

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

VIP TRUCK CENTER, LLC,
a Michigan limited liability company,

Case No.
Judge:

Plaintiff,

vs.

VOLVO TRUCKS NORTH AMERICA,
a division of VOLVO GROUP NORTH
AMERICA, LLC, a Delaware limited liability company,

Defendant.

COLOMBO & COLOMBO, P.C.
BY: MICHAEL J. O'SHAUGHNESSY (P37229)
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VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

NOW COMES Plaintiff, VIP TRUCK CENTER, LLC, by and through its attorneys, COLOMBO & COLOMBO, P.C., and for and as its Verified Complaint against Defendant, Volvo Trucks North America, a division of Volvo Group North America, LLC, states as follows:

THE ACTION

1. This is an action seeking permanent injunctive and equitable relief against a purported notice of termination of a motor vehicle franchise and for declaratory relief, compensatory and punitive and/or exemplary damages and costs for claims arising under the Automobile Dealers Day in Court Act, 15 USC §§ 1221 – 1226; the Michigan Motor Vehicle Dealer Franchise Act MCL § 445.1561, *et seq.*; and the common law.

JURISDICTION AND VENUE

2. This Court has original subject matter jurisdiction of this action under 28 USC §1331 as a civil action arising under the Federal Automobile Dealers Day in Court Act, 15 USC 1221-1226.

3. This Court has supplemental jurisdiction of state statutory common law claims hereunder based on 28 USC 1367, because the claims are so related to the federal question claim that they form a part of the same case under Article III of the United States Constitution.

4. This Court has original jurisdiction of this matter under 28 USC 1332 because (a) the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, (b) the matter is between citizens of different states, where Plaintiff is a “citizen” of the State of Michigan and Defendant is a “citizen” of the State of Delaware pursuant to 28 USC 1332(c).

5. Venue is proper in this district pursuant to 28 USC 1391(2), being that this is the judicial district in which a substantial part of the events and omissions giving rise to Plaintiff's claims occurred.

PARTIES TO THE ACTION

6. Plaintiff, VIP Truck Center, LLC ("VIP"), is a Michigan limited liability company whose business is located at 39300 Schoolcraft Road, Livonia, Michigan. VIP is engaged in the sale and service of new and used motor vehicles and the sale of vehicle parts.

7. Defendant, Volvo Group North America, LLC ("Volvo") is a Delaware limited liability company, with its principal place of business located in Greensboro, North Carolina and is admitted to do business in Michigan. Volvo Trucks North America, is a division of Volvo and is the distributor in North America for Volvo-branded heavy-duty trucks ("Volvo Trucks"), parts and accessories.

GENERAL ALLEGATIONS

8. In May 2001, at the request of Volvo, VIP purchased the assets of Truesdell Truck, Inc. located at 11757 Globe Road, Livonia, Michigan 48150, including the Volvo Truck franchise with the approval and assent of Volvo, and VIP and Volvo entered into a Volvo Trucks Dealer Sales and Service Agreement.

9. In May of 2010, VIP relocated its Volvo truck dealership to its current location at 39300 Schoolcraft Road, Livonia, Michigan.

10. VIP and Volvo are currently operating under a Volvo Trucks Dealer Sales and Service Agreement dated September 1, 2010 which expires on August 30, 2015 (“Dealer Agreement”). A copy of the Dealer Agreement is attached as Exhibit A. The Area of Responsibility (AOR) assigned to VIP encompasses six (6) counties

11. Page 4 of the Dealer Agreement provides that Volvo, referred to as “Company”, has the following responsibilities to VIP:

“Company’s Responsibilities

The dealers depend upon the Company to provide:

- A variety of competitive quality Products and services
- Effective sales, Parts, and service support
- Competent staff in support of the Dealer
- Prompt and reliable service to the Dealer
- Marketing and promotion efforts in support of Products, subject to commercially reasonable business considerations deemed relevant by the Company at any time”

12. Commencing shortly after the acquisition of the Volvo Truck franchise and throughout VIP’s term as a franchised Volvo Trucks dealership, Volvo has failed to make available to VIP sufficient quantity of new Volvo Trucks amenable to Michigan roads and climate to enable VIP to meet its market share objectives expected by Volvo.

