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CERTIFIED MAIL

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of MEGA RV CORP. dba MCMAHON'S RV, Protestant, v. ROADTREK MOTORHOMES, INC., Respondent.	**Protest No. PR-2201-10** **PROPOSED DECISION** **Vehicle Code section 3070(b)** **[Modification – Irvine]**

PROCEDURAL BACKGROUND

Parties and Counsel

1. Protestant Mega RV Corp doing business as McMahon's RV (herein "Mega RV" or "Protestant") is a recreational vehicle dealership, with several California and Arizona locations. Until early 2012, its primary dealership location was in Irvine, California at 6441 Burt Road, #10; on or about March 31, 2012, Protestant relocated that dealership to 5400 Garden Grove Boulevard, Westminster, California.

2. Mega RV is a California corporation owned by Brent McMahon. Mega RV is a

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"franchisee" within the meaning of Vehicle Code section 331.1.[1]

3. Protestant is represented by the Law Offices of Michael J. Flanagan, by Michael J. Flanagan, Esquire; Gavin M. Hughes, Esquire; Erin R. Hegedus McIntosh, Esquire; and Danielle R. Vare, Esquire (as of 11/21/11), 2277 Fair Oaks Boulevard, Suite 450, Sacramento, California.

4. Respondent Roadtrek Motorhomes, Inc. (herein "Roadtrek" or "Respondent") manufactures Class B motorhomes. It is located in Kitchener, Ontario, Canada.

5. Roadtrek is a Canadian corporation. Roadtrek is a "franchisor" within the meaning of Section 331.2.

6. Respondent is represented by Seyfarth Shaw, LLP, by Louis S. Chronowski, Esquire; and Kavitha Janardhan, Esquire (until 5/1/12), 131 South Dearborn Street, Suite 2400, Chicago, Illinois.

Preliminary Procedural Note

7. Between January and July of 2010, Mega RV filed with the New Motor Vehicle Board ("Board") 18 protests alleging violations of the Vehicle Code by Respondent Roadtrek involving Mega RV's dealership locations in Irvine, Colton, Scotts Valley and Palm Desert. By the first day of the hearing in August 2011, 12 protests had been consolidated for hearing, and six protests had been dismissed.

8. Also in 2010, Mega RV filed with the Board two petitions (Petition Nos. P-456-10 and P-457-10) against Roadtrek. Both petitions were rejected upon first consideration and the portions of the petitions that sought adjudication of the dispute pursuant to Section 3050(c)(2) were dismissed by the Board at the June 15, 2010, and December 3, 2010, General Meetings, respectively. The petitions also requested that the Board direct the Department of Motor Vehicles (hereinafter "DMV") to conduct an investigation of the allegations contained in the petitions and to order DMV to exercise any and all authority over Respondent's Occupational License. These requests were also denied at the meetings noted above.

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[1] Hereinafter, unless otherwise indicated, all Section references are to the Vehicle Code. The statutory references are subject to some qualification: although the parties are properly identified as "franchisee" and "franchisor" under Sections 331.1 and 331.2, it was only as of January 1, 2009 that Section 331.3 ("recreational vehicle franchise"), as well as Sections 11713.22 and 11713.23 ("written [RV] franchise agreement" and "sale of new [RV]") were enacted. Section 3072 ("establishing or relocating RV dealerships") became effective January 1, 2004.

9. On January 31, 2012, the September 20, 2010 order of consolidation for purposes of the merits hearing was amended for preparation of the Proposed Decisions and Decision by the Board; the new order consolidated the 12 protests into five groups, as follows:

Vehicle Code	Type of Protest	Filed	Protest Nos.
Section 3070(b)	Modification	January 29, 2010 January 29, 2010 January 29, 2010	PR-2198-10 (Scotts Valley)[2] PR-2199-10 (Colton) PR-2201-10 (Irvine)
Section 3075	Warranty reimbursement violations	February 9, 2010 February 18, 2010 February 18, 2010	PR-2206-10 (Colton) PR-2208-10 (Irvine) PR-2209-10 (Scotts Valley)
Section 3076	Franchisor incentive program violations	February 9, 2010 February 18, 2010 February 18, 2010	PR-2205-10 (Colton) PR-2211-10 (Scotts Valley) PR-2212-10 (Irvine)
Section 3072(a)	Establishment violations	May 11, 2010	PR-2233-10 (Colton)
Section 3070(a)	"*De facto* termination"	July 13, 2010 July 13, 2010	PR-2244-10 (Colton/Irvine) PR-2245-10 (Scotts Valley)

10. A hearing on the merits of the 12 protests was held before Administrative Law Judge Diana Woodward Hagle on the following dates in 2011: August 9 through 12, inclusive; August 15 through 19, inclusive; September 21 through 23, inclusive; September 30; November 7 through 11, inclusive; November 14 and 15; November 17 and 18; and November 28 through December 2, inclusive. Hearing dates in 2012 were the following: January 9 and 10; January 12 and 13; January 18 and 19; January 31; and February 1.

