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AUG 13 2010
NEW MOTOR VEHICLE BOARD

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ATTORNEYS FOR PROTESTANT

FILED
NEW MOTOR VEHICLE BOARD
DATE 8-13-10
BY na

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of:

SHAYCO, INC., dba
ONTARIO VOLKSWAGEN,

Protestant,

v.

VOLKSWAGEN OF AMERICA, INC.,

Respondent.

Protest No: PR- 2265-10

PROTEST TO PROPOSED DEALER ESTABLISHMENT (VEHICLE CODE SECTION 3062)

Protestant, Shayco, Inc., dba Ontario Volkswagen, through its attorneys protests the threatened action of Respondent, Volkswagen of America, Inc., and submits the following information and allegations pertinent thereto:

1. Protestant is the franchisee of Respondent. Its mailing address is 701 South Kettering Drive, Ontario, California 91761, and its telephone number is (909) 230-5600.

2. Protestant is represented in this matter by Law Offices of Michael J. Flanagan, whose address is 2277 Fair Oaks Boulevard, Suite 450, Sacramento, California 95825, and whose

telephone number is (916) 646-9100.

3. Protestant desires to appear before the Board.

4. This protest has reference to the following facts:

(a) On or about August 2, 2010, Protestant received a letter from Respondent, bearing the date of July 30, 2010, stating in essence that Respondent intends to establish a new Volkswagen franchise to be located at 9475 Autoplex Drive, Montclair, California, 91763.

(b) Said intended new location is in a relevant market area wherein the same line-make is now represented by Protestant.

(c) Protestant has sold a substantial number of Respondent's vehicles within the year preceding the receipt of the aforesaid notice, which period is believed to be relevant to the protest herein.

(d) Protestant's investments necessarily made and obligations incurred to perform its part of the franchise are substantial and permanent. The investments were made and the obligations were incurred at various times from the inception of the franchise to the date hereof.

(e) If the proposed new franchise were to be established, it would be injurious to the public welfare, because it will cause a division and redistribution of the market area presently served by Protestant, resulting in an over-representation of dealers, which in turn will adversely impact the consuming public within the relevant market area. No benefit to the consuming public will be derived by virtue of the establishment of the proposed new Volkswagen franchise.

5. Protestant protests to this Board the threatened act of Respondent to establish the proposed new Volkswagen franchise as aforesaid, without first complying with the notice and hearing provisions of Vehicle Code Sections 3062 and 3066.

6. Protestant prays that the Board make its order that:

(a) Pending a hearing in this matter, Respondent may take no further action to

facilitate the establishment of the proposed new franchise referenced in its letter of July 30, 2010; and

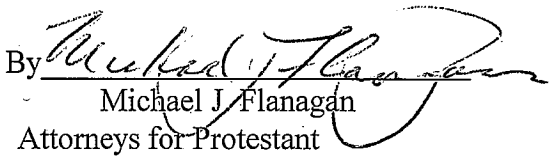
(b) At the conclusion of the proceeding in this matter, the Board enter its order that Respondent may not enfranchise a dealer at the proposed new location.

7. A pre-hearing conference is requested.

8. If a hearing before this Board is ultimately required, Protestant estimates such hearing will require 10 days.

Dated: August 13, 2010

LAW OFFICES OF
MICHAEL J. FLANAGAN

By 
Michael J. Flanagan
Attorneys for Protestant

DECLARATION OF SERVICE BY FIRST CLASS MAIL

I, Valerie A. Coffey, declare that I am employed in the County of Sacramento, State of California, that I am over 18 years of age, and that I am not a party to the proceedings identified herein. My business address is 2277 Fair Oaks Blvd., Suite 450, Sacramento, California, 95825.

I declare that on August 13, 2010, I caused to be served a true and complete copy of:

PROTEST

Ontario Volkswagen v Volkswagen
Protest No. PR-Unassigned

by First Class Mail:

Anthony Ray
General Manager Network Development
Western Region
Volkswagen of America, Inc.
5388 Sterling Center Drive
Westlake Village CA 91361

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13 August 2010, at Sacramento, California.

Valerie A. Coffey