

NEW MOTOR VEHICLE BOARD  
1507 - 21st Street, Suite 330  
Sacramento, California 95814  
Telephone: (916) 445-2080

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of )  
RAY'S RVS, INC., ) Protest No. PR-1922-04  
Protestant, )  
v. )  
ECLIPSE/ATTITUDE )  
Respondent. )

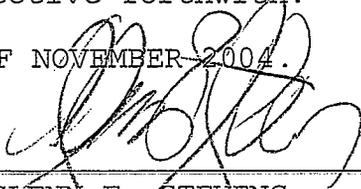
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DECISION

At its regularly scheduled meeting of November 4, 2004, the Public members of the Board met and considered the administrative record and Proposed Ruling Granting Respondent's Motion to Dismiss in the above-entitled matter. After such consideration, the Board adopted the Proposed Ruling as its final Decision in this matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 4<sup>th</sup> DAY OF NOVEMBER 2004.

  
GLENN E. STEVENS  
President  
New Motor Vehicle Board

1 NEW MOTOR VEHICLE BOARD  
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2 Sacramento, California 95814  
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CERTIFIED MAIL

8 STATE OF CALIFORNIA  
9 NEW MOTOR VEHICLE BOARD

11 In the Matter of the Protest of )  
12 RAY'S RVS, INC., ) Protest No. PR-1922-04  
13 Protestant, )  
14 v. ) PROPOSED RULING GRANTING  
ECLIPSE/ATTITUDE ) RESPONDENT'S MOTION TO  
15 ) DISMISS PROTEST (VEHICLE CODE  
Respondent. ) SECTION 3072)  
16 )

18 To: Ray Myers  
In Pro Per  
19 RAYS RVS  
411 Glide Avenue  
20 West Sacramento, California 95691

21 Matthew A. Hodel, Esq.  
Michael S. Leboff, Esq.  
22 Attorneys for Respondent  
HODEL BRIGGS WINTER LLP  
23 8105 Irvine Center Drive, Suite 1400  
Irvine, California 92618-4930

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FACTUAL AND PROCEDURAL BACKGROUND

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2 1. Protestant, Ray's RVS, Inc. (hereafter "Ray's"), is a seller  
3 of recreational vehicles and has three locations. The locations are:  
4 900 El Camino Ave., Sacramento, California ("Sacramento  
5 location");  
6 411 Glide Ave., West Sacramento, California ("West Sacramento  
7 location"); and  
8 4560 Central Ave., Fairfield, California ("Fairfield location").  
9 (The Sacramento location and the West Sacramento location are sometime  
10 referred to in the pleadings as "Sacramento locations".)

11 2. Respondent, the correct name of which is Eclipse  
12 Recreational Vehicles, Inc. (hereafter "Eclipse"), is a manufacturer  
13 of the "'Attitude' line of toy haulers, which are lightweight travel-  
14 trailers used to carry items, such as dirt bikes or all-terrain  
15 vehicles." (Trealoff Declaration, Page 5, lines 14-15)

16 3. On August 3, 2004, Ray's filed a protest with the New Motor  
17 Vehicle Board (hereafter "Board") asserting Ray's alleged rights  
18 pursuant to the provisions of California Vehicle Code section 3072.<sup>1</sup>  
19 In this protest, Ray's alleges that an additional recreational vehicle  
20 dealership of the same line-make was being established by Eclipse and  
21 that both the Sacramento and West Sacramento locations of Ray's

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27 <sup>1</sup> All statutory references are to the California Vehicle Code unless otherwise  
28 indicated. The application of this specific section will be discussed more fully  
below.

1 dealerships are within the relevant market area<sup>2</sup> of the additional  
2 dealership.

3 4. On September 8, 2004, Eclipse filed "RESPONDENT ECLIPSE  
4 RECREATIONAL VEHICLE, INC., 'S (sic) MOTION TO DISMISS PROTEST;  
5 DECLARATION OF DALLEN TREALOFF; EXHIBITS".

6 5. On September 24, 2004, Ray's filed "PROTESTANT RAYS RVS  
7 INC., 'S (sic) OPPOSITION OF RESPONDENTS MOTION TO DISMISS PROTEST;  
8 DECLARATION OF RAY MYERS; EXHIBITS".

