



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 No. PR-2233-10

TYPE: Vehicle Code section 3072 Protest (Establishment - Colton Dealership Location)
Proposed Decision

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:

- PROTEST FILED ON CALENDAR: May 11, 2010
- MOTIONS RELEVANT TO ESTABLISHMENT PROTEST FILED:
 - On June 2, 2010, the Board received Roadtrek's Motion to Dismiss Protest. On July 26, 2010, ALJ Skrocki issued an Order Denying Respondent's Motion to Dismiss Protest [PR-2233-10]. The Order analyzes Section 3072 and is attached to the Proposed Decision as Exhibit A.
 - On August 3, 2011, Administrative Law Judge Anthony J. Skrocki issued an Order Granting in Part and Denying in Part Protestant's Motions in Limine. The pertinent parts of the Order are set forth in full in paragraphs 17 through 21, inclusive, of the Proposed Decision.
- COUNSEL FOR PROTESTANT: Law Offices of Michael J. Flanagan
Michael J. Flanagan, Esquire
Gavin M. Hughes, Esquire
Erin R. Hegedus McIntosh, Esquire
Danielle R. Vare, Esquire (as of 11/21/11)
- COUNSEL FOR RESPONDENT: Seyfarth Shaw, LLP
Louis S. Chronowski, Esquire
Kavitha Janardhan, Esquire (until 5/1/12)
James D. McNairy, Esquire

EFFECT OF PROPOSED DECISION:

This Proposed Decision would sustain Protest No. PR-2233-10.

SUMMARY OF PROPOSED DECISION:

- ALJ Skrocki's pre-hearing Order entered on August 3, 2011 (pertinent part stated in full in paragraphs 17-21 of the Proposed Decision), established three things in regard to the adjudication of the instant establishment protest:
 - (1) No "good cause" hearing would be held;
 - (2) The sole issue is the interpretation of Vehicle Code section 3072(b)(5); and
 - (3) Protestant's request that Roadtrek's failure to comply with Section 3072 be referred to DMV for investigation and action pursuant to Section 3050 be decided after a hearing on the merits.
- The instant protest alleges that Roadtrek violated Section 3072(a)(1) by failing to give Mega RV notice of its intent to establish an additional Roadtrek dealer, Mike Thompson's Recreational Vehicles ("MTRV"), at a location which would put Mega RV within the new dealership's relevant market area at the "Colton RV Expo" in Colton, California.
- Roadtrek contends that no notice to Mega RV was required when Roadtrek entered into a franchise establishing an additional Roadtrek dealership in the relevant market area in which Mega RV was already located. Since the additional dealership location, MTRV was established as an RV dealership (even though not a Roadtrek dealership) on or before January 1, 2004, Section 3072(b)(5) exempts Roadtrek from the notice requirement and Mega RV therefore has no right to protest the establishment.
- The facts are undisputed: on January 29, 2010, respondent Roadtrek established MTRV as a franchisee in the "Colton RV Expo", directly across the street from protestant Mega RV's dealership. MTRV had been an RV dealer (although not a Roadtrek franchisee) since at least 1999 in the Colton location. On that date, Mega RV was Roadtrek franchisee, but was unable to order Roadtrek inventory or parts and was therefore unable to sell or perform warranty service on Roadtrek vehicles. The Proposed Decision describes the events leading up to this situation. (In termination protest PR-2244-10, the Proposed Decision describes in even greater detail the events, concludes that Mega RV's inability to function as a Roadtrek franchisee was due to its own acts, and recommends overruling Mega RV's termination protest.)
- The issue before the Board is one of statutory construction:
 - Section 3072(a) requires an RV franchisor which seeks to enter into a franchise establishing an additional RV dealership within a relevant market area where the same RV line-make is then represented to first notify the Board and each franchisee in that RV line-make in the relevant market area of its intention to establish the additional dealership.