11. The hearing was re-opened for a telephonic hearing on April 26, 2012 to provide evidence of the relocation of Mega RV's primary dealership location from Irvine to Westminster.

12. The matters were submitted on May 3, 2012.[3]

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[2] Subsequently, Protestant requested dismissal of Protest PR-2198-10, which was ordered on March 6, 2012.

[3] In October 2010, counsel for the parties stipulated to extend the time the ALJ has to render the proposed decisions from 30 to 60 days after the matters were deemed submitted; the time for the Board to consider the proposed decisions was also extended from 30 to 60 days from the date the ALJ submits the proposed decisions. On May 29, 2012, counsel stipulated to extend the ALJ's time to final and sign the proposed decisions from 60 days to 90 days, or August 1, 2012.

Pendant Federal Case

13. The parties to these protests are also parties to an action for money damages currently pending in United States District Court in the Central District of California, Case No. CV 09-09466 SJO. The federal proceeding is stayed pending the Board's Decision in these protests. (RT 9/21: 36-37)[4]

Statement of the Case

Background

14. On January 29, 2010, Roadtrek executed a franchise agreement with a recreational vehicle[5] dealer other than Mega RV to sell and service Roadtrek motorhomes at dealership locations which Mega RV alleged were within Mega RV's "exclusive" territories, as more particularly described below.

Modification Protest No. PR-2201-10 - Irvine Dealership Location

15. On January 29, 2010, Mega RV filed Protest No. PR-2201-10 with the Board. The protest alleged that Roadtrek had violated Section 3070(b) by modifying Mega RV's Irvine, California franchise by establishing another franchisee, Mike Thompson's Recreational Vehicles, dba Mike Thompsons RV Superstores ("MTRV"), in the "exclusive sales area" Roadtrek had previously assigned to Mega RV's Irvine dealership location (i.e., within a 60-mile radius of the dealership).

16. No written notice was given by Roadtrek to Mega RV or the Board pursuant to Section 3070(b).[6]

Vehicle Code Section 3070(b) - Modification of a Franchise

17. Section 3070(b) provides, in pertinent part, the following:

> "Notwithstanding...the terms of any franchise, a franchisor of a dealer of recreational vehicles may not modify or replace a franchise with a succeeding franchise if the modification or replacement would substantially affect the franchisee's sales or service obligations or investment, unless the franchisor has first given the board and each affected franchisee written notice thereof at least 60 days in advance of the modification or replacement."

ISSUES PRESENTED

18. What effect, if any, does the relocation in March 2012 of Mega RV's dealership location

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[4] References herein to "RT" followed by a date (excluding the year) are to the transcripts of the proceedings. References to "Exh" are to Exhibits.

[5] Hereinafter, recreational vehicles will sometimes be referred to as "RVs".

[6] Such notice is required whenever a franchisor seeks to modify or replace a franchise with a succeeding franchise if the modification or replacement would substantially affect the franchisee's sales or service obligations or investment. (Section 3070(b))

from Irvine to Westminster have on the continuation of Protest No. PR-2201-10?

19. If the relocation has no effect on the continuation of the protest, then the issues are the following:

A. Did Roadtrek sustain its burden of proof of establishing that Mega RV had no franchise right to an exclusive territory since (as Roadtrek alleges) Mega RV was no longer in "good standing" under the Roadtrek franchise agreement?

B. If Roadtrek fails to sustain its burden of proof stated above, did Mega RV sustain its burden of proof of showing that Roadtrek's establishment of an additional Roadtrek franchise within Mega RV's "contractually assigned exclusive territory" was a "modification" of Mega RV's Colton franchise?

C. If Mega RV sustained its burden of proof that its franchise was "modified" by the establishment of an additional Roadtrek franchise, did Mega RV sustain its burden of proof of showing that the "modification" substantially affected Mega RV's sales or service obligations or investment?

