

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.:

BILL USSERY MOTORS, INC., a
Florida corporation d/b/a MERCEDES
BENZ OF CORAL GABLES

Plaintiff,

vs.

PALMETTO SPORT CARS, INC.,
a Florida corporation,

Defendant.

COMPLAINT FOR DAMAGES AND EQUITABLE AND INJUNCTIVE RELIEF

The Plaintiff, BILL USSERY MOTORS, INC., d/b/a MERCEDES BENZ OF CORAL GABLES, by and through its undersigned counsel, sues the Defendant, PALMETTO SPORT CARS, INC., and as grounds asserts as follows:

COMMON ALLEGATIONS

1. This is an action for damages in excess of \$15,000.00 and for equitable relief pursuant to F.S. §501.211(1) and F.S. §320.695.
2. Plaintiff is a corporation duly organized and existing under the laws of the state of Florida and is operating and conducting business in Miami-Dade County, Florida.
3. Defendant is a corporation, which upon information and belief, is duly organized and existing under the laws of the state of Florida and is operating and conducting business in Miami-Dade County, Florida.

4. Venue and jurisdiction are proper in this county and state as the causes of action asserted herein all took place in Miami-Dade County, Florida and the Defendant's principal place of business is located in this county.

5. Plaintiff is a "franchised motor vehicle dealer" as defined in F.S. §320.27(1)(c)(1), as it has entered into a sales and service agreement, as defined by F.S. §320.60(1) with Mercedes-Benz USA, LLC for the sale and servicing of Mercedes Benz ("MB") model vehicles at the location of 300 Almeria Avenue, Coral Gables, Florida 33134 (hereafter "Plaintiff's Location").

6. Defendant operates a car dealership on 201 Bird Road, Coral Gables, Florida 33146 (hereafter "Defendant's Location 1") and 7900 S.W. 8th Street, Miami, Florida 33144 (hereafter "Defendant's Location 2"), both of which locations shall be jointly referred to as "Defendant's Locations".

7. The distance between the Plaintiff's Location and the Defendant's Location 1, as the crow flies, is approximately 0.80 miles, and the distance between the Plaintiff's Location and the Defendant's Location 2, as the crow flies, is slightly greater than 4.0 miles.

8. Defendant routinely inventories and offers for retail sale MB model vehicles.

9. On various occasions (especially at Defendant's Location 1), the MB vehicles offered for sale by Defendant are vehicles (hereafter "New MB Vehicles") for which neither equitable, nor legal title had ever been transferred by a manufacturer, distributor, importer or dealer to an ultimate purchaser.

10. Because it offered for sale New MB Vehicles, Defendant is a “motor vehicle dealer” as defined in §320.60(11)(a).

11. Plaintiff has been a MB “franchised motor vehicle dealer”, defined by §320.27(1)(c)(1), well before Defendant commenced operating.

12. Defendant does not have an agreement, as defined by F.S. §320.60(1), with Mercedes-Benz USA, LLC.

13. The establishment of Defendant as a “motor vehicle dealer”, as defined in F.S. §320.60(11)(a), at Defendant’s Location 1 is a violation of law as it was never noticed and/or there was otherwise a material, if not complete, failure to comply with the procedural requirements set forth in F.S. §320.642.

14. The establishment of Defendant as a “motor vehicle dealer”, as defined in F.S. §320.60(11)(a), at Defendant’s Location 2 is a violation of law as it was never noticed and/or there was otherwise a material, if not complete, failure to comply with the procedural requirements set forth in F.S. §320.642.

15. Had Defendant noticed and/or otherwise attempted compliance with F.S. §320.642 to become a lawful “motor vehicle dealer” at either or both Defendant’s Locations, Plaintiff would have had standing to protest same, and would have prevailed in such protest.

