UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SKYE TAYLOR,

Plaintiff-Appellant,

vs.

VOLKSWAGEN GROUP OF AMERICA INC.; CASCADE CHRYSLER INC., doing business as Karmart Volkswagen; HANSON MOTORS INC., doing business as Hanson Motors Volkswagen; ROGER JOBS MOTORS INC., doing business as Roger Jobs Volkswagen

Defendants-Appellees.

9th CIRCUIT CASE NO. 09-35343

APPELLANT'S INFORMAL OPENING BRIEF

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE
Case No. 2:07-cv-01849-RSL
Honorable Robert S. Lasnik, United States District Judge

ORAL ARGUMENT WAIVED

APPELLANT'S INFORMAL OPENING BRIEF

1. Introduction:

This appeal comes as a result of an Order (doc 98) granting Defendant Volkswagen Group of America Inc.'s ("VWoA") Motion for Summary Judgment (doc 72) without acknowledging Plaintiff's claim, or reviewing Plaintiff's Opposition to Defendant's Motion for Summary Judgment ("Plaintiff's Opposition", doc 80). Although the District Court's ruling took 46 days, it's highly uncharacteristic of the Court, because Plaintiff's legal question was taken out of context, and not one argument from Plaintiff's Opposition was represented within the Order (doc 98).

On June 16th 2008, Plaintiff, Skye Taylor proceeding as pro se, filed a Second Amended Complaint (doc 71) alleging that Defendant VWoA and their dealerships, three of whom are Defendants in this case, Karmart Volkswagen, Roger Jobs Volkswagen, and Hanson Motors Volkswagen, (collectively, "Defendants"), were in violation of Section 1 of the Sherman Act for placing customer territory restraints on consumers to eliminate all new vehicles from being imported and exported, in effort to maintain their ability to "price to market". Defendant VWoA's parent company, Volkswagen AG, was found guilty of using the exact same type of customer territory restraints on consumers in Europe and was ordered to pay 90 million Euros in fines. (Volkswagen A.G. v Commission T-62/98 (2000))

In this case while waiting a lengthy amount of time for a ruling (46 days) on Defendants' Motions for Summary Judgment and Plaintiff's Cross Motion, Defendant VWoA who appeared quite nervous, had the brazen arrogance to file a last minute blatantly misleading Motion to Dismiss (doc 94) on the grounds of bad behavior by the Plaintiff. The bad behavior in question was, Plaintiff had threatened 3 out of the 9 Defense Counsel with legal action and complaints to the State Board[1] for Defense Counsels' unprofessional, if not illegal conduct handling the case. Another words, Defendant VWoA's Motion to Dismiss is similar to that of a thief asking the judge to punish a storeowner, because the storeowner 'angrily threatened' to call the police when the thief tried to rob the store.

[1] Plaintiff didn't raise Counsels' unprofessional conduct (bullying etc.) with the District Court in fear of delaying the case, and in fear of making the case about Counsels' unprofessional conduct rather than the restraints in question. Plaintiff's plan as indicated in the misrepresented email submitted by Counsel, was to wait till the case was over before complaining to the State Board etc.. Although this case hasn't completed, Plaintiff has recently filed a complaint with the State Board regarding Counsels' unprofessional if not illegal conduct.

Although the District Court made no mention, the Court did take away Plaintiff's right to respond by filing a ruling (doc 98) in favor of Defendants' earlier Motions for Summary Judgment closing the case. Whether the deceitful Motion submitted by Defendant VWoA had any effect is not known, however, it is clearly apparent that the representation of all arguments from Plaintiff's Opposition are completely missing from the Order. Any fair minded individual reading the District Court Order could only determine that the District Court had not even read Plaintiff's Opposition.

As a result, Plaintiff asks this Appeals Court for assistance to review the arguments set forth in Plaintiff's Opposition. And to correct the ongoing misunderstanding that this case is about Defendant VWoA enforcing restraints upon their dealerships. Although there is an agreement between Volkswagen AG, Defendant VWoA and their dealerships to restraint the export of new vehicles, this case is almost entirely about dealerships placing and enforcing unreasonable restraints on consumers, as if the consumers were part of the distribution process. Plaintiff respectively pleads with this Appeals Court to correct this ongoing misunderstanding of the legal question for the Court first and foremost. Only once the Court determines if the consumer restraints in question are reasonable or not, will the Court be able to rule on Defendants' agreement to use them.

2. Jurisdiction:

a. Timeliness of Appeal:

(I) Date of entry of order of lower court was on: April 14th 2009.

(ii) Date of service of any motion made after judgment: none filed

(iii) Date of entry of order deciding motion: April 14th 2009.