PROTESTANT'S CONTENTION

20. Roadtrek's establishment of additional Roadtrek franchisees within Mega RV's "contractually assigned exclusive territories" were "modifications" of Mega RV's franchise that substantially affected Mega RV's sales or service obligations or investment. If this is found to be so, Roadtrek violated Section 3070(b) by failing to give notice to Mega RV and the Board of the intended additional franchise.

RESPONDENT'S CONTENTION

21. There was no modification since Mega RV no longer has a franchise right to the exclusive territories as Mega RV is no longer in "good standing" under the Dealer Agreement. Therefore, Roadtrek was under no statutory obligation to give notice to Mega RV of its establishment of additional Roadtrek franchise.

IDENTIFICATION OF WITNESSES AND EXHIBITS

Protestant's Witnesses

22. Brent McMahon is the president and CEO of Mega RV Corp, doing business as McMahon's RV. (RT 8/9: 76-173; 8/10: 14-244; 8/11: 6-267; 8/12: 7-249; 8/15: 6-205; 8/16: 6-124)

23. Paul Schilperoort is the Director of Operations at Mega RV, a position he has held since mid-2008. His duties include overseeing the "...daily operations of the entire company, which entail service and parts, the sales operations, and the accounting office". He initially was hired in November 2005 as service and parts director. (RT 8/16:127-220; 8/17:117-218; 8/18:6-215; 8/19:8-211; 9/21:9-190; 9/22: 6-71; 1/31:207-226; 2/1:6-144; 4/26:30-100)

24. Frank De Gelas[7] is the President of Mike Thompson's RV Super Stores, which operates RV dealerships in five locations in Southern California, including Colton, California.[8] (RT 1/13:7-77)

Respondent's Witnesses

25. Jeff Hanemaayer is the son of the founder of Roadtrek. Until 2009, he was Chairman of the company, handling marketing, finance and accounting. He described himself and James Hammill "...more as co-CEO's...", each involved in different areas of the company. (Exh 601; RT 11/14:11-249; 11/15:6-166)

26. James Hammill is President and CEO of Roadtrek. He was initially hired as General Manager in April 2005. He was appointed President around the beginning of 2007 and was named a Director of the company in 2008. He oversees "...all operations, everything tangible about the company, reporting to the board of directors... sales, manufacturing, engineering, quality, materials, purchasing... [e]ssentially all departments." (RT 9/22: 73-242; 9/23: 6-220; 11/7: 8-217; 11/8: 9-187; 11/9: 6-225; 11/10: 6-208; 11/11: 6-93)

Exhibits

27. Exhibit 600 is the Dealer Agreement between the parties which was executed on February 22, 2006. It establishes Roadtrek franchisees at Mega RV's Irvine and Colton dealership locations.

28. Exhibit 685 is the Roadtrek Motorhomes, Inc. Dealer Agreement with MTRV which was executed on January 29, 2010. It establishes Roadtrek franchisees at MTRV's dealership locations in Santa Fe Springs, Fountain Valley (two locations), and Colton (directly across the street from Mega RV's dealership).

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[7] Frank De Gelas was called as an adverse witness under Evidence Code section 776.

[8] MTRV has three year-round locations in Southern California and one temporary location. The Fountain Valley location has an address on both sides of the freeway and is counted as two locations. (RT 1/13: 8)

FINDINGS OF FACT[9]

Preliminary Findings

29. Roadtrek is a Class B motorhome manufacturer headquartered in Kitchener, Ontario, Canada. (RT 11/14:12-13) The company, founded by Jacques Hanemaayer, was previously known as Home & Park Motorhomes. (RT 11/14:12-15; 1/10:148-149)

30. Brent McMahon, the owner of Mega RV, started in the recreational vehicle business working with his stepfather, who owned a dealership (and who also sold Roadtrek RVs) at TraveLand, which once was a large multi-dealer RV park in Irvine, California. On December 1, 2000, Brent McMahon incorporated Mega RV Corp and started his own small dealership selling used RV's on one of the TraveLand lots. On April 9, 2001, he established Mega RV as a new recreational vehicle dealer. (Exh 1; RT 11/15: 177; 1/13: 66-67)

31. On February 22, 2006, Roadtrek and Mega RV entered into a Dealer Agreement covering Mega RV's Irvine, Colton and Stanton dealership locations. (Exh 600) The agreement was for a three-year period, and the parties contemplated that the agreement would be renewed. (Exh 600, Section 520)

