

Scout Motors' Plan to Sell EVs Directly to Consumers Is Likely to Face Legal Challenges

By Attorneys Tom Vangel, Jamie Radke, and Lindsey McComber of Murtha Cullina LLP

On October 24, Scout Motors debuted its new Terra pickup and Traveler SUV, which are both EVs set to launch in 2027. With its announcement, the company reported that the revived brand will not rely on a traditional franchised dealer network to sell these vehicles but, instead, will implement a direct-to-consumer model which Scout believes will make the buying experience “transparent, super-fast, and super easy.”

Many Volkswagen dealers across the country are outraged and believe that this move violates state franchise laws. Automobile dealers' associations across the country plan to challenge this model with the support of NADA CEO Mike Stanton, who has said that Volkswagen's attempt to sell direct to consumers and compete with U.S. dealer partners is “disappointing and misguided,” and “will be challenged.”

Scout Motors was an American vehicle brand which sold trucks and SUVs from 1961 to 1980. In 2021, Volkswagen acquired the Scout trademark and name following the acquisition of Navistar International, which was a successor of Scout's original owner. Scout Motors was revived in May 2022 to produce off-road capable EVs. Volkswagen has attempted to establish Scout Motors as an independent company managed separately from Volkswagen. However, automotive dealers across the country reject the claim that Scout is independent of Volkswagen and believe that this effort is “contradictory to all the efforts made to reinvigorate the [Volkswagen] brand with new models.”

With its announcement of its new EVs, Scout announced that it plans to begin producing up to 200,000 EV trucks and SUVs annually starting in 2027. It expects that the brand will have around three dozen retail centers across the U.S. by the time sales begin in 2027, and it plans to use batteries from Volkswagen's joint venture battery cell manufacturer in Canada. Scout has also revealed that it plans to use an app to

handle reservations, sales, and delivery in order to reduce the cost of retail and simplify the EV buying process.

Similar to Tesla, Rivian, and Lucid, the newly revived Scout Motors is attempting to sell its EV models directly to consumers. Although Tesla has had some success in avoiding certain state franchise laws nationally because it was an independent startup not affiliated with an established manufacturer, Scout is likely to face more difficulty due to its relationship with Volkswagen.

Despite objections from Volkswagen dealers across the country, Scout CEO Scott Keogh has said that Scout is “a 100 percent separate brand, separate entity, separate structure, separate everything[.]” Also, when asked about the direct sales model, Keogh stated, “I think it's critical moving into the future in unstable environments to control your customer, control your margin, control your operational experience[.]”

Scout Motors' relationship with Volkswagen could give rise to a legal challenge from Volkswagen dealers in Massachusetts. Under Section 4(c)(10) of Chapter 93B of the Massachusetts General Laws, manufacturers are prevented from owning or operating “either directly or indirectly through any subsidiary, parent company or firm, a motor vehicle dealership located in the commonwealth of the same line make as any of the vehicles manufactured, assembled or distributed by the manufacturer or distributor.” Chapter 93B, Section 15 gives dealers who suffer from an unfair method of competition or deceptive act or practice at the hands of a manufacturer standing to bring an action for damages and equitable relief.

Several decades ago, the Massachusetts Supreme Judicial Court held that Chapter 93B, Section 15 does not confer standing on a motor vehicle dealer to maintain an action for violation of Section 4(c)(10) against a manufacturer with which the dealer is not affiliated. With this decision, the Court

ruled that the “purpose of Chapter 93B historically was to protect motor vehicle dealers from a host of unfair acts and practices historically directed at them by their own brand manufacturers and distributors.”

By eliminating standing for dealers who are not affiliated with the subject manufacturer, the SJC has essentially prevented any dealer from challenging the illegal operation of a company store by a manufacturer who has no franchised dealers. Although the Massachusetts Attorney General has standing to enforce Chapter 93B, 15 years ago the then AG refused to do so in the Tesla context despite repeated requests from the MSADA to the AG to enforce Section 4(c)(10). Presently we have a different Attorney General than 15 years ago. It is, therefore, unknown whether the AG will be of any assistance to Massachusetts dealers in the Scout Motors context.

However, it is questionable whether Scout Motors will be able to do the same as Tesla given its affiliation with Volkswagen, as Scout's attempt to sell vehicles directly to consumers and bypass the existing Volkswagen dealership network arguably constitutes an “unfair method of competition” under Chapter 93B. The inevitable legal challenge will provide an interesting test case as to whether established auto manufacturers can avoid state franchise laws simply by establishing a separate legal entity and brand.

Volkswagen's attempt to use Scout Motors to circumvent its established dealer network serves as an important reminder that dealers need to vigorously assert their rights as manufacturers attempt to marginalize their role in the sale and servicing of motor vehicles.

Tom Vangel and Jamie Radke are partners and Lindsey McComber is an associate with the law firm of Murtha Cullina LLP in Boston who specialize in automotive law. They can be reached at 617-457-4072.