- However, it is Section 3072(b)(5), which provides an exemption from the notice requirement, which is at issue here: it states that "...Subdivision (a) does not apply to any of the following:...(5) A motor vehicle dealership protesting the location of another dealership with the same recreational vehicle line-make within its relevant market area, if the dealership location subject to the protest was established on or before January 1, 2004." (Emphasis added for importance.)
- Mega RV argues that Roadtrek violated Section 3072 by failing to give Mega RV and the Board notice of Roadtrek's intention to establish an additional Roadtrek dealer in the relevant market area in which Mega RV, a franchisee of the same line-make, is located. The exception in Section 3072(b)(5) is not applicable since MTRV was not a Roadtrek dealership on or before January 1, 2004.
- Roadtrek contends that no notice to Mega RV or the Board was required when Roadtrek entered into a franchise establishing an additional Roadtrek dealership in the relevant market area in which Mega RV was already located. Since the additional dealership location, MTRV was established as an RV dealership (even though not a Roadtrek dealership) on or before January 1, 2004, Section 3072(b)(5) exempts Roadtrek from the notice requirement and Mega RV therefore has no right to protest the establishment.
- Exhibit A, ALJ Skrocki's 25-page Order issued July 26, 2010, describes Section 3072(b)(5)'s definitional problems, reviews its legislative history and discusses implications and policy issues arising from different interpretations of the statute. ALJ Skrocki's conclusion was that "[a]lthough no conclusive interpretation of the meaning and scope of Section 3072(b)(5) has been made, neither can it be determined that Section 3072(b)(5) has a plain meaning that mandates dismissal of the protest under the facts as presented to the Board," thereby denying respondent's motion to dismiss.
- The pre-hearing Order made on August 3, 2011 (see paragraphs 17-21 of the Proposed Decision) also left open a definitive interpretation of Section 3072(b)(5).
- After re-reading Exhibit A and the August 3, 2011 ruling regarding the application of Section 3072(b)(5), it appears that the prior orders have stated at least implicitly how Section 3072(b)(5) should be interpreted. Recognizing that the prior orders could have been, and perhaps should have been, more specific, it is determined that Section 3072(b)(5) must be explicitly interpreted now, as follows: A franchisor is required to give notice to an existing franchisee of the same line-make of its intention to establish an additional franchise if the existing franchisee is within the relevant market area of the additional dealership location, unless the additional franchise location was established as a dealer or authorized to sell and service the franchisor's same line-make on or before January 1, 2004.
- Protestant requested that Roadtrek's failure to give Mega RV written notice that it intended to establish an additional Roadtrek franchisee in Colton, California, in a location which would put Mega RV within the new franchisee's RMA be referred to the DMV for investigation and action pursuant to Section 3050.

- Protestant's request is denied. Roadtrek's interpretation of the statute, that it "grandfathers" in to the exception those RV dealerships in business at a particular location on January 1, 2004, without reference as to whether they were franchisees of a particular line-make on that date or before, is not unreasonable under the circumstances.
- James Hammill, initially Roadtrek's General Manager and later President and CEO, testified that he had looked at the wording of Section 3072(b)(5) to determine its application to Roadtrek's intended appointment of MTRV as its franchised dealer. A layperson would not be reasonably expected to conduct the kind of extensive analysis contained in ALJ Skrocki's Order and later ruling. The section is unique to the RV industry; no similar exemption appears in the "establishment" section (3062) relative to passenger cars and trucks.
- According to James Hammill, "[Mega RV was] not in good standing under the agreement... [t]hey had no inventory, they weren't attempting to buy any inventory..." In late December of 2009, James Hammill was of the opinion that Roadtrek "... didn't have a relationship (with Mega RV)"..."[n]obody" was selling Roadtreks in the Los Angeles and Orange County areas.

RELATED MATTERS:

- Related Case Law: None.
- Applicable Statutes: Vehicle Code sections 331.1, 331.2, 3072 and 3072(b)(5).
- 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.