

1507 - 21st Street, Suite 330  
Sacramento, California 95814  
Telephone: (916) 445-1888

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Petition of )  
PERSON OLDSMOBILE, ) **Petition No. P-208-90**  
Petitioner, )  
vs. )  
OLDSMOBILE MOTOR DIVISION, GENERAL )  
MOTORS CORPORATION, )  
Respondent. )

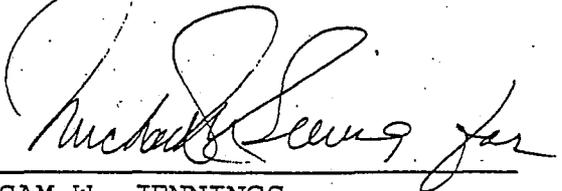
---

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the New Motor Vehicle Board as its Decision in the above entitled matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 12<sup>th</sup> day of September 1995.

  
SAM W. JENNINGS  
Chief Administrative Law Judge/  
Executive Secretary

1 1507 21st Street, Suite 330  
2 Sacramento, California 95814  
3 Telephone (916) 445-1888  
4

5 **STATE OF CALIFORNIA**  
6 **NEW MOTOR VEHICLE BOARD**  
7

8 In the Matter of the Petition of ) **Petition No. P-208-90**  
9 PERSON OLDSMOBILE, )  
10 )  
11 ) **PROPOSED DECISION**  
12 )  
13 )  
14 )  
15 )  
16 )  
17 )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

15  
16 **PROCEDURAL BACKGROUND**

17 1. By letter dated March 9, 1990, Oldsmobile Motor Division,  
18 General Motors Corporation ("Oldsmobile") gave notice to Person Oldsmobile  
19 ("Person"), pursuant to California Vehicle Code section 3062<sup>1</sup>, of  
20 Oldsmobile's intention to establish Oldsmobile representation on a dual  
21 basis with Chevrolet at 805 Central Avenue, Monrovia, California. The  
22 notice was received by the New Motor Vehicle Board ("Board") on  
23 March 12, 1990.

24 2. Person was a licensed new motor vehicle dealer enfranchised to  
25 sell Oldsmobile vehicles. Person was located at 2525 E. Workman Avenue,  
26 West Covina, California.

27 \_\_\_\_\_  
28 <sup>1</sup> All statutory references are to the California Vehicle Code  
unless otherwise indicated.

1 3. Oldsmobile is a manufacturer of new motor vehicles in  
2 California.

3 4. On March 23, 1990, Person filed a protest with the Board  
4 pursuant to the provisions of section 3062. The Board assigned Protest  
5 Number PR-1158-90 to the protest filed by Person against Oldsmobile.

6 5. On May 21, 1990, Person filed a petition against Oldsmobile,  
7 pursuant to the provisions of sections 3050(c), 11713(a), and 11713.2(e),  
8 alleging *inter alia*, fraud in the inducement to enter into the franchise  
9 that existed between Person and Oldsmobile. The petition was subsequently  
10 amended on October 11, 1990. The Board assigned Petition Number P-208-90  
11 to the petition filed by Person.

12 6. The petition and protest were not consolidated.

13 7. A five-day hearing on the protest was held before Michael M.  
14 Sieving, Administrative Law Judge, commencing on May 30, 1990, and ending  
15 on June 6, 1990. On September 21, 1990, the Board adopted the proposed  
16 decision overruling the protest. Oldsmobile was permitted to establish  
17 the proposed dealership at 805 Central Avenue, Monrovia, California.

18 8. On April 19, 1995, the Board issued an Order bifurcating the  
19 issues of liability and damages raised by the petition.

20 9. A hearing on the liability phase of the petition was held before  
21 Michael M. Sieving, Administrative Law Judge, on May 4, 1995, at  
22 Sacramento, California.

23 10. By stipulation of the parties, the entire evidentiary record in  
24 the protest proceeding (PR-1158-90) was admitted as part of the record  
25 herein.

26 11. Petitioner was represented by Michael Miller, Esq. of Ollestad,  
27 Freedman, Taylor & Miller, 185 Pier Avenue, Santa Monica, California.

28 12. Respondent was represented by Wallace M. Allan, Esq. of

1 O'Melveny & Myers, 400 S. Hope Street, Los Angeles, California and  
2 Joseph Lines, III, Esq., General Motors Corporation, 3031 West Grand  
3 Boulevard, Post Office Box 33122, Detroit, Michigan.

