

1401 - 21st Street
Suite 407
P. O. Box 31
Sacramento, CA 95801
(916) 445-1888

STATE OF CALIFORNIA---

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of)
IMPORT MOTORS, INC.,)
Protestant,) Protest No. PR-113-76
vs.)
JOHN DREW MOTORS, INC., dba) FILED: April 22, 1977
SUBARU OF NORTHERN CALIFORNIA,)
Respondent.)
.....)
_____)

DECISION

The attached proposed decision of the Hearing Officer is hereby adopted by the New Motor Vehicle Board, as modified herein, as its decision in the above entitled matter.

The Order is modified to read as follows:

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The protest is dismissed.

The foregoing constitutes the decision of the NEW Motor Vehicle Board.

Dated: 4/18/77

Thomas Kallay

THOMAS KALLAY
President

1401 - 21st Street
Suite 407
P. O. Box 31
Sacramento, CA 95801
(916) 445-1888

F I L E D
New Motor Vehicle Board
Date <u>March 25, 1977</u>
By <u>[Signature]</u>

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of)	
)	
IMPORT MOTORS, INC.,)	Protest No. PR-113-76
)	
Protestant,)	
)	
vs.)	
)	
JOHN DREW MOTORS, INC., dba)	
SUBARU OF NORTHERN CALIFORNIA,)	
)	
Respondent.)	
)	

PROPOSED DECISION

Procedural Background

1. Respondent John Drew Motors, Inc., dba Subaru of Northern California ("Subaru") gave notice pursuant to Section 3062 of the Vehicle Code^{1/} of its intention to establish a new franchise at Diablo Mazda, 2646 N. Main Street, Walnut Creek, California ("Proposed-Franchisee").

2. A protest was filed with the New Motor Vehicle Board ("Board") by Import Motors, Inc. ("Import") located at 1945 Market Street, Concord, California.

1. All references are to the Vehicle Code.

3. A hearing was held pursuant to Section 3066 before Anthony M. Skrocki, Hearing Officer of the New Motor Vehicle Board, in Sacramento, California, on Monday, February 14, 1977, beginning at 9:30 a.m. The Protestant was represented by Sidney I. Pilot. The Respondent was represented by Robert M. Wheatley.

Issue Presented

4. Import contends that Subaru failed to comply with the provisions of Section 3062 requiring the franchisor, Subaru, to "...in writing first notify the board and each franchisee..." of the intention to establish a new franchise in the relevant market area. It was therefore contended that the establishment of Diablo Mazda at the proposed location was illegal.

Facts

5. On March 24, 1975, notice was given in writing by Subaru to Import of Subaru's intention to establish Diablo Mazda as a new dealer. This notice was acknowledged by Mr. Ralph Day of Import and returned to Subaru where it was received on April 10, 1975. A copy of this letter was mailed to the Board on April 10, 1975. (See Stipulated Exhibit #1)

6. This notice was received by the Board and filed along with other such notices in a 1975 file which contained such

notices to which no protests had been filed within the statutorily prescribed time.

7. A protest was filed pursuant to Section 3062 by Import on July 26, 1976.

Determination of Issues

1. Import has failed to establish that Subaru did not comply with the provisions of Section 3062.

(a) Notice was given by Import some time between March 24, 1975 and April 10, 1975.

(b) Notice was sent to the Board on April 10, 1975, and received in due course of mail.

(c) A protest was not filed by Import until July 26, 1976, more than one year from receipt of notice by Import and the Board, well beyond the 15-day period established by Section 3062.

2. It is therefore determined that the Board is without jurisdiction to further consider the merits of the establishment of Diablo in the relevant market area of Import.

* * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The protest is overruled. ~~The respondent is entitled to~~
establish the proposed franchise.

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
at Sacramento, California, and
recommend its adoption as the
decision of the New Motor Vehicle
Board.

Anthony M. Skrocki
ANTHONY M. SKROCKI
Hearing Officer
New Motor Vehicle Board

DATED: 3/25/77