

# Is Porsche Paving a New Sales Model or Will Dealerships Still Have a Collection of Cars?

*Auto Dealer Today*

January 11, 2023

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One of Miami's most prominent luxury and foreign car dealerships, The Collection, has recently made the news by filing a lawsuit against Porsche, AG, historically one of its best-selling auto brands.<sup>[1]</sup> In its lawsuit, The Collection is alleging that Porsche has violated Florida statutory law by engaging in inappropriate business tactics to transition to selling directly to consumers by bypassing dealerships.

The Collection follows the traditional car-dealership model of purchasing vehicles at wholesale prices from various auto manufacturers and selling them at a markup to consumers. In their Complaint, The Collection alleges that Porsche, in an attempt to increase its own profit through direct-to-consumer sales, is forcing The Collection to either (1) give up its deep rooted customer base in the heart of Coral Gables for a storefront in a far more southern and rural section of Miami-Dade, or (2) make do without any allocated cars, such as the Taycan, which generate the most revenue and bring new clientele through its doors.

Porsche alleges this directive is within its unilateral discretion given language in the two parties' contract. If this is the case, The Collection, with no recourse, will suffer

negative consequences in either scenario. Both would cause The Collection to lose Porsche sales, a vital part of its business that it has built since 2002.

In response to Porsche's position, The Collection has filed a lawsuit seeking injunctive as well as \$300 million in compensatory relief. Its complaint is centered around statutory law that has been ingrained in Florida's auto industry for decades to prevent the exact type of behavior that is being seen here.

The Collection alleges that the \$300 million includes reparation for already suffered economic harm and treble damages, which are punitive in nature and are capped at three times the award of compensatory damages. The Collection asserts that treble damages are warranted in this case as a result of Porsche's egregious unfair trade practices.

While decade-old statutory regulations in Florida may not meet The Collection's meaning of unfair trade practices, it is no secret that digitization is becoming more prominent, a trend also seen throughout the judiciary. When technological advancements change the way a traditional industry or societal function operates, the technolo-

gy is commonly referred to as a “disrupter.” In the auto market, Tesla is a disrupter and has made its disruptive presence well known by implementing a direct-to-consumer platform that essentially cuts out most dealerships or “middle-men” in the industry.

In theory, direct-to-consumer sales would create cheaper prices for the consumer because there are less pockets to fill when a car is sold.<sup>[2]</sup> However, were laws to change and other manufacturers to adopt this model to push out the middle-man dealerships, it is unlikely that these initial lower prices would remain the status quo. This is why several states across the nation have chosen to apply their statutory regulations, created long before a direct-to-consumer model was utilized, to protect consumers and reinforce dealership’s role in the auto-sales industry.<sup>[3]</sup>

In a state such as South Carolina, a consumer is not able to purchase directly from Tesla.<sup>[4]</sup> The dealerships in these states are invoking similar statutory laws to protect themselves from the car manufacturers entering the direct to consumer market. Yet, even with this abstinence from several states, disruptive auto manufacturers like Tesla are showing record breaking sales utilizing direct-to-consumer practices. As a result auto brands like Porsche are seeking to capitalize on this new trend. In addition to potentially harmful long-term consequences for consumers in the future, the primary short-term impacts will be felt in dealerships, such as The Collection, as seen in this lawsuit.<sup>[5]</sup>

One of the consequences consumers may experience if the Court were to adopt

Porsche's defense is higher vehicle prices. Characteristically, the vehicle market functions in a capitalistic nature, which means the prices are kept fairly regulated as a result of negotiation. In its future decision in this case, the Court will need to consider that a shift to direct-to-consumer would alleviate the capitalist market structure.<sup>[6]</sup>

While this may be a good thing for auto-makers’ profits, this may not be so good for the consumers’ pockets because auto manufacturers will unilaterally set the prices of their vehicles, without any ability for consumers to negotiate. For example, currently a family can visit several local Ford dealerships and negotiate a better price for their car by pitting the two dealerships against one another in an effort to close the sale. In a direct-to-consumer market this is not possible.

Although so-called “disruptors” are welcomed by consumers in many industries for their convenience and efficiency, there are still barriers to cross and potential negative effects in some.

In this case, the Court will have to weigh the applicability of Florida’s three-decade old Dealer Act, a regulatory scheme directly enacted to govern the process of how auto manufacturers sell and distribute their vehicles.<sup>[7]</sup> The Dealer Act was originally implemented in an attempt to regulate rampant antitrust, consumer protection, and unfair trade practices that resulted from a significantly lower bargaining position that dealerships were in versus their manufacturer counterparts. Beginning in the mid twentieth century, States across the U.S., like Florida, implemented statutes like the Dealer Act to protect local dealerships from auto manufacturers who had both the

resources and ability to price out the local car dealership.<sup>[8]</sup>

Should Porsche successfully defend this lawsuit, it will reinforce auto-makers' ability to utilize a direct-to-consumer sales model in Florida, drastically changing auto sales and the breadth of the Dealer Act. In line with the Dealer Act's roots, a ruling to this effect would result in dealerships being stripped of the statutory protection that this Act has provided for decades.<sup>[9]</sup>

One thing is certain, The Collection's lawsuit against Porsche is undoubtedly the first step in Florida to either continue protecting the traditional dealership model or making enforceable precedent that would open up the possibility for auto-manufactures to utilize a direct-to-consumer sales approach.



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[1] See *The Collection Llc Et Al Vs Porsche Latin America, Inc. Et Al*, 2022-018640-CA-01.

[2] Under a direct-to-consumer sales model, when a Tesla is ordered by a consumer, it goes directly to

the manufacturing plant's queue and some time later, the car shows up to the purchaser's doorstep.

[3] Additional negative consequences may be felt by employees/sales people who work in traditional brick and mortar dealerships when a direct-to-consumer model is used (i.e. having a lack of desire for sales personnel to work the floor at the remaining brick-and-mortar dealerships as the majority of sales occur online). In response to these issues Tesla has transitioned to a salary-based pay scale, where personnel receive a salary rather than the traditional commission-based pay structure.

[4] Across the U.S., dealerships are not owned by the car manufacturer, rather they are licensed through the state and authorized to sell cars for these manufacturers. In fact, in many states, it is illegal for a car manufacturer to sell directly to consumers and has been for decades.

[5] In addition to losing a large percentage of its sales revenue, dealerships will also suffer negatively by losing additional profits via repairs and services to the vehicles sold.

[6] A manufacturer will list its price and the consumer can either take it or leave it.

[7] See §501.976, Fla. Stat. (2022).

[8] Additional legislative intent for creating the Dealer Act includes protecting the consumer from auto manufacturers usurping power and control from its sale-point dealerships and unfairly increasing market prices thereby eliminating fair competition.

[9] Act effective Oct. 1, 1988, ch. 88-395, 1988 Fla. Laws 2290-97.