4 CONTENTIONS OF THE PARTIES

5 13. Person seeks to have the Board determine that Oldsmobile is  
6 liable for its fraudulent concealment in failing to disclose, and deceit  
7 in misrepresenting, at the time Person signed its Dealer Sales and Service  
8 Agreement with Oldsmobile, Oldsmobile's plan to establish an open point  
9 for new Oldsmobile representation within the market area Petitioner  
10 believed it was acquiring.<sup>2</sup>

11 14. Person contends that a franchisor must disclose such facts that  
12 materially affect the desirability of the franchise. Furthermore, Person  
13 asserts that the Board should require disclosure, under Civil Code section  
14 1710(3), of any final, formal recommendation by a factory zone or region  
15 to its national dealer planning manager for the establishment of an open  
16 point which would substantially impact the desirability of a franchise to  
17 a pending dealer-applicant.

18 15. Oldsmobile's position is that because there is no fiduciary  
19 relationship between an automobile manufacturer and its dealers, it has no  
20 legal obligation to disclose its internal market deliberations to its  
21 dealers before or after the franchise agreement is signed. Furthermore,  
22 if a disclosure is voluntarily made by a manufacturer, it must be full and  
23 fair. However, the fact that a disclosure is made does not obligate the  
24

---

25 <sup>2</sup> In its Petition, Person alleged that Oldsmobile  
26 representatives had assured Mr. Person that if he increased his market  
27 penetration to a level equal to that of zone average then a new dealer  
28 would not be appointed in the study area. There was no evidence offered  
in support of this contention. Moreover, nowhere in Person's post-  
hearing briefs is this issue addressed. Accordingly, it is determined  
that Person has abandoned this assertion.

1 manufacturer to explain every detail and fact that the prospective dealer  
2 might find relevant.<sup>3</sup>

3 ISSUES PRESENTED

4 16. Is there a fiduciary relationship between a prospective new  
5 motor vehicle dealer franchisee and the prospective franchisor which would  
6 require disclosure of all facts known to the franchisor which could  
7 reasonably affect the prospective franchisee's decision to execute the  
8 Sales and Service Agreement?

9 17. Is there a "special relationship" between a prospective  
10 franchisee and franchisor which would require disclosure of such facts or  
11 information?

12 18. In May of 1989, when Warren Person executed the Oldsmobile Sales  
13 and Service Agreement, what determinations had Oldsmobile made with  
14 respect to the addition of Oldsmobile representation in Monrovia,  
15 California?

16 19. Was Oldsmobile's determination with respect additional  
17 representation in Monrovia material to the decision by Person to execute  
18 the franchise in May of 1989?

19 20. Did Oldsmobile have a duty to disclose the status of its  
20 deliberations with respect to the Monrovia establishment, as they existed  
21 in May of 1989, to Mr. Person before he executed the Oldsmobile Sales and  
22 Service Agreement?

---

23  
24 <sup>3</sup> Oldsmobile has additionally argued that, since the franchise  
25 specifically states that the appointment of the dealer is on a  
26 nonexclusive basis, Person's claims are barred by application of the  
27 Parol Evidence Rule. This contention is without merit. Person has not  
28 sought to introduce parol evidence to contradict the express terms of an  
agreement containing an integration clause in the context of an action  
founded in breach of contract. Instead, Person's claims are based upon  
an allegation that Oldsmobile perpetrated fraud in the inducement of the  
agreement. Under this situation, parol evidence is admissible even when  
it contradicts the terms of the franchise.

1 21. If Oldsmobile had a legal obligation to disclose rele( it  
2 information regarding the Monrovia point at the time of the proposed  
3 buy/sell, does Oldsmobile's failure to disclose constitute fraud?

4 22. Were the statements made by Oldsmobile representatives that "it  
5 was looking at the MDA [Multiple Dealer Area] for the possibility of  
6 further representation" truthful, and not misleading?

7 **FINDINGS OF FACT**

8 23. In June of 1988, Oldsmobile performed a Statistical Market  
9 Analysis ("SMA") of the Pasadena/Ontario market. The SMA recommended  
10 establishing an open point in El Monte, California. David Barnett  
11 ("Barnett"), Oldsmobile Zone Manager for Los Angeles, recommended  
12 Oldsmobile "go towards Monrovia instead of El Monte".