9 6. On October 5, 2004, Eclipse filed "RESPONDENT ECLIPSE  
10 RECREATIONAL VEHICLE, INC., 'S (sic) REPLY BRIEF IN SUPPORT OF MOTION  
11 TO DISMISS PROTESTS".

12 7. On October 12, 2004, the Motion to Dismiss was heard before  
13 Anthony M. Skrocki, Administrative Law Judge for the Board. Mr. Ray  
14 I. Myers, President of Ray's RVS Inc., represented Protestant.  
15 Michael S. LeBoff of the law firm of Hodel Briggs Winter LLP  
16 represented Respondent.

17 **CONTENTIONS OF ECLIPSE**

18 8. Eclipse, in its Motion to Dismiss, asserts that Ray's is not  
19 a franchisee located within the relevant market area because Ray's  
20 does not now and never has had a franchise to sell Eclipse products at  
21 the Sacramento location and that Ray's does not now and never has had  
22 a franchise to sell Eclipse products at the West Sacramento location.

23 9. Eclipse asserts that because there is no franchise in  
24 existence for either the Sacramento or West Sacramento location, Ray's  
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26 <sup>2</sup> Section 507 provides: "The 'relevant market area' is any area within a radius of  
27 10 miles from the site of a potential new dealership." It is conceded by Eclipse that  
28 Ray's is a franchisee of Eclipse in regard to the Fairfield location. Ray's is not  
contending that its Fairfield franchise is within the relevant market area of the  
additional Eclipse dealer being established in Sacramento.

1 has no standing to file a protest with the Board challenging the  
2 establishment of another Eclipse dealer in the Sacramento market.

3 ISSUES PRESENTED

4 DOES RAY'S HAVE A FRANCHISE FOR EITHER LOCATION

5 Statutory Requirements

6 10. For Ray's to have a right, pursuant to Section 3072, to  
7 protest the establishment of an additional recreational vehicle  
8 dealership, Ray's must be a franchisee of the same line-make<sup>3</sup> and be  
9 located within the relevant market area of the proposed additional  
10 dealership.

11 11. This requires that there must first be a "franchise"  
12 between Ray's and Eclipse under which Ray's was established as an  
13 Eclipse dealer at a location within ten miles of the new dealership  
14 (the relevant market area).

15 12. Section 331(a) in part defines a "franchise" as follows: "A  
16 'franchise' is a **written agreement** between two or more persons having  
17 all of the following conditions:..." (Emphasis added.)

18 13. The issue then becomes whether Ray's has a "written  
19 agreement" establishing it as an Eclipse dealer at either the  
20 Sacramento or the West Sacramento location.

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26 <sup>3</sup> Section 3072.5 provides: "For the purposes of this article, a 'recreational vehicle  
27 line-make' is a group or groups of recreational vehicles defined by the terms of a  
28 **written agreement that complies with Section 331.**" (Emphasis added.) Section 331 is  
the definition of a "franchise".



1 locations." It also states, "The only time I authorized Ray's to sell  
2 Eclipse products in the Sacramento area was at the 51<sup>st</sup> Annual Sacto  
3 Sports Boat and RV Show at 1600 Exposition Blvd. in Sacramento.  
4 ...But, as clearly stated in the OL124, Ray's authority to sell  
5 products with (sic) expressly limited to that show, and only between  
6 February 13 and 16, 2004."

7 20. Mr. Myers, during the hearing on October 12, 2004, asserted  
8 that there was an oral agreement between Ray's and Eclipse that Ray's  
9 would be the Eclipse franchisee in the Sacramento area. However, Mr.  
10 Myers candidly admitted that Ray's does not have a written franchise  
11 with Eclipse for either the Sacramento or West Sacramento location.

12 CONCLUSION AS TO WHETHER THERE IS A "FRANCHISE" THAT WOULD GIVE  
13 RAY'S STANDING TO FILE A PROTEST PURSUANT TO SECTION 3072

14 21. It is determined that there is no "written agreement" that  
15 would constitute a "franchise" within the meaning of Section 331(a)  
16 for either the Sacramento or West Sacramento location of Ray's, and  
17 therefore Ray's does not have standing to file a protest pursuant to  
18 the provisions of Section 3072 in regard to the additional Eclipse  
19 dealership sought to be established in Sacramento.

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