13. Commencing soon after VIP acquired its franchise, Volvo initiated and has continued to follow a pattern of conduct intending to terminate VIP’s franchise based upon allegations against VIP of deficient sales performance or not achieving

annual “Business Plan” results, under circumstances where Volvo has established sales objectives based upon arbitrary and capricious criteria, and where Volvo has in the past and through the present failed to supply VIP with a sufficient quantity of new Volvo Trucks, has failed to support VIP in its Area of Responsibility (AOR), and has assigned VIP an unreasonable expansive AOR.

14. Beginning in November, 2001, VIP began communicating with Volvo regarding acquiring a Mack Truck franchise. Specifically, VIP wrote in a letter dated November 20, 2001 to Mr. Bob Makosky with Mack Trucks, Inc. (a subsidiary of Volvo) expressing an interest in receiving a Mack Truck franchise for the following reasons:

“The customer base in the State of Michigan is largely vocational due in large part to our State weight laws that allow trucks to gross in excess of 160,000 pounds.

...

As you know, Volvo no longer builds the “Autocar”, “WG”, and Xpeditor model chassis. Recently Volvo announced the sale of the “Xpeditor” model to Autocar Trucks, LLC, a newly formed division of Workhorse Trucks, Inc. The replacement model for the “Autocar” and “WG” chassis is the VHD platform. While this is a fine product offering, it does not offer an engine in excess of twelve- (12) liters or a BBC in excess of one hundred thirteen (113) inches. Volvo currently does not have a replacement product offering for the Xpeditor and a new model is at least two years away from production even if the decision were to be made to develop the truck today. This has effectively taken VIP Truck Center out of the “Michigan Special”, heavy vocational, and refuse truck chassis markets.

...

Given the limited scope of our present Volvo vocational product offering, it is obvious that we need a wider range of vocational trucks and the components that go with them in order to meet out dealer objectives of

sustained growth in our market area. We would like to make the Mack product line a part of this growth opportunity.” (emphasis added)

15. More than a year later, VIP had not received a response on their request for the Mack truck franchise and VIP sent another request to Volvo explaining why VIP was the right dealership to receive that franchise.

16. On January 13, 2003, Volvo responded to VIP indicating that Volvo had “decided to pursue another candidate for the Detroit market area.”

17. VIP’s market share objectives continued to decline due to the following reasons:

- VIP’s AOR is too large, thus affording other dealers in counties neighboring those encompassed by VIP’s AOR to secure registrations from VIP’s AOR;
- Volvo expects its dealers, including VIP, to sell vehicles that are essentially “sale-proof” as explained in a VIP letter to Volvo:
 - The other Volvo Dealers in Michigan do not stock nor have they sold a VHD truck or tractor per conversations we have had with them. This proves that there are specification issues with that product in the Michigan market. We have no control over that aspect of the process and will continue to bid and represent the product to the best of our ability
 - VHD tractors have been hard to sell in Michigan because most users insist on a 14+ Liter engine. Since Volvo left the marketplace by discontinuing the Autocar in 2000 our share of that segment has declined to almost nothing.
 - VHD straight trucks are significantly priced over competition at the transaction level based on bid openings

for municipal road trucks. We can't meet specifications on some bids because not all Allison Transmissions are available from Volvo as requested in the various bids. We continue to work to influence bid specifications to avoid being written out because of this and work to deliver the Volvo value message. In today's municipal world inexpensive is valued over reliability and durability.

- Further headwind to improving the VHD market share is the lack of true 24" ground clearance due to emission equipment. VHD's are currently not acceptable to Customers or to body companies when bidding certain configurations involving under belly scrapers, a Michigan staple. We have requested this modification numerous times over the years and still don't have resolution or a spec we can sell effectively to this market. We continue cultivating relationships with these customers although it is difficult when we can't meet specs.
- While mentioning an engine which is too small in the vocational tractor market, the straight truck market is the exact opposite. VHD's as well as other Volvo tractor applications (VNM) need a smaller displacement engine to compete with other OEM's 9 liter products. Weights are going down as well as capital budgets. People do not want to over pay for over specified trucks. We have had very little positive results with the larger engine.

