

NEW MOTOR VEHICLE BOARD
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PR-1624-98

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

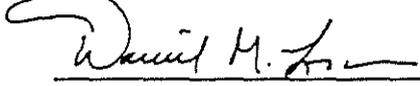
In the Matter of the Protest of)
)
QUAID IMPORTS, INC., dba QUAID) Protest No. PR-1624-98
NISSAN,)
)
)
Protestant,)
)
)
vs.)
)
)
NISSAN MOTOR CORPORATION, U.S.A.,)
)
)
Respondent.)
)

DECISION

At its regularly scheduled meeting of December 8, 1998, the Public members of the Board met and considered the administrative record and proposed decision in the above-entitled matter. On December 14, 1998, the Public members convened in closed Executive Session. After such consideration, the Board adopted the Proposed Decision as its final Decision in this matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 15th DAY OF DECEMBER 1998.



DANIEL M. LIVINGSTON
President
New Motor Vehicle Board

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11 In the Matter of the Protest of)
12 QUAID IMPORTS, INC., dba QUAID) Protest No. PR-1624-98
NISSAN,)
13 Protestant,)
14 vs.) PROPOSED DECISION
15 NISSAN MOTOR CORPORATION, U.S.A.,)
16 Respondent.)
17

18
19 PROCEDURAL BACKGROUND

20 1. By letter dated May 1, 1998, Nissan Motor Corporation, U.S.A.,
21 (hereinafter, "Nissan") gave notice pursuant to Vehicle Code § 3062¹ to
22 Quaid Imports Inc., dba Quaid Nissan (hereinafter, "Quaid") of Nissan's
23 intent to establish an additional dealership in Riverside, California.

24 2. Nissan is a manufacturer and distributor of new motor vehicles
25 under licenses issued by the State of California.
26

27
28 ¹ All statutory references are to the California Vehicle Code
unless otherwise stated.

1 3. Quaid is a franchised Nissan dealer and licensee of the State
2 of California for new motor vehicle sales, the principal place of
3 business for which is 8330 Indiana Avenue in the City of Riverside.
4 Quaid filed this protest under § 3062 on May 19, 1998, and the matter
5 was entered upon the Board's docket and given the designation PR-1624-
6 98.

7 4. Hearing was held before Administrative Law Judge, Kenneth B.
8 Wilson in Sacramento, California on September 14-17 and in Irvine,
9 California on September 23-24, 1998. The matter was submitted for
10 decision upon the filing of concurrent closing briefs on
11 October 5, 1998.

12 5. Protestant was represented by Randall L. Hite and Associates,
13 Randall L. Hite, Esq., 119 North Bush Street, Santa Ana, California.
14 Respondent was represented by Gibson, Dunn & Crutcher, LLP, Marjorie E.
15 Lewis, Esq., and Kimberly A. Udovic, Esq., 333 South Grand Street, Los
16 Angeles, California.

17 6. Protestant's witnesses were: Mr. John McCallan of Raceway
18 Ford in Riverside; Mr. William Bivens of Nissan Motors Acceptance
19 Company, Inc.; and, Mr. Robert A. Quaid of Quaid Imports, Inc.²

20 7. Respondent's witnesses were: Mr. William J. Kirrane of
21 Nissan; and, expert witness, Mr. Thomas Longo, Western Regional Manager
22 of Urban Sciences Applications, Inc. Mr. Longo sponsored the
23 introduction of evidence embodied in a technical report prepared for
24 this litigation entitled, "Nissan Motor Corporation Moreno Valley Open
25 Point Study 1998."

26
27
28 ² Protestant called Mr. McCallan and Mr. Bivens as adverse
witnesses under Evidence Code § 776.

1 early 1997, violated two Texas statutes prohibiting discrimination by a
2 manufacturer among its dealers and also violated a Texas Board rule
3 concerning improper advertising practices.⁴ The incentive programs
4 involved the assigning of dealers into "clusters" and providing
5 different levels of incentive benefits among and within the clusters
6 based on dealer performance. The Texas Board determined that the
7 programs were structured such that not all dealers had equal access to
8 the benefits offered and therefore violated the statutory prohibitions
9 against discrimination.