32. The Dealer Agreement required Mega RV, in order "...to remain in good standing under this Agreement...", to maintain stocking levels of Roadtrek motorhomes at certain levels at each of Mega RV's dealership locations covered by the agreement. (Exh 600, Section 109) As long as Mega RV maintained its "good standing" status, Roadtrek guaranteed that it would not 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...". (Exh 600, Sections 107 and 108)

33. Also, Roadtrek promised in the Dealer Agreement to "work with Mega RV to expand his [Brent McMahon's] operation" and to "ensure that [Mega RV] receives first priority on new product in the State of California". In return, Brent McMahon promised that if he "expands his operation to new locations, Roadtrek will be the number one selling class B motorhome at those locations". (Exh 600, Section 111)

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[9] References herein to testimony, exhibits or other parts of the record are examples of evidence relied upon to reach a finding and are not intended to be all-inclusive.

34. As indicated above, on January 29, 2010, Respondent Roadtrek executed a Dealer Agreement[10] with MTRV to sell and service Roadtrek motorhomes. Frank De Gelas, President/Secretary of MTRV signed on behalf of the dealership and James Hammill signed on behalf of Roadtrek. The Dealer Agreement created a franchisee-franchisor relationship in which there were four MTRV dealership locations from which Roadtrek motorhomes would be sold and serviced: Santa Fe Springs (the "head office"), Fountain Valley (two locations), and Colton, California. (Exh 685; RT 4/26:18-19)

FINDINGS RELATIVE TO THE RELOCATION OF MEGA RV'S "TRAVELAND" DEALERSHIP IN IRVINE TO WESTMINSTER

35. In March of 2012, Mega RV closed its RV dealership at TraveLand in Irvine, California and relocated it to a new location in Westminster, California. (Exh 537; RT 4/26:31)

36. There is no "written RV franchise agreement" between the parties referencing Mega RV's dealership location in Westminster, California.

37. Nothing in the 2006 Dealer Agreement supports an argument that it would encompass a relocated dealership location. Although Roadtrek promised to "work with [Brent McMahon] to expand his operation...." and "...expansions will be negotiated at the time of the expansion"---these phrases connote not only active participation by Roadtrek, but also the establishment of additional dealerships, not relocation of an existing dealership. (Exh 600, Section 111)

38. There is no evidence that Roadtrek participated in, or consented to, the relocation of Mega RV's dealership from Irvine to Westminster.

39. There is no evidence that the parties intended to establish a Roadtrek franchise at Mega RV's relocated dealership location in Westminster.

40. There is no franchise for Mega RV to sell Roadtrek vans from its Westminster dealership.

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[10] The Roadtrek-MTRV Dealer Agreement (Exh 685) is a "written recreational vehicle franchise agreement" pursuant to Sections 331.3, 11713.22 and 11713.23.

CONCLUSIONS

There is No Franchise for Mega RV to Sell Roadtrek RVs at its Westminster Dealership Location and Therefore No Jurisdiction of the Board

41. In regard to Protest No. PR-2201-10 (Irvine location), Mega RV cannot maintain a protest for its new location in Westminster because it does not have a Roadtrek franchise for that dealership. Roadtrek has no contractual relationship with Mega RV for the Westminster location; there is no written agreement between Mega RV's Westminster location and Roadtrek which would qualify as a franchise under Sections 331.3, 11713.22, and 11713.23.

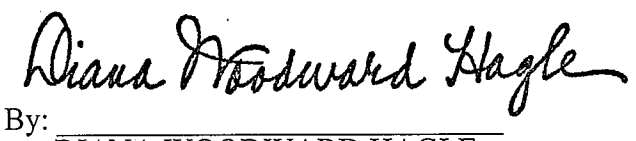
42. For the Board to have jurisdiction over this protest there must be a "franchise" in existence under the terms of which Mega RV's Westminster dealership would be a "franchisee" and Roadtrek would be a "franchisor". (Section 3079) That is not the case.

PROPOSED DECISION

Based on the evidence presented and the findings herein, IT IS HEREBY ORDERED THAT the Protest in *Mega RV Corp., dba McMahon's RV v. Roadtrek Motorhomes, Inc.*, Protest No. PR-2201-10, is overruled. The protest is hereby dismissed with prejudice.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter, as the result of a hearing before me, and I recommend this Proposed Decision be adopted as the decision of the New Motor Vehicle Board.

DATED: July 30, 2012



By: _____
DIANA WOODWARD HAGLE
Administrative Law Judge

George Valverde, Director, DMV
Mary Garcia, Branch Chief,
Occupational Licensing, DMV