18. Despite the foregoing, VIP received recognition on September 1, 2010 by Volvo for its CSI scores and in July 2011, VIP received an incentive award for exceeding its target market share in the first quarter of 2011.

19. Volvo has failed to remedy the foregoing issues by providing VIP with saleable products for this particular market and by reducing its expansive

AOR to be more comparable to Volvo's other dealers who are meeting their market share objectives.

20. Over the course of their operations as a Volvo Truck dealer, VIP has repeatedly been contacted by various persons at Volvo requesting VIP sell its dealership.

21. The owners of VIP operate other dealerships that Volvo perceives as a competitor to Volvo Trucks and, as a result, VIP has received numerous verbal threats from Volvo over the years regarding the termination of its franchise without good cause.

22. VIP's ability to succeed has been repeatedly undermined by Volvo personnel and even upon notice to Volvo, it has not remedied these problems. In 2014, Volvo personnel were present at a meeting with Chrysler, a potential customer located in VIP's AOR, along with a Volvo Dealer from Portland, Oregon. Prior to this meeting, VIP had engaged in discussions with Volvo's Central Region Fleet Manager, Adam Van Derbee, regarding being involved in any meetings with Chrysler to discuss the potential replacement of Chrysler's existing fleet. Volvo failed to inform VIP of this meeting and instead condoned joined the meeting with a dealer from Portland, Oregon giving Chrysler the impression that Volvo is endorsing the Portland Dealer.

23. Volvo has repeatedly taken the position with VIP that Volvo policy prohibits a dealer's attendance at a customer meeting outside of the dealer's AOR and VIP was specifically denied such a visit to a customer outside of its AOR prior to this incident involving the Portland, Oregon dealer. This clearly demonstrates Volvo's arbitrary and capricious application of its internal policies with the intent to constructively force VIP out of business.

24. On May 13, 2014, VIP sent a letter to David Winner, VP Distribution Optimization for Volvo Trucks, expressing its displeasure with Volvo's involvement in the meeting with Chrysler and the out-of-state dealer. In response, Mr. Winner reprimanded VIP's sales efforts, denied ever discussing the Chrysler account with VIP and essentially blamed VIP for failing to agree to sell its dealership when previously suggested by Mr. Winner.

25. On June 10, 2014, Volvo sent VIP a Notice of Breach and Demand for Cure pursuant to MCL 445.1567 providing VIP until the end of the calendar year of 2014 to cure what Volvo considered breaches of the Dealer Agreement.

26. On July 20, 2014, VIP responded to Volvo's Notice of Breach and Demand for Cure outlining how VIP planned to move forward, that VIP's awareness rate and CSI score were in excess of Volvo's target for VIP, and that VIP did not consider itself in breach of the Dealer Agreement.

27. On March 17, 2015, Volvo sent VIP a Notice of Termination pursuant to MCL 445.1570.

28. In addition to the written correspondence between the parties, there were numerous verbal communications between VIP and Volvo involving VIP's requests for more product that would fit the needs of Michigan customers, for sales assistance, for VIP's target market share to be adjusted to a realistic level in light of the issues with Volvo's product line and other factors as outlined above, for a reduced AOR and for consistent enforcement of Volvo's policies across its dealer body.

29. VIP has at all relevant times affected and maintained a level of sales performance, appropriate for the truck market and its market location in the City of Livonia, Michigan, and has maintained capable and competent management at its Volvo Truck franchise.

30. VIP has continuously and successfully maintained a stable, profitable and reputable truck dealership and has at all relevant times complied with its legal obligations under the Dealer Agreement.