(iv) Date notice of appeal filed: April 16th 2009.

b. Attached Please Find One Copy of Each of the Following:

(I) Plaintiff's Second Amended Complaint. (Doc 71)

(ii) Plaintiff's Opposition to Defendants' Motions for Summary Judgment. (Doc 80)

(iii) Plaintiff's Reply in Support of Plaintiff's Motion for Summary Judgment. (Doc 90)

3. What are the facts of your case?

Plaintiff, Skye Taylor use to be a resident of Canada, residing in Vancouver, British Columbia. During that time, Plaintiff would often cross the border into the United States for better selection, and sometimes better prices. In October of 2007, Plaintiff attempted to purchase 2 new Volkswagen vehicles from three cross border dealerships as a result of Volkswagen's policy to price to market. The scheme to price vehicles to market rather than sell them in the same base currency to their dealerships provides buying opportunities for neighboring markets that have high prices and/or strong currencies. For example, both because of the weak US dollar in October of 2007 and Defendants' restraints on consumers to maintain prices, Plaintiff could approximately save 30% by buying in the United States compared to in Canada. Given the huge savings, Plaintiff attempted to purchase just across the border in Washington from both Defendants, Roger Jobs Volkswagen and Karmart Volkswagen, but was refused by both Defendant Dealerships as a result of their written agreement with Defendant VWoA to place restraints on consumers[2], to eliminate all new vehicle exports. Plaintiff subsequently purchased a new vehicle from Defendant Hanson Volkswagen in Olympia, Washington, but the dealership refused to sell Plaintiff a second vehicle as a result of their policy and agreement with Defendant VWoA to place restraints on consumers.

[2] Although Plaintiff argues that the agreement between Defendant VWoA and their dealerships to use consumer restraints is unreasonable, this case is almost entirely (99%) about the restraints placed on consumers. Plaintiff argues first and foremost that the restraints placed on him being a consumer to conform are illegal.

Other Points of Interest and Facts:

When reviewing this case, the Court will note there are quite a few expressions used to describe the restraints placed on consumers. For example: customer territory restraints, consumer territory restraints, geographic sales limit policy, geographic market partitioning policy, and what Plaintiff believes is best, "passive sales restraints". The term, "passive sales" is important because it's the only expression used that doesn't have multiple meanings. Another words, you couldn't say that a distributor placed a passive sales restraint on a dealer, as it wouldn't make any sense. "Passive sales" are only sales to the final consumer or their intermediaries made by a dealer in response to unsolicited orders from outside their allocated sales territory. ("consumer restraints")

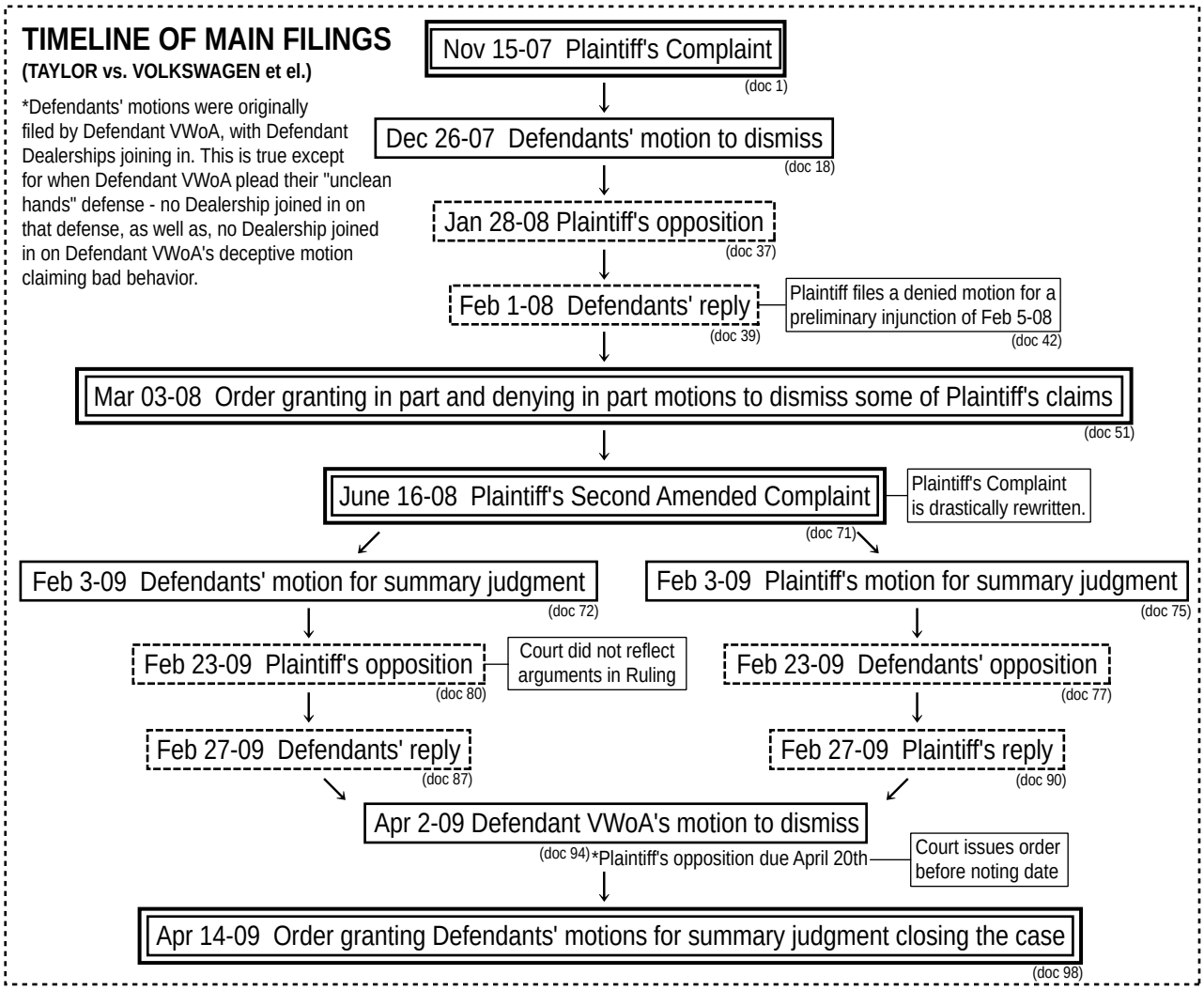
All major vehicle manufacturers/distributors including Defendant VWoA's counterpart cross border have agreements with their dealerships to use similar passive sales restraints on consumers to eliminate new vehicle imports and exports, to and from the United States. For example, Defendant VWoA's dealerships use passive sales restraints on consumers to eliminate exports from the United States, and Volkswagen Canada's dealerships use passive sales restraints on consumers to eliminate imports of new vehicles into the United States.

