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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of)
ALBERT PIANO and AL PIANO DATSUN,) Protest No. PR-155-77
Protestant,)
vs.)
NISSAN MOTOR CORPORATION,) Filed: July 11, 1978
Respondent.)

DECISION

The attached Proposed Decision of the Hearing Officer 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 30th day of June, 1978.

/s/ Florence Post
FLORENCE POST

/s/ Lyman S. Smith
LYMAN R. SMITH

/s/ Joseph Trejo
JOSEPH TREJO

/s/ John B. Oakley
JOHN B. OAKLEY

/s/ Kathleen O. Turner
KATHLEEN O. TURNER

Public Members
New Motor Vehicle Board

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NISSAN MOTOR CORPORATION,)
Respondent.)

PROPOSED DECISION

Procedural Background

1. Respondent, Nissan Motor Corporation ("Nissan") gave notice on November 30, 1977, pursuant to Vehicle Code section 3062^{1/} of its intention to establish an additional motor vehicle dealership at the corner of Cochran Street and First Street in Simi Valley, California ("proposed dealership").
2. A protest was filed with the New Motor Vehicle Board ("Board") on December 12, 1977, by Albert Piano and Al Piano Datsun ("Piano"), 3440 Thousand Oaks Boulevard, Thousand Oaks, California.

1. All references are to the Vehicle Code.

3. A hearing was held pursuant to section 3066 before Richard C. Wulliger, Hearing Officer of the New Motor Vehicle Board, in Los Angeles, California, commencing on March 21, 1978. Piano was represented by Sidney I. Pilot and A. Albert Spar. Nissan was represented by Donald M. Wessling and Gregory R. Oxford of O'Melveny & Myers.

Issues Presented

4. Piano contends that good cause exists for not establishing the proposed dealership for the following reasons:

(a) The additional dealership will jeopardize the permanent investment of Piano (§3063(1));

(b) The additional dealership will adversely affect the retail motor vehicle business and the consuming public in the relevant market area (§3063(2));

(c) It will be injurious to the public welfare for the additional franchise to be established (§3063(3));

(d) Piano is providing adequate competition and convenient consumer care for the motor vehicles of the line-make in the market area (§3063(4));

(e) The establishment of the additional franchise would not increase competition and would therefore not be in the public interest (§3063(5)).

Findings of Fact

Findings Relating to Permanency of Investment
(§3063(1))

5. Piano has been a franchised Datsun dealer since August, 1972, and has been located at 3440 Thousand Oaks

Boulevard, Thousand Oaks, California, since 1974. Piano is also a Honda franchisee.

6. Piano has a substantial permanent investment at its present location. The Piano facilities are valued at over one million dollars.

7. Piano proposes an addition to his location which will add over \$350,000 to its investment. The new addition will, however, house the Honda portion of Piano's operation.

8. Piano's dealership is located adjacent to the Ventura Freeway. The nearest Datsun dealers are in Oxnard, approximately 20 miles away from Piano, and in Woodland Hills, approximately 13 miles away from Piano.

9. The nearest Honda dealer to protestant is in Oxnard.

10. The projected population growth for Thousand Oaks (including Westlake) is from 72,600 in 1975 to 134,000 in 1990, an increase of 84.6% and an average annual increase of 5.6%.

11. Piano's return on investment is higher than he anticipated when purchasing the Datsun franchise in 1972.

12. If an additional Datsun dealer is established in Simi Valley, Piano will likely still be profitable and have a substantial return on his investment.

13. Even if a new dealership is established in Simi Valley, Piano intends to proceed with his plans for expanding his present facility.

Findings Relating to the Effect on the Retail
Motor Vehicle Business and the Consuming
Public in the Relevant Market Area
(§3063(2))

14. The straight line distance from Piano's location to the proposed new dealership is over nine miles and by the shortest surface route over 12 miles.

15. The proposed dealership is in the west end of Simi Valley and most of the population of Simi Valley is to the east of the proposed dealership, therefore, more than ten miles from Piano's location.

16. In 1975 residents of Simi Valley worked in locations as follows:

44.3% in San Fernando Valley;

22.4% in Simi Valley;

17.9% elsewhere in Los Angeles County; and

5.4% in Thousand Oaks--Westlake (and balance elsewhere).