13 24. On December 13, 1988, Price Gledhill ("Gledhill"), dealer  
14 principal of Price Chevrolet, wrote a letter to Oldsmobile expressing  
15 interest in establishing a dual Chevrolet-Oldsmobile dealership in  
16 Monrovia.

17 25. Joseph Rizzuto ("Rizzuto"), Oldsmobile Regional Development  
18 Manager, investigated the sales effectiveness and CSI (Customer  
19 Satisfaction Index) of Gledhill Chevrolet in Monrovia. Rizzuto obtained  
20 the CSI scores for a three-month period and a twelve-month period, the  
21 scores were 71 and 73, respectively. The scores were below the Chevrolet  
22 Zone Standard of 79.

23 26. In January of 1989, Barnett and Rizzuto decided that Gledhill  
24 probably could not obtain the capitol necessary to proceed with his desire  
25 to become the Monrovia Oldsmobile dealer.

26 27. In late 1988 and early 1989, Mandy Williams ("Williams"), dealer  
27 principal of Williams Oldsmobile, negotiated to sell his West Covina  
28 dealership to Warren Person. These negotiations resulted in the sig g

1 of a stock purchase agreement on February 27, 1989. Mr. Person negotiated  
2 the stock purchase agreement without the assistance or participation of  
3 Oldsmobile.

4 28. Mr. Person was not encouraged by Oldsmobile to purchase the  
5 dealership from Williams. Williams did not solicit Oldsmobile's  
6 assistance in selling his dealership. In fact, Oldsmobile played no role  
7 whatsoever in bringing Mr. Person and Williams together. Oldsmobile did  
8 not encourage Williams to sell his dealership and would have been  
9 satisfied if he continued to own and operate the dealership.

10 29. On February 27, 1989, after the stock purchase agreement was  
11 signed, Mr. Person and Williams met with Barnett and Rizzuto at the  
12 Oldsmobile zone office. The purpose of the meeting was to discuss with  
13 Oldsmobile personnel the buy/sell agreement which had just been executed  
14 by Mr. Person and Williams.

15 30. During the meeting of February 27, 1989, there were no  
16 representations or discussions regarding Oldsmobile's market plans for the  
17 area.<sup>4</sup>

18 31. In April of 1989, Barnett and Rizzuto wrote separate "Oldsmobile  
19 Inter-Organizational Memorandums" recommending the establishment of an  
20 open point in Monrovia with the intention of establishing a Chevrolet-  
21 Oldsmobile dual.<sup>5</sup>

22  

---

23 <sup>4</sup> The testimony in this regard was conflicting. Mr. Person  
24 testified that, during this meeting, Barnett stated that a market study  
25 had been done and it called for no changes. Barnett and Rizzuto deny  
26 this. During his deposition, Mr. Person testified that he did not  
recall any discussion on the subject of Oldsmobile's market plans in the  
area during the February 27 meeting.

27 <sup>5</sup> Barnett originally testified that his recommendation to senior  
28 Oldsmobile management did not take place until August or September of  
1989. On cross-examination, when shown a copy of the written  
recommendation, Barnett admitted that the recommendation took place in

1 32. On May 10, 1989, Williams, Warren Person, Rizutto, and Barri t  
2 met at the Oldsmobile zone office for the purposes of culminating the  
3 buy/sell process with the execution by Mr. Person of the Oldsmobile Sales  
4 and Service Agreement.

5 33. On or about August 29, 1989, Charles Tachdjian, ("Tachdjian")  
6 the dealer principal of Crown Oldsmobile, submitted an application to  
7 establish a Chevrolet-Oldsmobile dual in Monrovia with Gledhill and Price  
8 Chevrolet.

9 34. In an Inter-Organizational Memorandum dated November 1, 1989,  
10 Oldsmobile rendered a tentative<sup>6</sup> decision to establish a point in Monrovia.

11 35. On or about December 18, 1989, Oldsmobile notified existing  
12 dealers of the proposal to add dealer representation in Monrovia. Dealer  
13 input concerning the proposal was solicited.

14 36. On February 9, 1990, Oldsmobile notified all of its dealers in  
15 the MDA of a meeting scheduled for February 22, 1990, to discuss the  
16 tentative decision of Oldsmobile to add representation in Monrovia. Mr.  
17 Person attended this meeting and voiced objection to the proposed new  
18 dealership.

19 37. On March 5, 1990, Oldsmobile made final the decision to  
20 establish the proposed dealer in Monrovia.