16. Based on its business practices, the existence of Defendant is in violation of F.S. §320.642.

COUNT I
ACTION FOR INJUNCTIVE RELIEF

17. Plaintiff reavers paragraphs 1 through 16 above.

18. Defendant is an unauthorized and unlawful “motor vehicle dealer”, as defined by F.S. §320.60(11)(a).

19. The existence of Defendant at the Defendant’s Location 1 is in violation of F.S. §320.642.

20. The existence of Defendant at the Defendant’s Location 2 is in violation of F.S. §320.642.

21. Plaintiff, pursuant to F.S. §320.695, is authorized to act on behalf of the Department of Highway Safety and Motor Vehicle to make application to the Court for both temporary and permanent injunctive relief, without a bond, restraining any person from failing and refusing to comply with the requirements of F.S. §320.60 through §320.70.

22. Plaintiff has suffered and will continue to suffer irreparable harm by virtue of Defendant’s violation.

23. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff, BILL USSERY MOTORS, INC., d/b/a MERCEDES BENZ OF CORAL GABLES, demands both temporary and permanent injunctive relief against Defendant, without bond pursuant to F.S. §320.695, terminating Defendant’s motor vehicle license at Defendant’s Locations, and further respectfully requests this Honorable Court award Plaintiff any and other further relief that it deems just and proper.

COUNT II
ACTION FOR DECLARATORY RELIEF UNDER §501.211(1)

24. Plaintiff reavers 1 through 16 above.

25. Part 2 of Chapter 501 of Florida statutes is intended to, among other things, “protect the . . . legitimate business enterprises from those who engage in unfair

methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.”

26. By having established a “motor vehicle dealer” in violation of F.S. §320.642, at Defendant’s Location 1, Defendant is unfairly competing with Plaintiff.

27. By having established a “motor vehicle dealer” in violation of F.S. §320.642, at Defendant’s Location 2, Defendant is unfairly competing with Plaintiff.

28. Due to this unfair competition, Plaintiff has suffered and will continue to suffer irreparable injury and harm.

29. Plaintiff has no adequate remedy at law.

30. Plaintiff has been required to retain the services of the undersigned law firm to represent it in this matter and is obligated thereto for a reasonable fee.

31. Plaintiff demands recovery of its attorney’s fees pursuant F.S. §501.2105.

WHEREFORE, Plaintiff, BILL USSERY MOTORS, INC., d/b/a MERCEDES BENZ OF CORAL GABLES, seeks a determination that Defendant’s business is in violation of §320.642 and is therefore unlawfully competing with Plaintiff, and that this Honorable Court enter both temporary and permanent injunctive relief against Defendant and in favor of Plaintiff preventing any such further unlawful competition, and that this Honorable Court further award Plaintiff its reasonable attorney’s fees and costs in this action.

COUNT III
ACTION FOR DAMAGES UNDER §501.211

32. Plaintiff reavers paragraphs 1 through 16 above.

33. Part 2 of Chapter 501 of Florida statutes is intended to, among other things, “protect the . . . legitimate business enterprises from those who engage in unfair

methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.”

34. By having established a “motor vehicle dealer” in violation of F.S. §320.642, at Defendant’s Location 1, Defendant is unfairly competing with Plaintiff.

35. By having established a “motor vehicle dealer” in violation of F.S. §320.642, at Defendant’s Location 2, Defendant is unfairly competing with Plaintiff.

36. Due to this unfair competition, Plaintiff has suffered damages.

37. Plaintiff has been required to retain the services of the undersigned law firm to represent it in this matter and is obligated thereto for a reasonable fee.


38. Plaintiff demands recovery of its attorney’s fees pursuant F.S. §501.2105.

WHEREFORE, Plaintiff, BILL USSERY MOTORS, INC., a Florida corporation d/b/a MERCEDES BENZ OF CORAL GABLES, seeks a judgment against Defendant for compensatory damages, prejudgment interests, court costs, reasonable attorneys’ fees and any such other and further relief as this Court deems just and proper.

DATED this 27th day of August, 2008.

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