17. Piano's location is in a direction away from the areas wherein most Simi Valley residents work.

18. There is a range of hills between Simi Valley and Thousand Oaks.

19. A new freeway will join Simi Valley to the San Fernando Valley.

20. The proposed new dealer in Simi Valley anticipates a substantial permanent investment.

21. Population Growth Projection.

	<u>1975</u>	<u>1990</u>	<u>Percentage Increase</u>	<u>Average Ann. Incr.</u>
Simi Valley	69,000	101,000	46.1%	3.1%
Thousand Oaks (incl. Westlake)	72,000	134,000	84.6%	5.6%

22. The possible loss of new car sales in the Simi Valley by establishment of the new dealership there could be made up by Piano since Thousand Oaks is growing faster than Simi Valley

and Datsun sales in Thousand Oaks have increased more than protestant's sales in that area have increased.

Findings Relating to the Effect on the Public Welfare
(§3063(3))

23. Simi Valley lacks commercial operations and thus a source of revenue; there is high unemployment there.

24. Commercial growth should be encouraged in Simi Valley--specifically, a new auto dealership--as in the public interest by generating revenue for the City, creating jobs, and reducing the loss of sales.

25. A portion of Simi Valley sales potential is lost to other areas and it loses a large share of its potential auto sales to other areas.

26. In 1975 Simi Valley had auto sales loss to other areas of 74% as compared with total selected retail sales loss of 31%.

27. In 1975 in Simi Valley auto sales were 6.77% of total retail taxable sales as compared with 16.16% in Ventura County, 11.02% in Los Angeles County, and 11.86% in California.

28. In 1975 the per capita taxable sales in Thousand Oaks was \$2,448, which was fourth out of nine cities in Ventura County, and of Simi Valley \$1,186, which was eighth out of nine cities in Ventura County. In comparison per capita taxable sales were \$2,315 in Ventura County, \$3,326 in Los Angeles County, and \$3,252 in California.

29. The population per Datsun dealer is as follows in selected counties:

Ventura County, w/o new dealer	155,000	(1977)
Ventura County, w/ new dealer	116,000	(1977)
Los Angeles County	260,000	(1977)
Orange County	176,000	(1975)
Riverside County	93,000	(1975)
San Bernardino County	103,000	(1975)
San Diego County	340,000	(1975)
Imperial County	87,000	(1975)

Findings Relating to Adequate Competition
and Convenient Consumer Care
(\$3063(4))

30. Piano has employed salesmen as follows:

January - May, 1975	5
June - December, 1975	4
January - December, 1976	3
January - December, 1977	4

Nissan deems these amounts as below standard.

31. The amounts spent by Piano on advertising were as follows:

<u>Year</u>	<u>New Cars</u>	<u>Used Cars</u>
1975	Under \$40,000	Under \$300
1976	Under \$23,000	-0-
1977	Under \$23,000	-0-

32. While Piano's total annual Datsun sales increased from 561 to 568 (per retail delivery card) (or 619 by the dealer's financial statement) from 1974 to 1977 its sales in Simi Valley decreased from 110 to 103 (per retail delivery card). Piano's percentage of sales to Simi Valley decreased from 19.6% to 18.1%.

33. From 1974 to 1977, in Simi Valley, the San Fernando Valley Datsun dealers combined annual sales increased from 92 to 203 and total Datsun sales increased from 246 to 386.

Piano's Share of the Simi Valley Datsun market decreased from 44.7% to 26.7%, while the San Fernando dealers' share increased from 37.4% to 52.6%. Piano's share decreased 40.3% and San Fernando Valley dealers' share increased 40.6%.

34. From 1974 to 1977, in Thousand Oaks, Piano's annual sales increased from 208 to 262 (an increase of 21%), San Fernando Valley dealers' sales increased from 34 to 83, and Oxnard, Ventura dealers' sales increased from 12 to 48. Total Datsun annual sales increased from 283 to 458 (an increase of 61.8%).

Piano's share of the Datsun market, therefore, decreased from 73.5% to 57.2%, while the San Fernando Valley dealers' share increased from 12% to 18.1%, and the Oxnard, Ventura dealers' share increased from 4.2% to 10.5%.