21 38. On March 9, 1990, the dealers were notified of the final  
22

---

23 April of 1989. Person asserts that Barnett's original testimony  
24 constituted perjury. However, a more credible explanation of the  
25 differing testimony is that the written recommendation merely refreshed  
the memory of the witness regarding the timing of the memorandum written  
some 14 months earlier.

26 <sup>6</sup> Barnett testified that the decision reflected in Exhibit R-1  
27 was tentative and not final. Counsel for Person contends the Memorandum  
28 was merely a confirmation of the zone manager's recommendation to  
establish representation in Monrovia, which is one step in the process  
by which additional dealers are established.

1 decision reached by Oldsmobile. In a letter to Warren Person, Barnett  
2 indicated that "Oldsmobile has now made a final decision to establish  
3 dealer representation on a dual basis with Chevrolet at 805 Central,  
4 Monrovia, California."

5 39. Person's protest pursuant to section 3062 (PR-1158-90), and the  
6 instant petition, ensued.

7 40. It is well established that there is no fiduciary relationship  
8 between an automobile manufacturer and its dealers. Capitol Ford Truck  
9 Sales, Inc. v. Ford Motor Co. (N.D. Ga. 1992) 819 F. Supp. 1555, 1579-80;  
10 A.B.C. Packard, Inc. v. General Motors Corp. (9th Cir. 1960) 275 F. 2d 63,  
11 67. In California, the same is true as to franchisors and franchisees  
12 generally. Walker v. KFC Corp. (9th Cir. 1984) 728 F. 2d 1215, 1221 n. 5.  
13 Nor is there a fiduciary relationship in California between a franchisor  
14 and a prospective franchisee prior to approval of the franchisee by the  
15 franchisor. Reyes v. Atlantic Richfield Co. (9th Cir. 1993) 12 F. 3d  
16 1464, 1472 [the pre-approval relationship between ARCO and a prospective  
17 franchisee was strictly an arm's length business transaction and under  
18 these circumstances ARCO had no duty of disclosure].

19 41. A "special relationship" is one characterized by elements of  
20 public interest, adhesion, and fiduciary responsibility. Harris v.  
21 Atlantic Richfield Company (1993) 14 Cal. App. 4th 70, 73, 17 Cal. Rptr.  
22 2d 649. California courts have not extended the "special relationship"  
23 doctrine to include ordinary commercial transactions. Martin v. U-Haul  
24 Co. of Fresno (1988) 204 Cal. App. 3d 396, 412, 251 Cal. Rptr. 17 [the  
25 court refused to find a "special relationship" in the franchise agreement  
26 between the U-Haul Company and one of its franchisees]; See also Copesky  
27 v. Superior Court (1991) 229 Cal. App. 3d 678, 688-690, 280 Cal. Rptr. 338.

28 42. The steps in general with respect to recommending the

1 establishment of an open point in a dealer network are as follows: ( )  
2 examine the area; (2) recommend the area be established as a "study area"  
3 in which data is gathered; (3) study the physical aspects of the area;  
4 and (4) recommend the area be established as an open point.

5 43. A recommendation by zone personnel like Rizzuto and Barnett to  
6 establish an open point does not constitute a final decision by  
7 Oldsmobile. The actual decision to establish an open point is made by  
8 senior Oldsmobile management. Furthermore, recommendations of zone  
9 personnel are not always followed by Oldsmobile.<sup>7</sup>

10 44. The recommendation by zone personnel to establish an open point  
11 is one of the first steps in the Oldsmobile approval process.

12 45. Even when an open point has been designated or established by  
13 Oldsmobile senior management, it does not necessarily result in the  
14 establishment of a new dealer within the open point.

15 46. There have been a number of instances where Oldsmobile has  
16 established open points and have not established new dealers within these  
17 open points for substantial periods of time.

18 47. After the May 10, 1989 meeting with Rizzuto and Barnett, Person  
19 became an Oldsmobile dealer, and nothing further happened with regard to  
20 Monrovia until Tachdjian, the Oldsmobile dealer in Pasadena, wrote to  
21 Oldsmobile in August of 1989 expressing an interest in teaming up with  
22 Gledhill to construct a Chevrolet-Oldsmobile dual in Monrovia.

23 48. Tachdjian's substantial net worth changed the view of Barnett  
24 and Rizzuto regarding the viability of the Gledhill proposal. Rizzuto  
25 thereafter asked the Oldsmobile Division to go forward with approving

---

26  
27 <sup>7</sup> Calabasas and Irvine were cited by Barnett as examples where  
28 open point recommendations of other zone personnel were rejected by  
Oldsmobile management.