Case Filing Facts:

Although Plaintiff filed seven claims on November 15, 2007 this case really didn't start until Plaintiff drastically re-wrote and submitted the Second Amended Complaint (Doc 71). The Second Amended Complaint not only simplified matters, it included factual price pattern evidence and solid legal arguments. In defense, Defendant VWoA filed a Motion for Summary Judgment and the Defendant Dealerships joined in. It should be noted that although Defendant VWoA expressed they

were trying to end the case as soon as possible, and that they already had a Motion for Summary Judgment ready to file 8 months earlier, Defendant VWoA did not file, instead they waited till the very last deadline day to do so. During the 8-month wait Defendant VWoA along with their counterpart Volkswagen Canada simultaneously implemented export warranty restraints starting with their 2009 models. This point is mentioned as it helps express the lack of confidence Defendants had in their own Motion and how they would get around the District Court's ruling.

To simplify explaining the major filing dates in this case, here's a quick timeline chart:



In response to Defendants' Motions for Summary Judgment, as noted in the above chart, Plaintiff filed a Cross Motion (doc 75), as well as, Plaintiff's Opposition (Doc 80) providing four solid arguments, each carrying enough weight that if even the Court accepted one argument, Defendant VWoA and the Defendant Dealerships would be found guilty of antitrust violations under Section 1 of the Sherman Act. Those four arguments were: (1) that the restraints placed on consumers were horizontal restraints, (2) that the restraints placed on consumers were price-restraints as their primary purpose is to maintain price, (3) that the restraints placed on consumers suppress interbrand competition, and finally, (4) that the restraints placed on consumers block what Congress intended by entering into the free trade agreement.

4. What did you ask the district court to do?

a. To rule that passive sales restraints placed on consumers by Defendant Dealerships be adjudged and decreed to be an unreasonable restraint of trade in violation of Section 1 of the Sherman Act;

b. To rule that the contract, combination and conspiracy among Defendants to place and enforce restraints on consumers be adjudged and decreed to be an unreasonable restraint of trade in violation of Section 1 of the Sherman Act; and

c. To rule that Defendants have been unjustly enriched in the form of additional revenue as a result of their unlawful conduct. To order restitution; compensatory damages, punitive damages and injunctive relief, together with the cost of this suit, and any other compensation the Court deemed just and proper for the injuries the Plaintiff sustained by means of Defendants' misconduct. *Note that as a result of Defendant VWoA's admitted false unclean hands defense (emphasis on "admitted") to purposely taint Plaintiff's image and intentions

for this case, Plaintiff had no choice but to counter by filing Document 55 stating that any funds awarded will go to charity and that no tax receipt would be taken.

