



DECISION COVER SHEET

ACTION BY: Public Members Only

ACTION BY: All Members

To : BOARD MEMBERS

Date: August 14, 2012

From : ADMINISTRATIVE LAW JUDGE: Diana Woodward Hagle

CASE: MEGA RV CORP. dba MCMAHON'S RV v. ROADTREK MOTORHOMES, INC.
Protest Nos. PR-2199-10 and PR-2201-10

TYPE: Vehicle Code section 3070(b) Protests (Modification)
Proposed Decisions
PR-2199-10 (Colton Dealership Location)
PR-2201-10 (Irvine Dealership Location)

NOTE: An expanded statement of facts is found in the Decision Cover Sheet for termination protests PR-2244-10 and PR-2245-10.

PROCEDURE SUMMARY:

- PROTESTS FILED ON CALENDAR: January 29, 2010
- MOTION RELEVANT TO MODIFICATION PROTESTS FILED:
 - Protestant's Motions In Limine and Requests for Conclusions of Law and Other Relief – Administrative Law Judge Skrocki issued Order Granting in Part and Denying in Part Protestant's Motions in Limine (August 3, 2011)
 - ALJ Skrocki's Order relative to the modification protests is stated in full in the Proposed Decisions.
 - Among other things, ALJ Skrocki held that "...there is no need for a hearing to address the good cause factors as stated in Section 3071."
 - Also, ALJ Skrocki found that respondent had the burden of proof to establish its factual claim that since protestant was no longer in "good standing" under the parties' Dealer Agreement, it did not have a right to "exclusive" territories. That being so, respondent contends, the establishment of the additional Roadtrek franchises within protestant's (formerly) "exclusive" territories was not a modification of its franchise and

therefore no prior notice was required.

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EFFECT OF PROPOSED DECISION in PROTEST PR-2199-10 (Colton Dealership):

This Proposed Decision would overrule Protest No. PR-2199-10. However, this protest and termination protest PR-2244-10 rely on the same facts and the resolution of this protest may be dependent upon the Decision of the Board in protest PR-2244-10. If the Board adopts the Proposed Decision overruling protest PR-2244-10, then it must also address the modification issues in the instant protest. If, alternatively, the Board does not adopt the Proposed Decision and sustains protest PR-2244-10, then the instant protest is moot, since it would be a "useless act" to require protestant to prove the threshold issues of section 3070(b)(1) when it has already prevailed in the termination protest.

EFFECT OF PROPOSED DECISION in PROTEST PR-2201-10 (Irvine Dealership):

This Proposed Decision would overrule Protest PR-2201-10.

SUMMARY OF PROPOSED DECISION in PROTEST PR-2199-10 (Colton Dealership):

- Mega RV alleged that Roadtrek had violated Section 3070(b) by modifying Mega RV's Colton, California franchise by establishing another franchisee, Mike Thompson's Recreational Vehicles, dba Mike Thompsons RV Superstores ("MTRV"), in the "exclusive sales area" it had previously assigned to Mega RV (i.e., within a 60-mile radius of the dealership). MTRV's Colton dealership is directly across the street from Mega RV's dealership: they are the only tenants in the "Colton RV Expo". Roadtrek had failed to give written notice to Mega RV or the Board prior to the establishment.
- Roadtrek contended that there was no modification since Mega RV no longer has a franchise right to the "exclusive" territories as Mega RV was no longer in "good standing" under the Dealer Agreement. Therefore, Roadtrek was under no obligation under section 3071(b) to give notice to Mega RV of its establishment of an additional Roadtrek franchise.