1 Monrovia as an open point.

2 49. On November 1, 1989, Oldsmobile central office managers made a  
3 tentative decision to add representation in Monrovia.

4 50. A tentative decision is subject to reversal. In Calabasas, the  
5 tentative decision to add dealer representation was reversed after  
6 consultation with dealers.

7 51. Prior to rendering a final decision on the Monrovia open point,  
8 Oldsmobile solicited dealer input and held a dealer meeting in which  
9 dealers were given an opportunity to express opposition to the proposed  
10 open point. Mr. Person attended the meeting and expressed his opposition.  
11 After all of these opportunities for dealer input were exhausted,  
12 Oldsmobile made its final decision in March of 1990 to add the proposed  
13 dealer in Monrovia.

14 52. Person claims that the recommendation of Rizzuto and Barnett to  
15 designate the Monrovia open point constitute a fact which, if known by Mr.  
16 Person at the time, would have been material to his decision to execute  
17 the Oldsmobile franchise.

18 53. As previously determined, the recommendation by zone personnel  
19 to establish an open point is one of the first steps in the Oldsmobile  
20 approval process. Furthermore, the recommendations of zone personnel are  
21 not always followed in this regard. It is of no consequence that Mr.  
22 Person would have viewed these recommendations as material to his decision  
23 to execute the franchise. "The question of **materiality**, it is universally  
24 agreed, is an **objective** one, involving the significance of an omitted or  
25 misrepresented fact to a reasonable [person]." (Lynch v. Cook (1983) 148  
26 Cal. App. 3d 1072, 1081-1082, emphasis in original)

27 54. It has been determined that no fiduciary relationship exists  
28 between a prospective new motor vehicle franchisee and franchisor. In

1 addition, no "special relationship" exists which would require disclosure  
2 of all facts known by the franchisor which could reasonably affect the  
3 prospective dealer's decision to execute the Sales and Service Agreement.  
4 In the absence of a fiduciary or other special relationship, there is not  
5 a duty to disclose. La Jolla Village Homeowners' Ass'n v. Superior Court  
6 (1989) 212 Cal. App. 3d 1131, 1151; California Architectural Bldg. Prods.,  
7 Inc. v. Franciscan Ceramics, Inc. (9th Cir. 1987) 818 F. 2d 1466, 1472,  
8 cert. denied, (1988) 484 U.S. 1006 ["[a]bsent an independent duty, such as  
9 a fiduciary duty or an explicit statutory duty, failure to disclose cannot  
10 be the basis of a fraudulent scheme").

11 55. "Although material facts are known to one party and not the  
12 other, failure to disclose them is ordinarily not actionable fraud unless  
13 there is some fiduciary relationship giving rise to a duty to disclose."  
14 Witkin, Summary of California Law, Torts, § 697, at p. 799 (9th ed. 1988)  
15 and cases therein cited.

16 56. It is Oldsmobile's policy that a manufacturer's internal market  
17 deliberations, like the sale of a dealership, are sensitive matters and  
18 should remain undisclosed until a final decision has been rendered.

19 57. Paragraph 9(q) of the Stock Purchase Agreement between Mr.  
20 Person and Williams contains the following representation:

21 "Seller and Corporation, nor either of them have any knowledge  
22 that Oldsmobile presently contemplates establishing or  
23 relocating an Oldsmobile dealership within a ten mile radius of  
24 the Corporation's facility."

25 Although Oldsmobile personnel were provided with a copy of the stock  
26 purchase agreement, paragraph 9(q) was not specifically pointed out by Mr.  
27 Person to Barnett or Rizzuto when the stock purchase agreement was  
28 delivered to them. Furthermore, the assurances made in the Agreement and

1 nothing to do with Oldsmobile.

2 58. At the May 10, 1989 meeting in which Mr. Person signed the  
3 Dealer Agreement, Barnett and Rizzuto decided that, as a courtesy to Mr.  
4 Person, he ought to be told that Oldsmobile was "studying the area for the  
5 consideration of a possible add point." The recommendations made by  
6 Rizzuto and Barnett to add dealer representation in Monrovia was not  
7 disclosed to Mr. Person at the time of his signing the Dealer Agreement.