5. State the claim or claims you raised at the district court.

There were two overlapping violations of Section 1 of the Sherman Act raised at the District Court from the Second Amended Complaint. The first violation raised was that the Defendant Dealerships were in violation for enforcing unreasonable passive sales restraints on consumers. The second violation raised was that the contract, combination and conspiracy between Defendant VWoA and the Defendant Dealerships to employ passive sales restraint on consumers was a violation of the Section 1 of the Sherman Act.

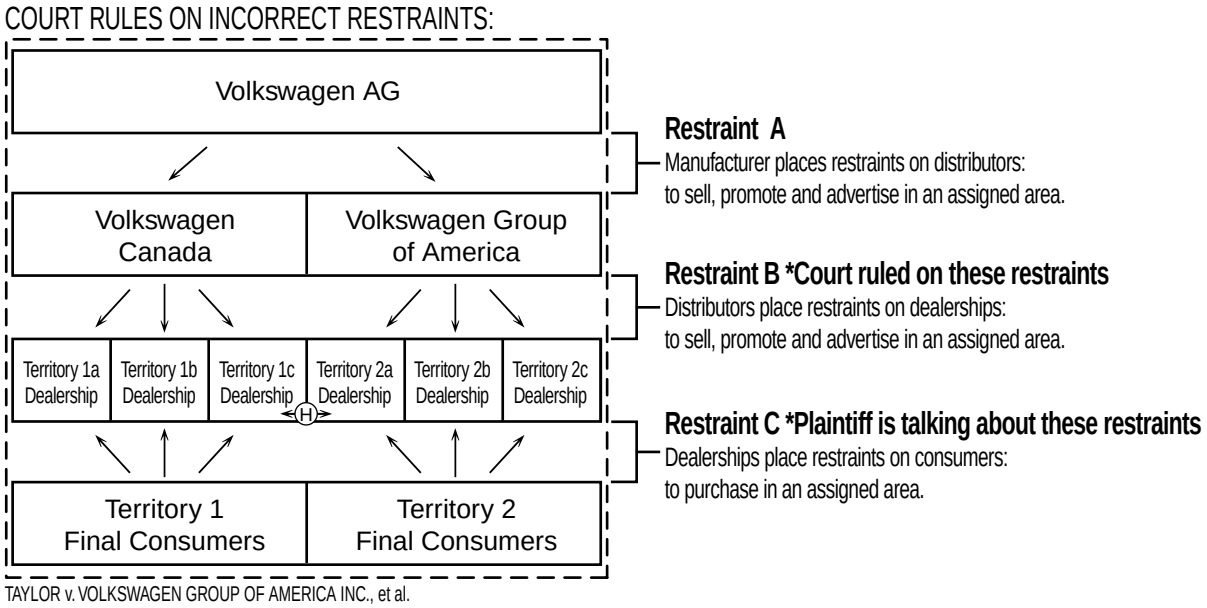
6. What issues are you raising on appeal?

The following 10 issues are being raised on appeal:

First Issue: **The District Court errors and rules on wrong restraints in question**

This action was brought against Defendants, because Volkswagen dealerships placed consumer restraints on Plaintiff preventing him from purchasing new vehicles from dealerships open to the public. Plaintiff explains in the Second Amended Complaint, and then later in great detail in Plaintiff's Opposition that the restraints dealerships place on consumers are a violation of Section 1 of the Sherman Act. Sure any agreement between distributor and dealer to implement illegal acts would be deemed illegal, however, the Court can't determine this until judgment has been made on the "passive sales restraints" placed on consumers. Unfortunately the Court did not

do so, and instead ruled on the cart before horse. Another words, without providing a ruling on "consumer restraints" the Court ruled on the agreement between Defendants. In doing so, the entire ruling has been misplaced and must be entirely overturned. This illustration helps explain the 3 different restraints in this case, and where the court made the error:



Second Issue: **District Court fails to include even one argument from Plaintiff's Opposition**

Although the District Court has always acknowledged arguments from both parties, and had done so earlier in this case [emphasis added], there is not one mention of even one argument presented by Plaintiff in the present Order. Not only is there no representation of Plaintiff's arguments, the Court completely misquotes Plaintiff. To be fair, there are two sides to every case and until both sides are acknowledged, the Order Granting Defendants' Motions for Summary Judgment must be stricken.

