



**DEPARTMENT OF MOTOR VEHICLES
COUNSEL'S OFFICE**

**OPINION OF COUNSEL
(#1-08)**

Subject: Internet Sales

Date: March 19, 2008

The question is whether the sale or offer for sale of a motor vehicle via the internet by a business located in New York State is subject to the provisions of Article 16 of the Vehicle and Traffic Law and the regulations promulgated thereunder (15 NYCRR Part 78). Based on the following discussion, the answer is yes.

Discussion

This question arose out of the case of Orest Grechka, d/b/a Extraordinary Auto Sales, hereafter "Extraordinary Auto Sales", where the ALJ found this registered dealer guilty of violating six counts of the Commissioner's Regulations in relation to the sale of motor vehicles over the internet. On November 27th, 2007, the DMV Appeals Board reversed and dismissed all violations, writing:

"The Department's position has been that those who sell vehicles via the Internet are not required to register as dealers in New York State, nor are they required to have an established business in New York."

Vehicle and Traffic Law §415(1)(a) defines a "dealer" as:

"a. Dealer" means a person engaged in the business of buying, selling or dealing in motor vehicles, motorcycles or trailers, other than mobile homes or manufactured homes, at retail or wholesale; except, however, trailers with an unladen weight of less than one thousand pounds. . . . Any person who sells, or offers for sale more than five motor vehicles, motorcycles or trailers in any calendar year or who displays or permits the display of three or more motor vehicles, motorcycles or trailers for sale at any one time or within any one calendar month upon premises owned or controlled by him, if such vehicles were purchased, acquired or otherwise obtained by such person for the purpose of resale, will be regarded as a dealer. . . ."

Vehicle and Traffic Law §415(1)(b) defines a “person” as:

b. “Person” means any natural person, firm, corporation, partnership, limited liability company, entity, joint venture, association or organization.”

It is the opinion of Counsel’s Office that any person located in this State who meets the definition of “dealer” as defined in 415 (1) (a) (above), must register as a dealer regardless of whether such sales are transacted in person or via the internet, and that all such sales are subject to the provisions of Article 16 of the Vehicle and Traffic Law and 15 NYCRR Part 78.

In People v. Lipsitz, 174 Misc.2d 571, at 577(New York Co. Sup. Ct. 1997), a business located on Staten Island sold magazines over the internet. The Attorney General’s Office charged the business with fraudulent activity and false advertising. In considering whether the court had jurisdiction over the case, the court wrote, in part:

“The first jurisdictional consideration is whether the litigation target has established a physical presence or a sufficiently close equivalent in the jurisdiction. Such a physical presence is not established, for example, by merely maintaining an Internet site accessible by an individual in a given jurisdiction. As recognized by Magistrate Peck in Hearst Corp. v Goldberger (1997 WL 97097, 1 [SD NY, Feb. 26, 1997]), "a finding of personal jurisdiction in New York based on an Internet web site would mean that there would be nationwide (indeed, worldwide) personal jurisdiction over anyone and everyone who establishes an Internet web site. Such nationwide jurisdiction is not consistent with traditional personal jurisdiction case law nor acceptable to the Court as a matter of policy" (see also, in accord, Bensusan Rest. Corp. v King, 937 F Supp 295 [SD NY 1996, Stein, J.]). However, where a person or business conducts a business within the forum State by being a subscriber to a local Internet service provider and selling a product through that provider, jurisdiction is proper (CompuServe, Inc. v Patterson, 89 F3d 1257 [6th Cir 1996]; see also, as to varying tests for tort and intellectual property claims, EDIAS Software Intl. v Basis Intl., 947 F Supp 413 [D Ariz 1996]; California Software v Reliability Research, 631 F Supp 1356 [D Cal 1986]; Playboy Enters. v Chuckleberry Publ., 939 F Supp 1032 [SD NY 1996]). Here, respondent is physically located within the jurisdiction.”

Similarly, in the “Extraordinary Auto Sales” case, the dealer was located in this State and transacted business in this State via the internet. Thus, DMV clearly had jurisdiction over its sales transactions. Applying the logic of the Lipsitz decision, DMV would also have jurisdiction over a “person” who conducts business over the internet as a dealer but has failed to register as a dealer. DMV could pursue an “unregistered dealer” investigation against such an entity as we do against such unregistered dealers who perform traditional “in-person” transactions.

The Appeals Board, in the “Extraordinary Auto Sales” case, may have relied upon a letter written by Counsel in 2000, advising Piaggio USA that “those who sell motor vehicles via the internet are not required to register as dealers in New York State”. Piaggio USA, a subsidiary based in New York, facilitated the sale of Vespa motor scooters, made in Pontedera Italy by Piaggio & C. S.p.A, to New Yorkers and other Americans. The scooters would be ordered from the internet or a catalog, and shipped from Italy.

The subsidiary itself apparently never had physical possession or ownership of any of the scooters, but only represented the Italian company in the United States. At that time, it did not appear that Piaggio USA intended to establish a place of business in NYS to sell the scooters. Therefore, because the Italian manufacturer had no intention of establishing a business in this State, there was no basis to require dealer registration merely based upon internet and catalog sales to New Yorkers via the internet.

In conclusion, it is the opinion of Counsel’s Office that any person registered or required to be registered as a dealer under Section 415 of the Vehicle and Traffic Law that sells vehicles over the internet must comply with such section and all relevant regulations set forth in 15 NYCRR Part 78 and, consequently, is subject to enforcement actions by the Department for violations thereof.

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