8 59. Fraud involving nondisclosure requires the following elements:  
9 (1) the respondent must have concealed or suppressed a material fact; (2)  
10 the respondent must have been under a duty to disclose the fact to the  
11 petitioner; (3) the respondent must have intentionally concealed or  
12 suppressed the fact with the intent to defraud the petitioner; (4) the  
13 petitioner must have been unaware of the fact and would not have acted as  
14 he did if he had known of the concealed or suppressed fact; and (5) as a  
15 result of the concealment or suppression of the fact, the petitioner must  
16 have sustained damage. BAJI No. 12.35 (1992 Revision).

17 60. Civil Code section 1709 defines fraudulent deceit as "[o]ne who  
18 willfully deceives another with intent to induce him to alter his position  
19 to his injury or risk, is liable for damage which he thereby suffers."

20 61. At common law, misrepresentation made for the purpose of  
21 inducing reliance upon the false statement is fraudulent. But one who  
22 fails to disclose material information prior to the consummation of a  
23 transaction commits fraud only when he is under a duty of disclosure. And  
24 the duty to disclose arises when one party has information that the other  
25 party is entitled to know because of a fiduciary or other similar relation  
26 of trust and confidence between them. Chiarella v. U.S. (1980) 445 U.S.  
27 222, 227-228, 100 S. Ct. 1108, 1114.

28 ///

DETERMINATION OF ISSUES

1  
2       62. A fiduciary relationship does not exist between a prospective  
3 new motor vehicle franchisee and franchisor which would require disclosure  
4 of all facts known by the franchisor which could reasonably affect the  
5 prospective franchisee's decision to execute the Sales and Service  
6 Agreement.

7       63. There is no "special relationship" between a prospective  
8 franchisee and franchisor which would require disclosure of such facts of  
9 information.

10       64. In May of 1989, when Warren Person executed the Oldsmobile Sales  
11 and Service Agreement, Rizzuto and Barnett had made recommendations to  
12 senior Oldsmobile management that an open point be established for  
13 Monrovia, California. Their recommendations constituted one of the first  
14 steps in the Oldsmobile approval process.

15       65. At the time Mr. Person signed the Oldsmobile Sales and Service  
16 Agreement, Oldsmobile had not made a final decision to add representation  
17 in Monrovia.

18       66. A representation by zone personnel that an open point be  
19 established is not the equivalent to a final decision by Oldsmobile to  
20 establish an open point.

21       67. The final decision to establish an open point is not the  
22 equivalent of a final decision to add dealer representation in the open  
23 point.

24       68. Given the other factors which more readily affect the viability  
25 of an existing dealership, and given the tentative nature of a zone  
26 recommendation to establish an open point, the recommendations of Rizzuto  
27 and Barnett in April of 1989 that Monrovia be established as an open point  
28 could not objectively be determined as a factor material to the decision

1 of Mr. Person to execute the Oldsmobile Sales and Service Agreement.

2 69. Oldsmobile did not have a duty to disclose the status of its  
3 deliberations with respect to the Oldsmobile Monrovia establishment, as  
4 they existed in May of 1989, to Mr. Person before he executed the  
5 Oldsmobile Sales and Service Agreement.

6 70. If Oldsmobile had a legal duty to disclose relevant information  
7 regarding the Monrovia point, the failure to do so does not constitute  
8 fraud.

9 71. The statement made by Barnett to Mr. Person that Oldsmobile was  
10 "looking at the MDA for the possibility of further representation", or that  
11 Oldsmobile was "studying the area for consideration of a possible add  
12 point" was truthful and not misleading.

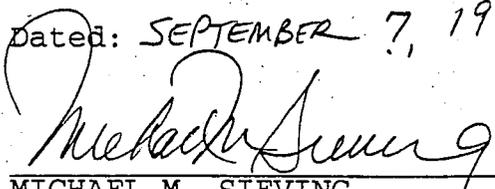
13 **PROPOSED DECISION**

14 THEREFORE, the following decision is respectfully proposed:

- 15 1. The relief request by Petitioner is denied.  
16 2. The issue of damages allegedly sustained by Person is moot.  
17  
18

19 I hereby submit the foregoing which  
20 constitutes my proposed decision in the  
21 above-entitled matter, as a result of a  
22 hearing held before me adoption of this  
23 proposed decision as the decision of the  
24 New Motor Vehicle Board.

25 Dated: SEPTEMBER 7, 1995

26   
27 MICHAEL M. SIEVING  
28 Administrative Law Judge/  
Assistant Executive Secretary