

1 1507 - 21st Street, Suite 330
2 Sacramento, California 95814
3 Telephone: (916) 445-1888
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9 STATE OF CALIFORNIA
10 NEW MOTOR VEHICLE BOARD

11 In the Matter of the Protests of)
12 WALKER-BUERGE FORD;) Protest No. PR-1135-89
13 SANTA MONICA FORD,) Protest No. PR-1136-89
14 Protestants,)
15 vs.)
16 FORD MOTOR COMPANY,)
17 Respondent.)
18

19 DECISION

20 The attached Proposed Decision of the Administrative Law
21 Judge is hereby adopted by the New Motor Vehicle Board as its
22 Decision in the above-entitled matter on condition that the
23 following be performed within five years of this Decision.

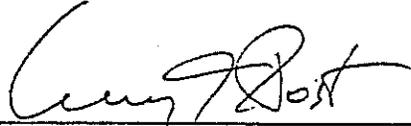
24 The facilities of the permanent dealership must meet
25 Ford's standard guidelines, so as to provide adequate
26 competition and convenient consumer care. Said facilities shall
27 comply with all the applicable provisions of the California
28 Vehicle Code.

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If said conditions are not met the franchise shall automatically terminate.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 26th day of October, 1990.



MANNING J. POST
Vice-President
New Motor Vehicle Board

A. A. Pierce, Director DMV
Frank Ketchel, Acting Program Manager
Occupational Licensing, DMV
Legal Office

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

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of)	
WALKER-BUERGE FORD;)	Protest No. PR-1135-89
SANTA MONICA FORD,)	Protest No. PR-1136-89
Protestants,)	
vs.)	PROPOSED DECISION
FORD MOTOR COMPANY,)	FOR REMAND
Respondent.)	

PROCEDURAL BACKGROUND

1. Ford Motor Company ("Ford"), pursuant to Vehicle Code section 3062 1/, notified Walker-Buerge Ford ("Walker-Buerge") and Santa Monica Ford ("Santa Monica") on October 27, 1989, of its intention to establish a Ford dealership at the intersection of Wilshire Boulevard and Weatherly Drive in Beverly Hills, California.

1/ All statutory references are to the California Vehicle Code.

2. Walker-Buerge and Santa Monica filed protests with the Board on November 21, 1989. The protests were consolidated and a hearing was held April 2, 3, 4, 5, 6, 9, 10, 11, and 12, 1990, before Administrative Law Judge, Robert S. Kendall.

3. A Proposed Decision was issued by the administrative law judge on September 7, 1990.

4. After consideration of the Proposed Decision and the administrative record in the matter, the Board, on September 25, 1990, issued an Order of Remand. Pursuant to the order, the parties were instructed to appear before the administrative law judge to offer additional evidence relevant and material to the contention of the Protestants that the establishment of the new dealership will have a catastrophic economic impact upon the Protestants. ^{2/}

5. The remand hearing was held on October 8, 1990, before Administrative Law Judge, Robert S. Kendall.

6. Protestants were represented by A. Albert Spar of Pilot, Spar & Siegler, 1801 Avenue of the Stars, Suite 1120, Los Angeles, California.

^{2/} Protestants sought to introduce evidence relevant to the potential impact upon them due to the alleged imminent opening of a Ford dealership in Culver City.

Protestants offer of proof was rejected on the grounds that such evidence was not relevant or material to the issue for which the remand was ordered: the alleged catastrophic impact on Protestants caused by the establishment of a Ford dealership in Beverly Hills.

Following rejection of the offer of proof, Protestants offered no further evidence.

Respondents offered additional evidence on remand.

7. Respondent was represented by J. Keith McKeag of Downey, Brand, Seymour & Rohwer, 555 Capitol Mall, Tenth Floor, Sacramento, California.

ISSUES PRESENTED

8. Santa Monica and Walker-Buerge assert that the establishment of the new dealership will have a catastrophic economic impact upon them based upon the following reasons:

- a) All dealers within five miles of each other share equally in the available market for Fords.
- b) That all the dealers already existing in the Relevant Market Area ("RMA") ^{3/} are selling all the Fords possible to be sold therein.
- c) That parts, service and used car sales will suffer losses in the same proportion as new car sales.
- d) That all losses will be caused entirely by the new dealership and cannot be mitigated by the capture of in-sell and other line make sales.

FINDINGS OF FACT

9. The proposed findings of fact as contained in the proposed decision dated September 7, 1990, are incorporated, in their entirety, herein.

Facts Pertaining to Dealers Within
Five Miles of Each Other
Sharing Equally in Ford Sales

10. The Primary Market Areas ("PMA's"), that area within a five-mile radius of the dealer, of Santa Monica and Walker Buerge overlap to create an area similar to the shape of a

^{3/} Vehicle Code section 507 defines the Relevant Market Area as any area within a radius of 10 miles from the site of a potential new dealership.

football. Santa Monica and Walker-Buerge have previously offered evidence showing that each makes approximately 50% of their new car sales into their overlap. Protestants contend that this will be the result whenever dealers have overlapping PMA's. Based on this assumption, Walker Buerge and Santa Monica further contend that they will suffer retail losses of 27.2% to 35.5% and 18.1% to 24.8% respectively within their respective overlaps with the new dealership. No factual evidence to support this conclusion was offered by the Protestants at this hearing beyond the assertion that the new Beverly Hills dealership will share equally with them in sales made into the overlaps of all three dealers.