Piano's share increased 22.2%, San Fernando Valley dealers' share increased 50.8% and Oxnard, Ventura dealers' share increased 150%.

35. From 1974 to 1977 in Simi Valley and Thousand Oaks combined, Piano's annual sales increased from 341 to 399, while other dealers' annual sales increased from 286 to 640, and total Datsun annual sales increased from 629 to 1039.

Sales by other dealers, therefore, increased from 45.6% to 61.6% to the market, creating a situation where the dealer in the area (Piano) sells fewer vehicles in his area than other dealers sell in his area ("pump-in").

36. From 1974 to 1977, Piano's annual sales outside of Thousand Oaks and Simi Valley decreased from 220 to 169.

37. From 1975 to 1977, Piano's annual sales decreased from 743 to 619 (-16.7%), Datsun district sales increased from 9,693 to 12,910 per year (+33.2%), and Datsun region sales increased from 56,493 to 81,466 per year (+44.2%).

38. From 1975 to 1977 in Simi Valley, auto sales by Datsun decreased from 296 to 278 (10 months annualized) (-6.1%); by Honda increased from 151 to 284 (10 months annualized) (+88.1%); and by Toyota increased from 148 to 271 (10 months annualized) (+83.1%).

39. From 1975 to 1977 in Thousand Oaks, auto sales by Datsun increased from 469 to 522 (10 months annualized) (+11.3%); by Honda increased from 256 to 710 (10 months annualized) (+177.3%); by Toyota increased from 244 to 598 (10 months annualized) (+145.1%).

40. From 1974 to 1977 in Simi Valley, truck registration by Datsun increased from 91 to 119 (10 months annualized) (+30.8%) and by Toyota increased from 34 to 109 (10 months annualized) (+220.6%).

41. In 1976 and 1977 Piano's model mix approximated that of the District and the Region.

42. In both 1976 and 1977 Nissan expressed dissatisfaction with Piano's sales and performance.

43. Piano's location is not convenient for Simi Valley residents, being more than ten miles from most of Simi Valley.

Findings Relating to Increased Competition
and the Public Interest
(\$3063(5))

44. Datsun car sales in Simi Valley decreased from 13.9% of industry in 1975 to 8.8% in 1977.

45. The projected population growth in Simi Valley is from 69,000 in 1975 to 101,000 in 1990, an increase of 46.1% or an average annual increase of 3.1%.

46. Datsun sales in Simi Valley:

<u>Year</u>	<u>Datsun Sales</u>	<u>Piano's Sales</u>	<u>Piano's Market Share</u>
1974	246	110	44.7%
1975	379	177	46.7%
1976	253	68	26.9%
1977	386	103	26.7%

Piano's share of Simi Valley Datsun market decreased 40.3% from 1974 to 1977.

Determination of Issues

Piano has failed to establish that good cause exists for not permitting the establishment of the additional dealership for the following reasons:

(a) The additional dealership will not jeopardize the permanent investment of Piano. Substantial business opportunities exist and will increase in the Thousand Oaks and adjacent areas. (§4(a).)

(b) The additional dealership will not adversely affect the retail motor vehicle business and the consuming public in the relevant market area. The demographics are favorable to a new dealership in Simi Valley. (§4(b).)

(c) It will injure the public welfare to establish the additional franchise. A new dealership is economically desirable for Simi Valley. (§4(c).)

(d) The franchise of the same line-make in the relevant market area is not providing adequate competition and convenient consumer care for the motor vehicles of the line-make in the relevant market area because of Piano's decreased efforts, reduced sales results, and distance from Simi Valley. (§4(d).)

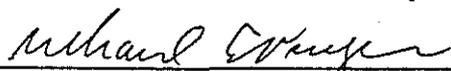
(e) The establishment of the additional franchise will increase competition and therefore be in the public interest. The sales in Simi Valley by the nearest Datsun dealer--Piano-- can be improved upon by a dealer in Simi Valley, which dealer will also be more convenient for Simi Valley residents. (§4(e).)

The following Proposed Decision is respectfully submitted:

The protest is overruled. The respondent is entitled to establish the additional Datsun dealership at the proposed location.

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

Dated: June 20, 1978.



RICHARD C. WULLIGER
Hearing Officer
New Motor Vehicle Board