- Roadtrek has sustained its burden of proof of establishing that since protestant was no longer in "good standing" under the parties' Dealer Agreement, it no longer had a right to "exclusive" territories; therefore, the establishment of a Roadtrek franchise within protestant's (formerly) "exclusive" territory in the "Colton RV Expo" was not a modification of its franchise. As there was no modification, no prior notice of the establishment was required.
- The Dealer Agreement which Roadtrek and Mega RV executed on February 22, 2006 established Mega RV's Roadtrek franchise. The Dealer Agreement required Mega RV, in order to remain in "good standing" under the Agreement, to "stock" and "prominently display" a stated number of Roadtrek vans at each of Mega RV's three dealership locations. As long as Mega RV maintained its "good standing" status, Roadtrek promised not to locate another dealer within a "...60 mile radii..." of each dealership location and that Mega RV would "...have the exclusive right to purchase, display and resell Roadtreks, parts and accessories in the [Dealer's] Territory...".
- In mid-2008, financial disputes between the parties began and thereafter intensified. Roadtrek elected to pursue its remedies under the UCC.¹ At the 2009 Pomona RV show, held in mid-October, Roadtrek repossessed Mega RV's inventory of Roadtrek vehicles. After the Pomona RV show, Roadtrek did not deliver any new motorhomes to Mega RV. In mid-December, Jeff Hanemaayer emailed Brent McMahon that "[Roadtrek] will need adequate assurances as defined under the UCC before completing any further transactions...". Brent McMahon's December 14, 2009 email response to Roadtrek's demand for adequate assurances was "Good luck". Mega RV did not provide adequate assurances to Roadtrek, either in the form requested or otherwise.
- Under the UCC, Roadtrek's position is that it may consider that Mega RV's failure to provide adequate assurances of performance a repudiation of the Dealer Agreement after the passage of 30 days from the request.
- The consequence of Mega RV's failure to provide "adequate assurances" to Roadtrek under the UCC is that Roadtrek will not deliver inventory to Mega RV. Therefore, since Mega RV was not able to order Roadtrek inventory, it failed to meet the stocking levels required by the Dealer Agreement. It was therefore not in "good standing" under the terms of the Dealer Agreement, which resulted in loss of its "exclusive territories" as a Roadtrek dealer. Mega RV no longer had "exclusive" territorial rights as a Roadtrek dealer on January 29, 2010 when Roadtrek executed a Dealer Agreement with MTRV, establishing a new franchise location across the street from Mega RV's Colton dealership.
- Since Mega RV no longer has a franchise right to "exclusive" territories as a Roadtrek dealer because it is no longer in "good standing" under the Dealer Agreement, the

¹ Remedies asserted by parties under the Uniform Commercial Code (UCC) are not within the Board's jurisdiction.

establishment of MTRV as a Roadtrek franchisee in Colton did not constitute a "modification" of Mega RV's franchise. Therefore, no notice was needed pursuant to Section 3070(b).

SUMMARY OF PROPOSED DECISION in PROTEST PR-2201-10 (Irvine Dealership):

- The facts recited above also apply to Mega RV's Irvine location.
- However, in March of 2012, Mega RV closed its Irvine dealership and relocated it to Westminster, California.
- There is no "written RV franchise agreement" between the parties referencing Mega RV's dealership location in Westminster, and nothing in the 2006 Dealer Agreement supports an argument that it would encompass a relocated dealership location.
- There is no evidence that the parties intended to establish a Roadtrek franchise at Mega RV's relocated dealership location in Westminster.
- For the Board to have jurisdiction over this protest there must be a "franchise" in existence under the terms of which Mega RV's Westminster dealership would be a "franchisee" and Roadtrek would be a "franchisor". (Section 3079) That is not the case.

RELATED MATTERS:

- Related Case Law: None.
- Applicable Statutes: Vehicle Code sections 331.1, 331.2, 3070(b) and 3079.
- Related Board Protests: There are 11 *Mega RV Corp. dba McMahons RV v. Roadtrek Motorhomes, Inc.* protests that are pending a decision on their merits. These Proposed Decisions will be considered at the August 23, 2012, General Meeting as follows:
 - Protest Nos. PR-2199-10 (Colton) and PR-2201-10 (Irvine) Section 3070(b) modification.
 - Protest Nos. PR-2206-10 (Colton), PR-2208-10 (Irvine), and PR-2209-10 (Scotts Valley) Section 3075 warranty reimbursement.
 - Protest Nos. PR-2205-10 (Colton), PR-2211-10 (Scotts Valley), and PR-2212-10 (Irvine) Section 3076 franchisor incentive program reimbursement.
 - Protest No. PR-2233-10 (Colton) Section 3072 establishment.
 - Protest Nos. PR-2244-10 (Colton/Irvine) Section 3070(a) termination.
 - Protest No. PR-2245-10 (Scotts Valley) - A Proposed Order Granting Respondent's Motion to Dismiss Protest No. PR-2245-10, a Section 3070 termination protest for the Scotts Valley location, will also be considered at the August meeting.