Third Issue: **Plaintiff argues "consumer restraints" are horizontal restraints, and in reply the District Court rules, "dealership restraints" are vertical restraints – what!**

Plaintiff raises the argument that restraints placed on consumers are horizontal restraints because they can only be enforced horizontally among other reasons. Then instead of engaging in the argument or even acknowledging it, Defendant VWoA states in an argument format that the restraints placed on dealerships are vertical restraints and that the Supreme Court agrees. Not to sound rude, but who cares, that was not in dispute. Not only was that deceptive fake argument not in dispute, Plaintiff already stated a number of times that the agreement between Volkswagen and it's dealerships is vertical. Sadly Defendant VWoA's relentless spin to make this case only about dealership restraints, which it's not, did have an effect on the Court. That effect was, the Court although ruling whether the restraints were vertical or horizontal, only confirmed what we already knew, which wasn't in dispute, that *Volkswagen's policy is a vertical agreement between Volkswagen and it's dealerships*. (doc 98, page 4, lines 13-15)

Since the Order contains no analysis or reasoning why "consumer restraints" and "dealership restraints" should all of a sudden be the same, and there was no representation of any of Plaintiff's arguments to indicate the District Court was actually referring to Plaintiff's raised argument, rather than the undisputed false argument raised by Defendants, it's impossible to conclude anything from the Order other than a confirmation of what wasn't in dispute. Plaintiff asks this Appeals Court to strike the ruling, as it doesn't address Plaintiff's raised claim, and to provide a ruling agreeing that restraints on consumers are horizontal because:

a. They can only be enforced horizontally;

b. They are used to eliminate intrabrand and suppress interbrand competition horizontally;

c. Plaintiff was, and is continuing to be told by Defendants to buy from their competition;

d. They are used to maintain price; and

e. There are no vertical aspects to restraints placed on consumers. For example, a restraint placed on a dealership may be enforced vertically but then have a horizontal effect. In such a case the Court would have to weigh both the vertical and horizontal nature of the restraint and then determine which side of the scale had more weight. With consumer restraints no scale is needed because no vertical aspect exist. They start by being enforced horizontally, and end with a horizontal effect.

Fourth Issue: **For an unknown reason the Court rules Defendants' price-restraints to maintain market prices should be classified as "non-price restraints"**

Plaintiff asked the District Court to classify whether Volkswagen's consumer restraints are "price-restraints" or "non-price restraints". The Court considers a "price-restraint" one that is used to *depress, fix, raise, maintain, or stabilize price.* Plaintiff provides the Court with Defendants' own pleading which states they use consumer restraints to maintain market prices (doc 72, page 6 lines 19-21). Another words, Defendants plead their consumer restraints are in place to affect the price of their vehicles. So by the Courts' own definition, a restraint that is in place to affect price is "a price-restraint". As logical and straightforward as this may appear, the Court in fact ruled without analysis or reason, that Volkswagen restraints are "non-price restraints". Plaintiff strongly objects to this ruling and until the Court changes the definition of a price restraint, the non-price classification must be overturned. After all:

a. They are used to maintain price [emphasis added]; and

b. Volkswagen pleads they use them to maintain their market prices [extra emphasis added].

Fifth Issue: **Without evidence, Court rules pricing to market increases interbrand competition**

Plaintiff brings the argument that restraints placed on consumers eliminate intrabrand competition, and more importantly maintain the suppression of interbrand competition. Then as sure as death and taxes, Defendant VWoA responds with another staged argument as if what they are about to say was in dispute, telling the Court that dealer restraints are legal because they may promote competition and the Supreme Court agrees. Well, this was never in dispute and Plaintiff states this exact same thing in Plaintiff's Opposition when explaining the different restraint types.

In fact, Plaintiff, Defendants, and the Court all quote Continental T.V. v. GTE Sylvania, Inc., 433 U.S. (1977) mutually agreeing that the case confirms dealer restraints may promote interbrand competition. The problem is: *Continental* had nothing to do with consumer restraints[3]. To even suggest that a dealer restraint is the same as a restraint placed on a consumer, lessens the intelligence of this Court – it's like saying applying a restraint on your child to stop buying junk food, is the exact same thing as applying the restraint on some kid across the street. The effect would be totally different. Think about it, since you couldn't enforce the restraint to stop the child across the street from buying junk food, you would have to rely on their parent horizontally to enforce your restraint. Not only that, you don't know if the parent will agree. This simple example confirms that both the enforcement and the effect are completely different, even though the restraint is virtually identical. The only real difference is, your child is within your group and the child across the street isn't. Well, dealerships are within the Volkswagen group and consumers aren't.

[3] It's not just the European Union that recognizes passive sales restraints to have their own distinct restraint classification, but also the Supreme Court. Although not ruling directly on passive sales restraints, there's a long history of their distinction, see: *White Motor Co. vs. United States, 372 U. S. 273 (1963)* the terminology used in that case was "customer restraints" in reference to consumers being forced to conform. Note "customer restraints" can refer to both reasonable restraints where a dealer agrees to sell in a designated area, and also unreasonable restraints, which force the consumer to conform. This dual meaning and Defendant VWoA's deceitful use of it, is why we are here today.

