VIA E-MAIL

RECEIVED
SEP 15 2017
NEW MOTOR VEHICLE BOARD

LAW OFFICES OF GAVIN M. HUGHES
GAVIN M. HUGHES State Bar #242119
ROBERT A. MAYVILLE, JR. State Bar #311069
3436 American River Drive, Suite 10
Sacramento, CA 95864
Telephone: (916) 900-8022
E-mail: gavin@hughesdealerlaw.com

ATTORNEYS FOR PROTESTANT

FILED
NEW MOTOR VEHICLE BOARD
DATE 9-15-17
BY MT

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of:

ASIAN PACIFIC INDUSTRIES, INC., dba JAGUAR LAND ROVER STEVENS CREEK,

Protestant,

v.

JAGUAR LAND ROVER NORTH AMERICA, LLC,

Respondent.

PROTEST NO: PR-2530-17

PROTEST
[Vehicle Code Section 3060 (b)(1)]

Protestant, Asian Pacific Industries, Inc., dba Jaguar Land Rover Stevens Creek, a California corporation, qualified to do business in California, through its attorneys, files this protest under provisions of California Vehicle Code Section 3060 (b)(1) and alleges as follows:

1. Protestant is a new motor vehicle dealer selling Jaguar vehicles and parts, is duly licensed as a vehicle dealer by the State of California, and is located at, 440 Stevens Creek Boulevard, San Jose, California 95129; Protestant's telephone number is (408) 246-7660.

2. Respondent, Jaguar Land Rover North America, LLC, distributes Jaguar products and is the franchisor of Protestant.

3. Protestant is represented in this matter by Law Offices of Gavin M. Hughes, whose address and telephone number are 3436 American River Drive, Suite 10, Sacramento, California 95864; (916) 900-8022.

4. Respondent operates an incentive program entitled Business Builder Bonus Program ("BBBP"). The BBBP incentive funds available to Jaguar dealers represent 7% of invoice for all vehicles retailed. Respondent modified the BBBP program performance categories over time. Currently, Respondent measures Protestant's eligibility for receiving BBBP incentive monies based upon its performance, as measured by Respondent, under six (6) categories: 1.) Facility Reserve; 2.) Approved; 3.) Training; 4) In Territory Sales; 5.) Sales Objectives; and 6.) Customer Pay Hours Sold. Each category counts as 1% toward the total available 7% of invoice, with the exception of Facility Reserve, which accounts for 2%.

5. Respondent pays dealers the amount of BBBP incentive funds it determines each dealer is entitled, on a quarterly basis. Dealers qualifying for the full amount of BBBP funds enjoy a competitive advantage over those dealers that do not receive the full amount.

6. Respondent's refusal to pay Protestant the full 7% of BBBP funds is based, in part, upon an overly-broad assigned dealer territory designed to overstate Protestant's UIO count and the corresponding Customer Pay Hours Sold component of the BBBP program.

7. The administration of the BBBP program substantially impacts Protestant's sales and service obligations and investment and is an inseparable component of the franchise agreement. As such, any changes to the BBBP program substantially impact Protestant's sales and service obligations and investment and require statutory notice pursuant to Vehicle Code Section 3060 (b)(1).

8. Respondent recently modified the BBBP program to include the Customer Pay Hours component, effective April 1, 2017. This material modification of Protestant's franchise agreement substantially affects Protestant's sales and service obligations and its investment. Respondent was required to provide statutory notice of this proposed modification, pursuant to 3060 (b)(1), but failed to do so.

9. The Customer Pay Hours Component materially modifies Protestant's and other JLRNA dealers' existing service obligations, which adversely impacts the public welfare. The modification,

requiring dealers to capture a minimum amount of customer pay service hours, erodes consumer confidence for customers receiving service work from JLRNA dealers and encourages abuse.

10. Respondent does not have good cause to modify or to replace Protestant's franchise by reason of the following facts:

(a) Protestant is a franchised Jaguar dealer under a written franchise agreement with Respondent.

(b) Protestant has made a substantial and permanent investment in the franchise.

(c) Protestant has transacted and is transacting an adequate amount of Jaguar business compared to the business available to it.

(d) Protestant fulfills the warranty obligations to be performed by it.

(e) The extent of any failure of Protestant to comply with the terms of the franchise agreement is immaterial.

(f) Protestant has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified personnel to reasonably provide for the needs of the Jaguar buyers and owners in the market area and is rendering adequate service to the public.

(g) The proposed modifications to Protestant's franchise will substantially affect Protestant's sales and service obligations and investments without good cause.

11. Protestant and its attorneys desire to appear before the Board and/or its designated hearing officer for the purpose of presenting oral and documentary evidence concerning the matters herein alleged. Protestant estimates the hearing in this matter will take ten (10) days to complete.

WHEREFORE, Protestant prays as follows:

1. That the Board sustain this Protest and order Respondent not to modify or replace Protestant's franchise nor refuse to continue its existing franchise and immediately pay Protestant any BBBP funds withheld pursuant to the terms of the unlawful modification.

2. That pending the hearing in this matter, the Board or its secretary or authorized representative immediately order Respondent not to modify, replace, or refuse to continue Protestant's franchise unless and until Respondent has established good cause for such actions under the provisions of

Vehicle Code Sections 3060 and 3061.

3. That a pre-hearing conference be set and the parties notified thereof.

4. That Protestant be awarded such other and further relief as the Board deems just and proper.

Dated: September 15, 2017

LAW OFFICES OF
GAVIN M. HUGHES

By Gavin Hughes
Gavin M. Hughes
Attorneys for Protestant

DECLARATION OF SERVICE BY US MAIL

I, Robert A. Mayville, Jr., 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 3436 American River Drive, Suite 10, Sacramento, California 95864.

I declare that on September 15, 2017, I caused to be served a true and complete copy of:

PROTEST [Vehicle Code Section 3060(b)(1)]
Jaguar Franchise

Asian Pacific Industries, Inc., dba Jaguar Land Rover Stevens Creek
v.
Jaguar Land Rover North America, LLC

PROTEST [Vehicle Code Section 3065.1]
Jaguar Franchise

Asian Pacific Industries, Inc., dba Jaguar Land Rover Stevens Creek
v.
Jaguar Land Rover North America, LLC

PROTEST [Vehicle Code Section 3060(b)(1)]
Land Rover Franchise

Asian Pacific Industries, Inc., dba Jaguar Land Rover Stevens Creek
v.
Jaguar Land Rover North America, LLC

PROTEST [Vehicle Code Section 3065.1]
Land Rover Franchise

Asian Pacific Industries, Inc., dba Jaguar Land Rover Stevens Creek
v.
Jaguar Land Rover North America, LLC

///

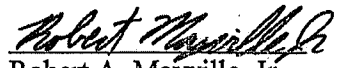
///

By US Mail:

Thomas J. Loveless
Region VP-Western Region
Jaguar Land Rover North America, LLC
555 MacArthur Blvd.
Mahwah, NJ 07430

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

Executed this 15 September, 2017, Sacramento, California.



Robert A. Mayville, Jr.