

NEW MOTOR VEHICLE BOARD
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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest and)
Petition of:)

MICHAEL IMPORTS, INC., dba)
VAN NESS HYUNDAI,)

Protestant/Petitioner,)

v.)

HYUNDAI MOTOR AMERICA,)

Respondent.)

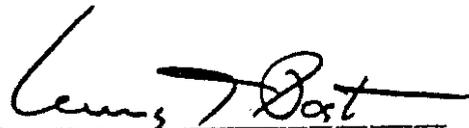
PROTEST NO. PR-1003-88
PETITION NO. P-177-88

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 11th day of July, 1990.



MANNING J. POST
Vice President
New Motor Vehicle Board

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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest and
and Petition of:

MICHAEL IMPORTS, INC. dba
VAN NESS HYUNDAI,

Protestant, Petitioner,

vs.

HYUNDAI MOTOR AMERICA,

Respondent.

PROTEST NO. PR-1003-88

PETITION NO. P-177-88

PROPOSED DECISION RE:
RESPONDENT'S REQUEST FOR
ISSUANCE OF AN ORDER OF
TERMINATION BY THE NEW
MOTOR VEHICLE BOARD

PROCEDURAL BACKGROUND

This matter is before the New Motor Vehicle Board ("Board") for a determination of whether the Protestant, Michael Imports Inc., dba Van Ness Hyundai ("Van Ness") has failed to comply with the terms of a Stipulated Decision and Order of the Board ("Stipulated Board Order").

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The Stipulated Board Order was issued as a result of the following:

1. A protest filed on October 25, 1988, by Van Ness asserting that Hyundai Motor America ("HMA") did not have good cause to terminate the Hyundai franchise of Van Ness; and

2. A petition filed on November 2, 1988 alleging that HMA had unreasonably refused to allow Van Ness to relocate.

3. As a result of a settlement conference held before an administrative law judge of the Board, the parties executed and submitted to the Board a proposed stipulated decision and proposed order. The proposed stipulated decision and order was adopted as a Stipulated Board Order on January 27, 1989, pursuant to the provisions of Vehicle Code section 3050.7.

4. On September 18, 1989, HMA filed a Request For Issuance Of An Order Of Termination alleging that Van Ness had failed to comply with the terms of the Stipulated Board Order. On September 27, 1989, Van Ness' filed its Opposition To Request For Termination Order.

5. An evidentiary hearing on the motion was held on October 2, 1989, before Sam W. Jennings, Chief Administrative Law Judge and Executive Secretary of the Board.

ISSUES PRESENTED AND FINDING OF FACT

The following are the provisions of the Stipulated Board Order alleged to have been violated by Van Ness and the facts that relate thereto.

6. Paragraph 4 of the Stipulated Board Order provides:

"Van Ness shall spend a minimum of \$20,000.00 per month in advertising of new Hyundai vehicles, commencing February 1, 1989;"

7. The following are the sums spent by Van Ness for the months indicated:

March 1989	\$17,814
April 1989	17,026
May 1989	29,425
June 1989	9,586
July 1989	8,945
Aug. 1989	9,000

Average	\$15,224

8. Paragraph 5 of the Stipulated Board Order provides:

"Van Ness shall average fifty retail sales of new Hyundai vehicles to ultimate consumer per month on a quarterly basis, beginning February 1, 1989";

9. The following are the sales made by Van Ness for the months indicated:

<u>Month</u>	<u>Sales</u>
March 1989	25
April 1989	16
May 1989	15
June 1989	17
July 1989	23
Aug. 1989	22

Average	19.6

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10. Paragraph 6 of the Stipulated Board Order provides:

"Van Ness shall hire, by February 1, 1989, and maintain for the duration of its current Hyundai Sales And Service Agreement, one full-time General Manager approved by Hyundai, other than Jim Tracy; one Finance and Insurance Manager; seven sales staff members and two trained technicians, all dedicated exclusively to the Hyundai franchise;"

11. Van Ness has not employed a full-time Hyundai General Manager and has employed five rather than seven sales staff members.

12. Paragraph 7 of the Stipulated Board Order provides:

"Van Ness shall be recapitalized to meet or exceed Hyundai's minimum operating capital requirements (approximately \$462,000.00), no later than February 28, 1989;"

13. The capitalization of Van Ness was as follows:

<u>Month</u>	<u>Working Capital</u>
March 1989	\$101,456
April 1989	74,706
May 1989	31,599
June 1989	19,543
July 1989	215

Average	\$ 55,229

14. Paragraph 8 of the Stipulated Board Order provides:

"Van Ness has provided proof to Hyundai that Van Ness has in place (as of December 16, 1988) an executed, unencumbered, binding and usable wholesale flooring agreement in a form acceptable to Hyundai, solely for the purchase of new Hyundai vehicles from Hyundai, available in the amount of one million dollars, or in the minimum amount required by Hyundai, whichever is greater, from a financing institution approved by Hyundai, and subject to the terms of the current Dealer Sales And Service Agreement between Van Ness and Hyundai;"

15. The flooring agreement that Van Ness had was suspended as of July 18, 1989, and has not been re-instated.

16. Paragraph 10 of the Stipulated Board Order provides:

"Van Ness shall keep Hyundai apprised both orally, if requested, and in writing of the progress of Van Ness' efforts to comply with the terms of this Stipulation And Agreement;"

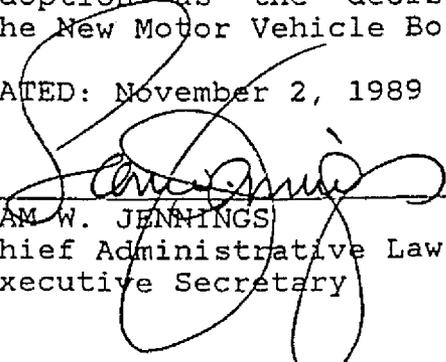
HMA did not establish sufficient facts to evidence a violation of this provision,

DETERMINATION OF ISSUES

Van Ness has violated the provisions of paragraphs 4, 5, 6, 7 and 8 of the Stipulated Board Order. HMA is permitted to terminate the franchise of Van Ness Hyundai.

I hereby submit the foregoing which constitutes my proposed decision in the above-entitled matter, as a result of a hearing had before me on the above date, and recommend its adoption as the decision of the New Motor Vehicle Board.

DATED: November 2, 1989



SAM W. JENNINGS
Chief Administrative Law Judge/
Executive Secretary