In effort to clarify that consumer restraints have a different purpose and effect, and to concretely confirm that they undeniably maintain the suppression of interbrand competition, Plaintiff's Opposition argues that although it's possible to use a market share threshold test on dealer restraints, it's absolutely impossible to use the same threshold test on passive sales restraints placed on consumers. The market share threshold test referred to in this case, states that if a manufacturer doesn't have enough market share they couldn't suppress interbrand competition because there is always a close substitute available for the consumer to purchase. The problem with this threshold test is, it can't be applied to consumer restraints when the majority of dealerships are using similar restraints. The logic is simple: if all major auto manufacturers use similar consumer restraints there would then be no substitute available of any kind. For example, there is no dispute that Volkswagen has roughly only 2% of the market share, so the market threshold logic should indicate, that Plaintiff should be able to purchase at other interbrand dealers like Toyota, Honda, and Ford etc… after all, Volkswagen only has 2% of the market share. The problem is, as Defendant VWoA confirms: there is no substitute available because all major vehicle manufacturers employ similar consumer restraints stopping Plaintiff altogether from purchasing.

Plaintiff's Opposition provides, a clearer, more detailed explanation of this argument; it's easier to understand because Plaintiff breaks down the restraints and labels them into two classes, TYPE 1 and TYPE 3 restraints to help the Court distinguish the simple logical difference between them. The strange thing is, although Plaintiff's argument completely refutes and shatters the market share threshold test for consumer restraints, confirming that the amount of market share makes absolutely no difference, the Court relies heavily on it in it's ruling. This of course makes no sense because there again would have to be interbrand vehicles available for the Plaintiff to purchase and

it's proven there aren't. The only thing we've learnt from the Court's misuse of the threshold test is, that consumer restraints prevent interbrand competition. And we know this again because without consumer restraints Plaintiff would be able to purchase from a multitude of interbrand competitors.

There is no other argument presented regarding interbrand competition, however, the Court does surprisingly suggest in it's analysis that restraints that eliminate new vehicle imports and exports, furthers rather than hinders interbrand competition, because the restraints are designed to allow vehicle manufacturers the ability to price to market, this ungoverned ability allows market prices to be maintained, which in turn allows dealerships to stay in business from fear of consumers crossing the border to shop. The problem with this analysis is, there is no evidence, other than Defendants' own testimony that their dealerships would go out of business if the restraints were removed. A written testimony from ones own staff surely doesn't satisfy any Court to grant the ability to price to market as being the only sole solution. Speaking of solutions, we already know that if vehicles were sold to all dealerships in the same base currency, or at least to calculate from, no dealership would ever have to worry about consumers crossing the border, because they would always be able to compete. So until proper evidence and clear reasoning is provided why pricing to market is the only solution to keep dealerships in business, the Court's analysis and ruling suggesting that interbrand competition is increased by eliminating imports and exports, cannot be accepted and must be stricken.

In reviewing the argument that restraints placed on consumers continue to suppress interbrand competition, please review the following two crucial points:

a. Defendants plead that all major auto manufacturers use similar restraints; and

b. If Volkswagen stopped using consumer restraints it would force their interbrand competition to abandon their consumer restraints or lose clients to Volkswagen. This point confirms the use of consumer restraints maintains the suppression of interbrand competition and is a very extreme point. Please refer to Second Amended Complaint, document 71, paragraph 37 to 39. The paragraphs mentioned provide a clear understanding of this extreme point, which really needs to be fully absorbed.

Sixth Issue: **The District Court contradicts it's earlier ruling by implying there is now new evidence why the restraints are in place**

The District Court previously denied Defendant VWoA's original Motion to Dismiss (doc 18) in part because Plaintiff alleged that the Defendants conspired with their counterparts in Canada to limit trade, and in part because: *…there is no evidence about why the restrictions are in place. Accordingly, the Court cannot rule as a matter of law that the restrictions are reasonable.* (Doc 51 p8, lines 11-13)

Since that ruling, absolutely no new evidence has been provided to the Court, not one tiny bit of new information why the restraints are in place, however, the Court now rules the restraints are reasonable as a matter of law. Plaintiff objects to this blatant contradiction in ruling and insists until the Defendants provide evidence, the Order Granting Defendants' Motions for Summary Judgment must be overturned.