COUNT I

WRONGFUL TERMINATION – PERMANENT

INJUNCTION/DECLARATORY JUDGMENT

31. VIP repeats the foregoing allegations of this Verified Complaint against Volvo as if incorporated completely herein.

32. Volvo has engaged in a pattern of arbitrary and capricious conduct intending to culminate in the wrongful termination of VIP's Volvo Truck franchise, in violation of MCL 445.1574(1)(a) by: (1) establishing an arbitrary, capricious and inequitable market penetration objective that cannot be reasonably achieved in VIP's market; (2) by refusing to adjust VIP's market penetration requirement to a reasonable and achievable level; (3) by continuing to measure VIP's performance against the arbitrary penetration level it has set and by intentionally ignoring VIP's volume sales as compared to other dealers in similar markets; (4) by failing to provide VIP with a sufficient quantity of saleable new trucks to achieve arbitrary or realistic sales objectives; (5) by failing to act in good faith, in violation of MCL 445.1567(1)(b), holding VIP to a different sales and market penetration than other dealers, and (6) by failing to establish "good cause" for termination in violation of MCL 445.1567.

33. Under circumstances where Volvo seeks to terminate VIP's franchise for poor sales performance and where VIP claims and alleges in addition to the

allegations above that it has been unable to achieve sales performance due to Volvo's failure and refusal to supply VIP with the appropriate new trucks to sell, Volvo is estopped to terminate the franchise based on any of the grounds set forth in Volvo's Notice of Termination dated March 17, 2015.

34. VIP is without an adequate remedy at law to prevent the irreparable and incalculable consequences of termination of the franchise. Any such termination would adversely impact the reputation of VIP, its related dealerships, its employees and the goodwill of its dealership.

35. The termination of the Volvo Trucks franchise, if not permanently enjoined, would cause VIP irreparable, incalculable and unconscionable harm attributable to Volvo.

WHEREFORE, VIP demands judgment against Volvo as follows:

- A. Grant VIP permanent injunctive relief against the termination of the Dealer Agreement with Volvo and enjoin Volvo from denying renewal of VIP's Dealer Agreement in September of 2015;
- B. Enter Judgment in favor of VIP against Volvo for damages incurred as a result of Volvo's violations of statute and failure to provide VIP with a reasonable number of appropriate vehicles for resale;
- C. Award VIP all costs of this action including, but not limited to, reasonable attorney fees;

- D. Award VIP punitive damages to the extent same may be available;
- E. Award such other and further additional relief to VIP as this Court deems just and proper, including interest, costs, and attorney fees pursuant to MCL 445.1580(4).
- F. Enter an Order declaring that Volvo has failed to establish good cause for terminating VIP's Dealer Agreement pursuant to MCL 445.1567.

COUNT II

VIOLATION OF THE MICHIGAN DEALER ACT

36. VIP repeats the foregoing allegations of this Verified Complaint against Volvo as if incorporated completely herein.

37. VIP has fully and substantially complied with the reasonable and lawful requirements of the written Dealer Agreement with Volvo.

38. Volvo's Notice of Termination is defective under the provisions of MCL 445.1567(2) in that Volvo first acquired actual knowledge of the alleged failure and performance of VIP more than 2 years prior to the date on which the Notice of Termination was given.

WHEREFORE, VIP demands judgment against Volvo as follows:

- A. Grant VIP permanent injunctive relief against the termination of the Dealer Agreement with Volvo and enjoin Volvo from denying renewal of VIP's Dealer Agreement in September of 2015;

- B. Enter Judgment in favor of VIP against Volvo for damages incurred as a result of Volvo's violations of statute and failure to provide VIP with a reasonable number of appropriate vehicles for resale;
- C. Award VIP all costs of this action including, but not limited to, reasonable attorney fees;
- D. Award VIP punitive damages to the extent same may be available;
- E. Award such other and further additional relief to VIP as this Court deems just and proper, including interest, costs, and attorney fees pursuant to MCL 445.1580(4).

COUNT III

VIOLATION OF 15 USC 1221

39. VIP repeats the foregoing allegations of this Verified Complaint against Volvo as if incorporated completely herein.

40. Volvo is an automobile manufacturer and VIP is an automobile dealer as those terms are defined in the Automobile Dealers Day in Court Act (DDCA), 15 USC 1221.

41. Volvo's Notice of Termination and prior communications alleging breach of its obligations under the Dealer Agreement and alleged failure to meet its market share objectives were false, pretextual and merely designed to intimidate and coerce VIP into selling its dealership to a third party handpicked by Volvo.

