UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DEVAN MOTORS OF FAIRFIELD, INC. D/B/A INFINITI OF FAIRFIELD Plaintiff, v. INFINITI DIVISION OF NISSAN NORTH AMERICA, INC., Defendant.	:	Civ No. 3:04CV00308(AWT)

RULING ON SUPPLEMENTAL MOTION TO DISMISS

For the reasons set forth below, the defendant's Supplemental Motion to Dismiss is being denied.

As an initial matter, the court notes that it agrees with the defendant that ascertainable loss is a jurisdictional requirement under CUTPA. See Ganim v. Smith and Wesson Corporation, 258 Conn. 313, 373 (2001) ("If the only standing requirement under CUTPA were that, as a result of the defendant's prohibited conduct, the plaintiff suffered an 'ascertainable loss of money or property'" . . . .). See also Robert M. Langer, et al., Unfair Trade Practices, in 12 Connecticut Practice Series § 6.4, at 402 (2003) (hereinafter "Langer") (The subsection on ascertainable loss states that "[i]n addition to having general standing to bring a CUTPA action as discussed in § 6.2, a private party seeking to bring a CUTPA action must have statutory

standing.”).

The defendant argues that the plaintiff does not have standing because it has not yet suffered an ascertainable loss, but rather is merely threatened with a prospect of injury that is entirely speculative. Langer notes that "[i]t is . . . unclear whether one who faces threatened harm but has not yet suffered an ‘ascertainable loss of money or property’ has standing to bring a CUTPA action. This could occur in a case in which a plaintiff seeks injunctive relief to prevent a threatened loss." Id. at 408. However, the court need not resolve this issue at this time.

“[T]he court must accept all factual allegations in the complaint as true and draw inferences from those allegations in the light most favorable to the plaintiff. The court may not dismiss a complaint unless it appears beyond doubt, even when the complaint is liberally construed, that the plaintiff can prove no set of facts which would entitle him to relief." Jaghory v. New York State Dep’t of Educ., 131 F.3d 326, 329 (2d Cir. 1997) (internal citations and quotations omitted). Here, the court finds that the plaintiff has alleged facts that would support a finding that it has suffered an ascertainable loss of property.

In the context of a consumer transaction, the Connecticut Supreme Court stated in Hinchcliffe v. American Motors Corp., 184 Conn. 607 (1981), that:

> Whenever a consumer has received something other than what he bargained for, he has suffered a loss of money or property. That loss is ascertainable if it is measurable even though the precise amount of the loss is not known. CUTPA is not designed to afford a remedy for trifles. In one sense the buyer has lost the purchase price of the item because he parted with his money reasonably expecting to receive a particular item or service. When the product fails to measure up, the consumer has been injured; he has suffered a loss. In another sense he has lost the benefits of the product which he was led to believe he had purchased. That the loss does not consist of a diminution in value is immaterial, although obviously such diminution would satisfy the statute.

Id. at 614. The same logic would apply here.

Here, the plaintiff has alleged in substance that, relying upon the representations of the defendant, it purchased the Greenwich, Connecticut Infiniti dealership from New Country Motor Cars of Greenwich, Inc., and that the defendant was a beneficiary of that transaction because it manufactures Infiniti automobiles and franchises Infiniti automobile dealerships. The plaintiff alleges that, knowing that it would temporarily be located in Fairfield but would be looking to move to the Greenwich/Stamford/Norwalk area when a location became available, it paid for a dealership that was guaranteed not to have competition in the form of a point-of-sale location in Greenwich.

The plaintiff further alleges that Infiniti itself projects that the plaintiff's sales volume would decrease by at least 22 percent if the Greenwich point-of-sale location were to be reopened. However, even if the Greenwich point-of-sale location

is not reopened, it is reasonable to infer that the dealership purchased by the plaintiff is less valuable than the dealership it thought it was purchasing because that dealership is not one guaranteed to have no competition in the form of a point-of-sale location in Greenwich. Thus, it is reasonable to infer that the plaintiff has suffered a diminution in the value of its dealership merely from the fact that it is not protected from competition by a point-of-sale location in Greenwich, as the plaintiff alleges the defendant represented would be the case. This constitutes an ascertainable loss of property as that concept is discussed in Hinchcliffe.

Accordingly, Defendant's Supplemental Motion to Dismiss (Doc. No. 36) is hereby DENIED.

It is so ordered.

Dated this 14th day of December 2004, in Hartford, Connecticut.

_____/s/_____
Alvin W. Thompson
United States District Judge