The District Court mentions the novel idea that consumer restraints are also in place to protect the integrity of the Volkswagen dealer network, however this has already been proven to only be a contradiction. If it wasn't a contradiction, Volkswagen would also restrict the sale of their used vehicles still under warranty, and they wouldn't have honored all warranties at cross border dealerships up until their 2009 models. Also if the Court accepted such a novel ideal, where would it end? Volkswagen could technically set up consumer restraints state by state, as each state has different vehicle certification standards.

Seventh Issue: **The District Court's analysis misquotes Plaintiff's case law argument**

No case law ruling on consumer restraints seems to exist; at least Plaintiff, Defendants and the Court have not been able to provide any. This being the situation, Plaintiff located the most similar case possible where restraints had a similar "enforcement and effect" as consumer restraints have. Then Plaintiff took that case and compared it to a case that had nothing but reasonable restraints. The reason this was done this way, was because no single case could be found that only used unreasonable restraints that resemble consumer restraints, so both the good and the bad had to be compared to be able to dissect the difference between restraints within the same distribution structure. In Plaintiff's Opposition, *United States v. Arnold, Schwinn & Co.*, 388 U.S. 365 (1967) was the key case provided that contained both completely reasonable restraints, and restraints that had a similar unreasonable enforcement and effect as consumer restraints have. Plaintiff then used, *Continental T.V. v. GTE Sylvania* to express what an ideal restraint structure should actually look like.

In response, the District Court's analysis states that Plaintiff's reliance on *United States v. Arnold, Schwinn & Co.* was rejected by the Supreme Court in *Continental T.V. v. GTE Sylvania.* The problem with this analysis is: Plaintiff's reliance is in fact on both cases mentioned. Also, there is no record of the Supreme Court reviewing the same unreasonable dealer restraints mentioned in Plaintiff's Opposition, in *Continental T.V. v. GTE Sylvania.* And until such a record can be provided, the District Court's analysis suggesting that both cases had the exact same restraint structures in front of the Court must be stricken.

Eighth Issue: **The District Court fails to recognize the first meaning of a "conspiracy"**

The District Court fails to recognize the first meaning of a "conspiracy" and accepts Defendants' argument, that the Volkswagen agreement to restrain trade cannot be classified as a conspiracy, because the agreement is the result of unilateral conduct. Defendants provide two cases in defense where in both cases it was argued that as a result of an agreement, an illegal violation was born [emphasis added]. For example, although it's completely legal for a hotdog vendor to sell hotdogs at $2 each, as soon as the hotdog vender agrees with their competition to sell them at $2, the once legal action of selling hotdogs at $2 now becomes illegal. Defendants use this definition of a conspiracy and argue that their agreement doesn't make their restraints illegal. Sure of course not, that's because placing restraints on consumers is illegal from the start, regardless of the agreement.

According to Merriam-Webster's Dictionary of Law (1996) a "conspiracy" is: *an agreement between two or more people to commit an act prohibited by law or to commit a lawful act by means prohibited by law.*

It's clear that Defendants' argument is based on the second meaning in the conspiracy definition above, however Plaintiff brought the case to Court because of the first meaning of the definition, where two or more people are agreeing to do something already illegal. Until Defendants can provide a case in support that shows that two parties agreed to commit an illegal act and got off because the agreement was unilateral, the Court has no choice but to overturn the Order and classify the contract and agreement between Defendants to be a conspiracy, because the agreement between Defendants was an agreement to commit an illegal act.

Ninth Issue: **The District Court's ruling blocks Congress's intentions**

Plaintiff raises the argument that Congress entered into the Free Trade Agreement and removed tariffs on vehicles to promote the free flow of goods across the border. As such, the District Court's ruling allowing Defendants to use consumer restraints to eliminate the import and export of new vehicles must be overturned as it goes directly against Congress's intentions.

Tenth Issue: **Plaintiff did satisfy the requirements for a Sherman Act claim because Defendants have admitted to all three requirements that Plaintiff had to fulfill**

To state a claim under Section 1, plaintiff must show: (1) a contract, combination or conspiracy among two or more persons or distinct business entities, (2) by which the persons or entities intended to harm or restrain trade or commerce among the several States, or with foreign nations, and (3) which actually injures competition. Kendall v. VISA U.S.A., Inc., 518 F3d 1042 1047 (9th Cir 2008)

This is as straightforward as it gets:

(1) Defendants plead there is a written agreement between them to restrain trade. (Doc. 47, p6: line 1-13) (2) Defendants plead their intention was, and still is, to restrain new vehicles from being imported to, and exported from, the United States. (Doc. 47, p6: line 18-24, p15: line 11-17) (3) Defendants plead that all major auto manufacturers use similar consumer restraints to restrain imports and exports. (Doc 71, page 11: ¶35)

The above 3 pleadings confirm in stone that the requirement for a Sherman Act claim has been fully fulfilled. It just can't get any easier for the Court than this. The Defendants claim:

(1) Yes, there is an agreement between us to restrain trade; (2) Yes, our intent is to stop trade with foreign nations; and, (3) Yes, all other major auto manufacturers are enforcing similar passive sales restraints to stop trade.