42. That Volvo has acted in bad faith in violation of 15 USC 1222, by engaging in the following: (1) establishing an arbitrary, capricious and inequitable market penetration objective that cannot be reasonably achieved in VIP's market; (2) by refusing to adjust VIP's market penetration requirement to a reasonable and achievable level; (3) by continuing to measure VIP's performance against the arbitrary penetration level it has set and by intentionally ignoring VIP's volume sales as compared to other dealers in similar markets; (4) by failing to provide VIP with a sufficient quantity of saleable new trucks to achieve realistic sales objectives; (5) by holding VIP to a different sales and market penetration than other dealers.

43. Volvo has repeatedly coerced and intimidated VIP by threatening termination unless VIP complied exactly with Volvo's planning potential penetration performance requirements, although no other Volvo Truck dealer is held to this same standard. VIP has been wrongfully and in bad faith been singled out for franchise termination by Volvo.

44. In the event Volvo terminates the franchise of VIP, termination will permit arbitrary, capricious and draconian remedies.

45. Volvo has imposed a substantially and contractually unfair burden on VIP by wrongfully requiring a contrived and arbitrary performance standard and noticing termination based upon that performance standard.

46. Volvo's attempt to coerce a termination of the VIP Volvo Truck franchise is grossly unfair, inequitable and acts to deprive VIP of the benefit of its investment, the economic benefit of the development of dealership sales, service and goodwill, and experience during the past several years and anticipated future income and profits. This coercion and intimidation took place by virtue of the following conduct: Volvo has failed and/or refused to supply VIP with sufficient saleable inventory. Volvo has repeatedly undermined VIP's sales efforts by endorsing other dealers' sales attempts in VIP's AOR, by refusing to reduce its AOR and by establishing an unrealistic sales plan for VIP in comparison to other Volvo Truck dealers.

47. The conduct referenced above constitutes a breach of the statutory duty of good faith and fair dealing required by 15 USC 1221(e) and 1222.

48. VIP is without an adequate remedy at law and Volvo is estopped from terminating the franchise for the reason that Volvo's conduct is the cause of Volvo's allegations of noncompliance under the Dealer Agreement because it established unreachable goals for VIP and failed to supply saleable trucks, thereby prohibiting VIP from reaching those goals.

49. Unless permanently restrained, Volvo will effect the termination of VIP causing VIP loss of its investment, future profits and alternative investment income,

business opportunity, goodwill reputation and loss of employment to its staff and service to its customers, thereby causing irreparable harm to VIP and third parties.

WHEREFORE, VIP demands judgment against Volvo as follows:

- A. Grant VIP permanent injunctive relief against the termination of the Dealer Agreement with Volvo and enjoin Volvo from denying renewal of VIP's Dealer Agreement in September of 2015;
- B. Enter Judgment in favor of VIP against Volvo for damages incurred as a result of Volvo's violations of statute and failure to provide VIP with a reasonable number of appropriate vehicles for resale;
- C. Award VIP all costs of this action including, but not limited to, reasonable attorney fees;
- D. Award VIP punitive damages to the extent same may be available;
- E. Award such other and further additional relief to VIP as this Court deems just and proper, including interest, costs, and attorney fees pursuant to MCL 445.1580(4).

COUNT IV

BREACH OF CONTRACT

50. VIP repeats the foregoing allegations of this Verified Complaint against Volvo as if incorporated completely herein.

51. The wrongful acts of Volvo constitute a material breach of its obligation in the Dealer Agreement to deal fairly with VIP.

52. Volvo has wrongfully noticed the termination of VIP with discriminatory intent in light of the dealer responsibilities outlined in the Dealer Agreement, which VIP has fully complied with and satisfied.

53. Volvo has breached the Dealer Agreement by failing to fulfill its responsibilities of providing:

- A variety of competitive quality Products and services
- Effective sales, Parts and service support
- Competent staff in support of the Dealer
- Prompt and reliable service to the Dealer
- Marketing and promotion efforts in support of Products, subject to commercially reasonable business considerations deemed relevant to the Company at any time.

