

U.S. UPDATE

TESLA DISTRIBUTION METHOD SURVIVES CHALLENGE

U.S. based electric car manufacturer Tesla has been sued by dealer associations in New York and Massachusetts, where dealer associations are challenging the way Tesla markets its vehicles. Tesla recently won an early dismissal, however, in the Massachusetts case.

Elon Musk and other former Silicon Valley engineers founded Tesla in 2003. Tesla went into full-scale production in 2008. All of its vehicles are fully-electric. Tesla began production with the Tesla Roadster, now offers a sedan, and has a cross-over vehicle due to arrive in 2014. Tesla's distribution method, which eschews traditional dealers, appears to be as unique as its automobiles. As Tesla's website states, "We challenge custom and question tradition."

Traditionally in the United States, auto manufacturers only sell their cars through franchised dealers. Forty-eight of the 50 states, with Indiana and Utah being the exceptions, seek to prohibit manufacturers from selling directly to consumers. Both Massachusetts and New York have such statutes. Those statutes prohibit manufacturers from owning dealerships, although they do not specifically prohibit direct sales via the manufacturer's website.

Despite those statutes, Tesla has opened retail showrooms in those states and elsewhere. Tesla has 31 locations world-wide, with 18 of those in the U.S. Differing from traditional dealerships, the Tesla showrooms are located in shopping malls and hold only display vehicles. In some respects, they are modeled after the notably successful Apple stores. In order to attempt to comply with the local laws prohibiting manufacturers from selling directly to consumers, Tesla retail showrooms do not accept orders for cars. Rather, Tesla employees in those showrooms will direct potential purchasers to the Tesla website, where consumers can order the automobiles directly from the manufacturer, an activity that arguably is not prohibited by the

state laws. Tesla apparently hopes that its retail showrooms will not be found to be dealerships under the applicable statutes.

The current lawsuits pit Elon Musk and Tesla against the traditional U.S. dealership model. Musk and Tesla apparently believe that traditional automobile dealers, some of whom are seeking to sell Tesla vehicles through their dealerships, are ill-equipped to sell fully-electric cars because most of their business still comes from selling gasoline powered cars. Tesla believes that this creates an inherent conflict-of-interest that it is seeking to avoid by selling directly to consumers. Selling directly to consumers may also serve to keep down the costs of the already expensive Tesla vehicles.

The court challenges in Massachusetts and New York have just begun. There have not yet been any significant rulings in the New York case. In Massachusetts, however, Tesla recently scored a significant victory. Early this year, the Norfolk Superior Court in Massachusetts dismissed the plaintiff's suit, finding that the plaintiff, an association of automobile dealers, lacked standing to bring the suit. Because the dismissal is based on lack of standing, the court did not have to address the more significant issue of whether Tesla's distribution model violates the franchise laws. That issue has yet to be decided.