



DECISION COVER SHEET

ACTION BY: Public Members Only

ACTION BY: All Members

To : BOARD MEMBERS

Date: October 31, 2013

From : ADMINISTRATIVE LAW JUDGE: Victor D. Ryerson

CASE: ALDON, INC. dba CARSON TOYOTA v. TOYOTA MOTOR SALES, U.S.A., INC.;
H.T.L. AUTOMOTIVE INC., dba HOOMAN TOYOTA OF LONG BEACH and
HOOMAN SCION OF LONG BEACH (Intervenor)

Protest No. PR-2339-12

ALDON, INC. dba CARSON SCION v. TOYOTA MOTOR SALES, U.S.A., INC.;
H.T.L. AUTOMOTIVE INC., dba HOOMAN TOYOTA OF LONG BEACH and
HOOMAN SCION OF LONG BEACH (Intervenor)

Protest No. PR-2340-12

CABE BROTHERS dba CABE TOYOTA and CABE SCION v. TOYOTA MOTOR
SALES, U.S.A., INC.; H.T.L. AUTOMOTIVE INC., dba HOOMAN TOYOTA OF
LONG BEACH and HOOMAN SCION OF LONG BEACH (Intervenor)

Protest No. PR-2342-12

TYPE: Vehicle Code section 3062 Relocation - Proposed Decision

PROCEDURE SUMMARY:

- FILED ON CALENDAR: August 16, 2012, August 16, 2012, and August 22, 2012, respectively

- MOTIONS FILED:

Pre-Hearing Motions:

- H.T.L. Automotive Inc., dba Hooman Toyota of Long Beach and Hooman Scion of Long Beach's Motion to Intervene (granted).
- Toyota Motor Sales, U.S.A., Inc.'s Motion to Strike Additional Expert Witnesses Identified by Cabe Brothers, Inc. (granted).
- Protestant Aldon Inc., dba Carson Toyota and Protestant Aldon Inc., Carson Scion's Motion to Amend the Prehearing Conference Order to Reflect an Anticipated Merits Hearing Date of July 1 or in the Alternative, May 6 or May 13 (denied).
- Cabe Brothers dba Cabe Toyota and Cabe Scion's Motion for an Order Extending the Deposition Cut-Off Date (denied) and Permitting the Deposition of Mark Zimmerman (granted).

- Toyota Motor Sales, U.S.A., Inc. and H.T.L. Automotive Inc., dba Hooman Toyota of Long Beach and Hooman Scion of Long Beach's Motion to Exclude Evidence of Potential Alternative Facility Options for Hooman Toyota (granted).
- Toyota Motor Sales, U.S.A., Inc.'s Motion to Exclude Financial Analysis Untimely Produced by Cabe Toyota (denied).
- Cabe Brothers dba Cabe Toyota and Cabe Scion's Motion to Compel Production of Documents (Set One) Propounded to Toyota Motor Sales, U.S.A., Inc. [Hooman Toyota President's Award Criteria for 2008-Present] (granted).
- H.T.L. Automotive Inc., dba Hooman Toyota of Long Beach and Hooman Scion of Long Beach's Motion to Exclude Department of Motor Vehicles Documents Pertaining to Hooman Toyota (granted).
- H.T.L. Automotive Inc., dba Hooman Toyota of Long Beach and Hooman Scion of Long Beach's Motion to Exclude Testimony of Greg Beck (denied)
- H.T.L. Automotive Inc., dba Hooman Toyota of Long Beach and Hooman Scion of Long Beach's Motion to Exclude the Declaration of Dave Wilson (granted).
- H.T.L. Automotive Inc., dba Hooman Toyota of Long Beach and Hooman Scion of Long Beach's Motion to Exclude the Declaration of Jim Speck (denied).
- H.T.L. Automotive Inc., dba Hooman Toyota of Long Beach and Hooman Scion of Long Beach's Motion to Exclude all documents untimely produced by Protestants (denied)
- Cabe Brothers dba Cabe Toyota and Cabe Scion's Request for Judicial Notice (granted).

Post-Hearing Motions:

- Aldon, Inc. dba Carson Toyota and Carson Scion's Motion to Strike Portions of Memorandum of Site Visit June 27, 2013 Long Beach, California (granted).
- H.T.L. Automotive Inc., dba Hooman Toyota of Long Beach and Hooman Scion of Long Beach and Toyota Motor Sales, U.S.A., Inc.'s Joint Notice of Motion and Motion to Strike Cabe Toyota's Post-Hearing Opening Brief (denied in part and granted in part).

