is to purchase goods at a reduced price and on conditions that are favourable for him (with the relevant trim level, within specific time period etc.). However, a planned massive attack may be aimed at ruining the reputation and economic stability of the car dealer.

## Risk zones

The refusal of the car seller to conclude a retail sale contract on the conditions published on the seller's Website or in other advertising materials due to increase of the car price or change of other conditions of implementation of such contract may give rise to claims filed by competition authorities with regard to breach of advertising laws. The fine imposed for such breaches may be up to RUR 500,000.

The consumer, whose rights are being infringed through such unreasonable refusal to conclude a deal, may be defended by the Russian Federal Consumer Rights Protection and Human Health Control Service (Rospotrebnadzor), which may impose relevant sanctions against the dealer.

However, the most serious risk is related to setting a precedent for compelling the dealer to conclude a contract on conditions favourable only for consumer through the court. It is very likely that the court will resolve a dispute over the terms of such contract in favour of the consumer and will compel a dealer to enter into contracts on the conditions that were earlier announced by the dealer.

This will all result in financial losses in the form of fines and lost profit, as well as deterioration in relations with distributor or importer of the sold products. In this case the losses of the dealer may provide grounds for rescission of dealership contract, introduction of amendments unfavourable for the dealer or imposition of contractual sanctions (if applicable).

## Preventive protection

A cunningly planned blackmail by consumer may establish a court precedent, which will get disseminated at a great speed through mass media and word of mouth advertising.

In this case a usual disclaimer at the dealer's Website and advertising materials that the information about products does not constitute a public offer will not be of great help. It will only prevent from accepting the provided information but it will not protect against the need to respond to the consumer's offer. In the latter case if the dispute arises the court will define the conditions of the contract, and as a rule it will do it at its own discretion.

In view of the above the problem of blackmailing by consumers calls for thorough diagnostics and comprehensive solution. The dealers need to have their business processes analysed in a comprehensive way and to ensure a preventive protection through the right form of company in order to minimize economic losses and reputational harm.

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## RECOMMENDATIONS & RECOGNITION:

- European Legal Experts 2012
- Best Lawyers 2012
- International Financial Law Review 2012
  - ▶ Restructuring and insolvency
  - ▶ Corporate and M&A
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- Chambers Europe 2012
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- PLC which lawyer? 2012
  - ▶ Competition/Antitrust
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- The Legal 500 EMEA 2012
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- Russia's leading rankings "Pravo.ru-300", 2012
  - ▶ Competition/Antitrust
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