The Defendants may argue they didn't physically say the actual words, "our restraints harm interbrand competitions", but since Defendants' pleading has the exact same meaning it doesn't matter. To say that all major auto manufacturers use similar restraints means exactly the same thing, because if the Defendants stopped enforcing their restraints, their interbrand competition would be forced to also stop or lose clients to Volkswagen. So removing the restraints increases interbrand competition, and keeping them harms interbrand competition. For a visual please see illustration: "with TYPE 3 (consumer) restraints and without" on page 18 of Plaintiff's Opposition.

7. Did you present all these issues to the district court?

Yes, all issues were clearly presented to the District Court.

8. What law supports these issues on appeal? (You may, but need not, refer to cases and statutes.)

Section 1 of the Sherman Act, 15 U.S.C § 1 et seq., as well as, Plaintiff hereby incorporates by reference all cases and statutes already quoted and/or cited in all of Plaintiff's filings, as if all were set forth fully herein.

9. Do you have any other cases pending in this court?

No, I have no other cases pending in this or any other Court.

10. Have you filed any previous cases which have been decided by this court?

No, I have never filed a previous case with this Court.

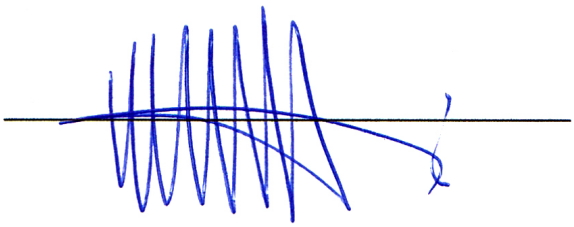
11. Tell this court what you want us to do on appeal?

Plaintiff respectively request this Appeals Court to overturn the District Court's Order granting Defendants' Motions for Summary Judgment, to rule that Plaintiff has fulfilled a Section 1 Sherman Act claim and provide effective injunctive relief. (Plaintiff understands that as a result of Volkswagen's newly implemented warranty restraints, injunctive relief won't have the same effect, however it's just as important as before.) Plaintiff pleads to this Appeals Court to provide a very detailed analysis when ruling on each of the following:

a. Should the passive sales restraints that are placed on consumers, be classified as "horizontal" or "vertical" restraints?
b. Should the passive sales restraints that are placed on consumers, be classified as "price-restraints" or "non price-restraints"?
c. Do the passive sales restraints that are placed on consumers, "promote interbrand competition" or "suppress interbrand competition"?
d. Do the passive sales restraints that are placed on consumers, block Congress's Free Trade Agreement of trying to promote the free flow of goods across the border?
e. Is it reasonable to place passive sales restraints on consumers?
f. After the above questions are answered: is the agreement between Defendants to use passive sales restraints on consumers reasonable?

Lastly, Plaintiff respectively requests this Appeals Court to order: restitution, compensatory damages, punitive damages, together with the cost of the suit and appeal, and any other compensation this Court deems just and proper for the injuries Plaintiff sustained by means of Defendants' misconduct. Plaintiff also request that extra consideration be made in consequence of Defendant VWoA's deceitful filings and ill-natured arguments in effort to mislead the "consumer restraint" issue before the Court, which has done nothing but waste time, and valuable Court resources.

Respectively submitted this 6th day of June 2009.



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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

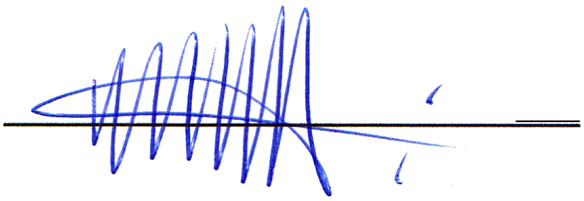
SKYE TAYLOR, Plaintiff-Appellant, vs. VOLKSWAGEN GROUP OF AMERICA INC.; CASCADE CHRYSLER INC., doing business as Karmart Volkswagen; HANSON MOTORS INC., doing business as Hanson Motors Volkswagen; ROGER JOBS MOTORS INC., doing business as Roger Jobs Volkswagen Defendants-Appellees.	9th CIR. CASE NO. 09-35343 D.C. NO. 2:07-cv-01849-RSL **CERTIFICATE OF SERVICE**

CERTIFICATE OF SERVICE

I hereby certify that on this ninth day of June 2009, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system as well as the District Court's CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF systems.

Respectively submitted,



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