• HEARING: June 3-7, 2013, June 10-14, 2013, and June 17-21, 2013

• COUNSEL FOR PROTESTANTS: Halbert B. Rasmussen, Esq.
 Franjo M. Dolenac, Esq.
 Attorneys for Aldon Toyota and Aldon Scion
 Manning, Leaver, Bruder & Berberich

Gregory J. Ferruzzo, Esq.
 Attorney for Cabe Toyota and Cabe Scion
 Ferruzzo & Ferruzzo, LLP

• COUNSEL FOR RESPONDENT: Steven A. McKelvey, Jr., Esq.
 S. Keith Hutto, Esq.
 Steven B. McFarland, Esq.
 Nelson Mullins Riley & Scarborough, LLP

- COUNSEL FOR INTERVENOR: Michael J. Flanagan, Esq.
Gavin M. Hughes, Esq.
Danielle R. Vare, Esq.
Law Offices of Michael J. Flanagan

EFFECT OF PROPOSED DECISION: The Proposed Decision¹ overrules Protest Nos. PR-2339-12 and PR-2340-12 of Aldon, Inc., a California corporation dba Carson Toyota and Carson Scion (Carson), and overrules Protest No. PR-2341-12 of Cabe Brothers, a California Corporation, dba Cabe Toyota and Cabe Scion (Cabe).

The effect of the decision is to permit the relocation by H.T.L. Automotive, Inc., dba Hooman Toyota of Long Beach and Hooman Scion of Long Beach (Hooman) to 3399 E. Willow Street and 2679 Redondo Avenue, Long Beach, California, pursuant to its notice dated August 2, 2012.

SUMMARY OF PROPOSED DECISION:

Pursuant to Vehicle Code Section 3063, The Board is required to decide whether good cause has been established for not permitting Hooman to relocate as proposed. In so doing, the Board must consider, without limitation, the following circumstances and make determinations thereon. Based upon the evidence and arguments of the parties, the proposed decision determines as follows:

- Cabe has established that its investment is permanent. (Section 3063(a))
- Carson has established that its investment is permanent. (Section 3063(a))
- Hooman has established that its investment is permanent. (Section 3063(a))
- Cabe has not shown that Hooman's relocation would have an adverse effect on the retail motor vehicle business and the consuming public in the relevant market area. (Section 3063(b))
- Carson has not shown that Hooman's relocation would have an adverse effect on the retail motor vehicle business and the consuming public in the relevant market area. (Section 3063(b))
- Cabe has not shown that it would be injurious to the public welfare for the Hooman Toyota dealership to be relocated. (Section 3063(c))
- Carson has not shown that it would be injurious to the public welfare for the Hooman Toyota dealership to be relocated. (Section 3063(c))

¹ See Exhibit 1164 attached hereto.

- Cabe has established that Toyota franchisees are providing adequate competition and convenient consumer care for Toyota and Scion vehicles in the relevant market area, including whether motor vehicle sales and service facilities, equipment, supply of vehicle parts, and service personnel are adequate. (Section 3063(d))
- Carson has established that Toyota franchisees are providing adequate competition and convenient consumer care for Toyota and Scion vehicles in the relevant market area, including whether motor vehicle sales and service facilities, equipment, supply of vehicle parts, and service personnel are adequate. (Section 3063(d))
- Cabe has not shown that competition would not increase if the relocation is allowed, and that the public interest would therefore not be served. (Section 3063(e))
- Carson has not shown that competition would not increase if the relocation is allowed, and that the public interest would therefore not be served. (Section 3063(e))
- Cabe has not sustained its burden of proof of showing good cause why Hooman should not be permitted to relocate its dealership to the Proposed Location. (Section 3063)
- Carson has not sustained its burden of proof of showing good cause why Hooman should not be permitted to relocate its dealership to the Proposed Location. (Section 3063)

RELATED MATTERS:

- Related Case Law: There are no published court decisions applicable to this case.
- Applicable Statutes and Regulations: Vehicle Code sections 331.1, 331.2, 3062, and 3063.

DISTANCE FROM PRESENT TO PROPOSED SITE:
1.13 air miles.

