

CHECKLIST FOR FRANCHISOR CRITICAL LETTERS

As a franchised dealer, you may receive letters critical of your dealership's performance. You should always respond to franchisor critical letters. Here is a checklist of considerations when preparing your response.

What is the Criticism? Respond to each.

- Sales efficiency?
- CSI?
- Capitalization?
- Succession and Ownership Notification?
- Other?

Sales Efficiency

- Is your franchisor's measurement consistent with your dealer sales and service agreement?
- Is your franchisor's performance measurement consistent with your state's law?
- How statistically valid is your franchisor's performance measurement?
 - Is the assigned primary market area correct? If you are responsible for geographic areas where you do not have an advantage, that will negatively affect your calculation.
 - Is the comparison basis valid – is statewide, regionwide or other comparison basis equivalent to your PMA?
 - Does the measurement standard take into account your special circumstances – geographic obstacles, demographic factors, vehicle choice differences, vehicle brand preferences, etc.
 - Are there commuting or other travel factors from areas in your PMA that make the PMA disadvantageous?
 - Are there temporary factors – construction, natural disaster, etc. – that make areas of your PMA disadvantageous.
- Availability of vehicles – you cannot sell what you do not have. Has your franchisor made available sufficient vehicles for you to meet objectives under your dealer agreement?
- Is the franchisor complying with required availability and sufficiently of all vehicles under state law?
- Types of vehicles -- has your franchisor made available "hot" models and equipment or has the availability been skewed to your disadvantage?

CSI

- Are there statistical deficiencies in the franchisor's calculations?
 - Are the questions valid?
 - Do the questions make your dealership responsible for manufacturer deficiencies?
 - Are there sufficient numbers of responses to make the survey statistically sound?
- Has the franchisor made the underlying data available to you? If not, is it available on request?
- Do the franchisor's measured results differ materially from your internal measurement results?

Capitalization

- Does the franchisor contend that your dealership does not meet capitalization standards?
- Have you done your own calculations using the franchisor's method to determine the validity of the franchisor's position?
- Can you recategorize assets/liabilities on your statement delivered to your franchisor to positively affect the calculation?
- If recategorization is not sufficient, what funds can be invested to solve the issue?

Succession and Ownership Notification

- Have you identified a successor if something happens to the dealer?
- Has the franchisor approved the successor?
- Avoid claims of material breach of the dealer agreement by having the franchisor approve all owners, including trusts.

Other Criticisms

- What are the specific criticisms made?
- Are the criticisms proper issues under your DSSA, e.g. are you being held to a standard not included there?
- Are the criticisms proper issues under your state's law, e.g. is there a demand for facility improvements despite state law protection?
- What is your position with respect to each other criticism?