54. Volvo has breached the Dealer Agreement by establishing unreasonable and unattainable market performance and market share objectives which, in comparison to other Volvo Truck dealers, are arbitrary, capricious, pretextual and violative of the intent of the Dealer Agreement, which is expressly intended to be one of support of mutual benefit to the parties.

55. Volvo's material breaches of contract have injured the rights of VIP and have caused, and will continue to cause, irreparable harm if not restrained.

WHEREFORE, VIP demands judgment against Volvo as follows:

- A. Grant VIP permanent injunctive relief against the termination of the Dealer Agreement with Volvo and enjoin Volvo from denying renewal of VIP's Dealer Agreement in September of 2015;
- B. Enter Judgment in favor of VIP against Volvo for damages incurred as a result of Volvo's violations of statute and failure to provide VIP with a reasonable number of appropriate vehicles for resale;
- C. Award VIP all costs of this action including, but not limited to, reasonable attorney fees;
- D. Award VIP punitive damages to the extent same may be available;
- E. Award such other and further additional relief to VIP as this Court deems just and proper, including interest, costs, and attorney fees pursuant to MCL 445.1580(4).

COUNT V

TORTIOUS INTERFERENCE WITH PRESENT AND FUTURE BUSINESS

56. VIP repeats the foregoing allegations of this Verified Complaint against Volvo as if incorporated completely herein.

57. Volvo's wrongful acts have tortuously interfered with the present and prospective economic advantage of VIP in operating a thriving Volvo Truck dealership and with VIP's relationships with employees, customers, suppliers and

others. This tortious interference has caused, and will continue to cause, VIP ongoing material harm if not enjoined.

58. Volvo has engaged in immoral, illegal and unethical bad faith conduct throughout the course of its relationship with VIP.

59. Volvo has refused to objectively evaluate the market area/AOR given the available product supplied to Volvo and the limitations of this market and customer demand.

60. Volvo has adopted an arbitrary, capricious and inequitable system for measuring sales performance penetration by VIP in a bad faith attempt to pretextually and constructively terminate the franchise and deprive VIP of the value of its franchise.

WHEREFORE, VIP demands judgment against Volvo as follows:

- A. Grant VIP permanent injunctive relief against the termination of the Dealer Agreement with Volvo and enjoin Volvo from denying renewal of VIP's Dealer Agreement in September of 2015;
- B. Enter Judgment in favor of VIP against Volvo for damages incurred as a result of Volvo's violations of statute and failure to provide VIP with a reasonable number of appropriate vehicles for resale;
- C. Award VIP all costs of this action including, but not limited to, reasonable attorney fees;

- D. Award VIP punitive damages to the extent same may be available;
- E. Award such other and further additional relief to VIP as this Court deems just and proper, including interest, costs, and attorney fees pursuant to MCL 445.1580(4).

Respectfully Submitted,

COLOMBO & COLOMBO, P.C.

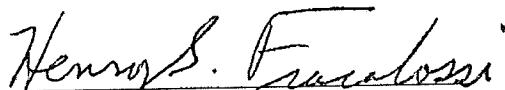
BY: /s/ Michael J. O'Shaughnessy
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Dated: July 1, 2015

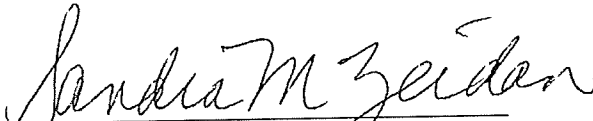
VERIFICATION

STATE OF MICHIGAN)
)SS
COUNTY OF WAYNE)

I, Henry S. Fracalossi, of full age, being duly sworn, depose and say that I am Managing Member/Controlling Individual for VIP Truck Center, LLC and that I have read the foregoing Verified Complaint and have knowledge of the contents thereof; and that these contents are true to my own personal knowledge, except as to those matters stated upon information and belief, and as to those, I believe them to be true.


Henry S. Fracalossi

Subscribed and sworn to before me this 1st day of July, 2015.



, Notary Public

SANDRA M. ZEIDAN
Notary Public - Michigan
Oakland County
My Comm. Expires 1 / 16 / 2016

Acting in the County of Wayne