11. Ford dealers within five miles of each other do not necessarily share equally in new car sales within their "overlaps". Evidence presented demonstrates that of all the Ford dealers with PMA overlaps within the Los Angeles North Multiple Point ("LANMP"), only Santa Monica and Walker-Buerge, share equal sales within their "overlap".

12. Of the 46 Ford dealers within the three Los Angeles multiple points, 40 are within five miles of another Ford dealer (i.e. all share significant overlaps).

13. A majority of Ford dealers in the LANMP operate in proximity to each other but they don't share equally in sales within their overlaps. Therefore Protestants' estimate of potential lost sales to the new dealership is skewed.

Facts Pertaining to Respondent's Contention
That Ford Sales Within The RMA are Static

14. Protestants contend that the Ford dealers within the RMA are making all the Ford sales possible, that there is little way to increase incremental sales, and that population increase will provide a minimal increase in sales. Based on this assumption, Protestants claim they are doomed to lose sales by the mere existence of the new dealership and moreover that the only sales that the new dealership might make will come at the expense of other Ford dealers, specifically Walker-Buerge Ford and Santa Monica Ford. Protestants offered no factual evidence to support this conclusion at this hearing.

15. Sales are not necessarily diminished by the introduction of a new dealer within 5 miles of an established dealer. Midway Ford was an established dealership, while Francis Hankey Ford entered the established PMA 2.75 miles away.

SALES COMPARISON
MIDWAY FORD/FRANCIS HANKEY FORD
DISTANCE BETWEEN DEALERSHIPS 2.75 MILES

	MIDWAY FORD	FRANCIS HANKEY FORD
1982	661	67 ^{4/}
1983	793	368
1984	929	392
1985	749	303
1986	739	341
1987	764	394
1988	883	448 ^{5/}

(Remand R. Ex. 5)

4/ Francis Hankey appointed July 1982 - operational September 1982.

5/ Francis Hankey registered October 1988.

16. New dealerships do not draw sales away from nearby established dealers. New dealerships, in fact, can be a stimulus to new car sales.

17. Francis Hankey subsequently closed down in 1988 for reasons unrelated to poor sales performance. As a result, Midway's 1989 sales did not rise but in fact decreased (883 to 729 sales).

18. 4,451 Ford sales were made into the RMA in 1989 by dealers outside of that RMA, sales that were in effect taken away from the dealers within the RMA.

19. Ford's loss of new car sales to other line makes with the RMA is significant. Ford's penetration of RMA domestic market is below the RMA average which translates into a loss of an additional 917 new car sales to Ford dealers, bringing the total lost opportunity to Ford dealers within the RMA in 1989 to 5,368 new car sales.

20. Lost sales opportunities within the RMA are sufficient to offset any adverse impact for which a new dealership might be responsible.

Facts Pertaining to Proportional Losses of
Parts, Service, and Used Car Sales

21. Protestants contend that their sales of service, parts, used cars and body work will decrease in the same proportion as their retail car sales. Protestants make this contention even though the new dealership will have a small service area, smaller parts department, limited space to store or display used cars and no facilities for body work. Protestants offered no further factual evidence to support these conclusions at this hearing.

22. A loss of new car sales does not necessarily translate into a loss of service, parts and used cars sales in the same proportion.

23. In 1986, a year in which both Midway and Hankey Ford experienced declines in new car sales, used car sales increased (92 to 128 sales and 105 to 107 sales respectively) parts sales remained substantially the same (no change and 143 to 153 sales respectively) and service sales increased (317 to 333 sales and 184 to 220 sales respectively).

24. Although parts, service and used car sales follow from the sales of new cars, these departments are by no means subordinate to the new car sales department and that these departments can operate profitably in their own right.

DETERMINATION OF ISSUES

1. Protestants did not establish that all dealers within five miles of each other share equally in the available market for Fords.

2. Protestants failed to establish that all the dealers already existing in the RMA are selling all the Fords possible to be sold therein.

3. Protestants did not establish that parts, service and used car sales will suffer losses in the same proportion to a decrease in new car sales, should one result from the establishment of an additional dealership in Beverly Hills.

4. Protestants failed to establish that all their losses would be caused entirely by the new dealership and could not be mitigated by the capture of in-sell and other line make sales.

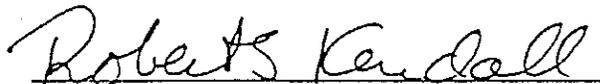
Proposed Decision

The following proposed decision is respectfully submitted:

The protests of each and both Protestants are overruled. Ford shall be permitted to establish the proposed dealership in the vicinity of Wilshire Boulevard at its intersection with Weatherly Drive in Beverly Hills, California.

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

Dated: October 16, 1990



ROBERT S. KENDALL
Administrative Law Judge
New Motor Vehicle Board