10 12. In the course of that proceeding, Mr. Longo testified that
11 insell data did not show that dealers outside particular dealer clusters
12 were diverting sales from the dealers within the cluster. The Texas
13 Board found that insell data had "limitations regarding the effect of
14 competitive harm to the dealers" of Nissan's incentive programs because
15 by definition, insell from out-of-cluster dealers did not include sales
16 lost to other dealers *within* the cluster to whom higher benefits were
17 available, or lost to other brands or because customers chose not to buy
18 at all. In short, the Texas Board found that the absence of sales lost
19 to dealers outside a cluster did not prove that there was no unlawful
20 discrimination as among dealers *within* the clusters.

21 13. In that the insell evidence introduced in this proceeding was
22 presented for the entirely different purpose of determining the adequacy
23

24 ⁴ Specifically, Texas Motor Vehicle Code § 5.02(b)(20)(B) makes
25 it unlawful to directly or indirectly discriminate against a dealer or
26 otherwise treat dealers differently as the result of a formula or other
27 calculation or process intended to gauge the performance of a
28 dealership, except a sales contest or other recognition program based on
reasonable sales and service criteria. Texas Motor Vehicle Code §
5.02(b)(21) makes it unlawful for a manufacturer to discriminate
unreasonably between or among franchisees in the sale of a motor vehicle
by a manufacturer or distributor.

1 of sales performance by existing franchisees in the RMA and as a
2 component in determining the potential sales of an additional
3 dealership, the findings of the Texas Board are without any tendency in
4 reason to prove or disprove any disputed fact that is of consequence to
5 the determination of this action and are, therefore, irrelevant. (See
6 Evidence Code § 210.)

7 14. Likewise, to the extent that Protestant may have intended to
8 use the Texas decision to undermine Mr. Longo's testimony concerning
9 Quaid's sales performance, the Texas Board decision is clearly
10 irrelevant in that it held only that low insell rates by dealers outside
11 a given area do not establish that sales have not been lost to competing
12 dealers inside the area who have a discriminatory advantage. Mr.
13 Longo's testimony in this case was that insell rates in the Moreno
14 Valley and Riverside PMA's and the RMA were high, not low. Whatever the
15 reason for the high insell rates in this proceeding, the findings of the
16 Texas Board are totally inapposite.

17 15. Having determined that the findings of the Texas Motor Vehicle
18 Board in Docket No. 97-316 are irrelevant to the matters to be
19 determined in this proceeding, it is not necessary to rule on
20 Respondent's objection based on hearsay or to address Protestant's
21 argument that the Board may take judicial notice.⁵ Respondent's
22 objection based on relevance is sustained and Exhibit P-16 is not
23 admitted into evidence in this proceeding.

24 _____
25 ⁵ Parenthetically, hearsay consists of a statement made by other
26 than a witness while testifying at the hearing and that is offered to
27 prove the truth of the matter stated. The truth of the matter stated in
28 the Texas decision could only have been that the absence of increased
insell does not establish that dealers in Texas were not competitively
harmed by Nissan's incentive programs. Even if admitted, the evidence
would have tended to prove nothing in this proceeding.

1 (h) Protestant contended that the proposed new franchisee has
2 no plan and has not entered into a contractual agreement with Nissan to
3 provide showroom and service facilities, and if established without
4 making a substantial capital investment could compete unfairly against
5 Quaid in that the proposed franchisee would avoid fixed costs that other
6 dealers, particularly Quaid, must recover; and,

7 (i) Protestant contended that the location of the proposed
8 new franchise and the absence of any capital facilities agreement arise
9 from Nissan's objective of punishing or eliminating Quaid through
10 excessive competition.

11
12 FINDINGS OF FACT

13 18. The findings herein are presented in the order deemed most
14 appropriate for the reader and not necessarily in the order presented at
15 the hearing.

16
17 A. GENERAL FINDINGS

18 19. For purposes of marketing and administration Nissan has
19 established a Southwest Region consisting of the State of Arizona,
20 southeastern Nevada (including the Las Vegas urban area) and the 11
21 southernmost counties of California.

22 20. Nissan has further divided the Southwest Region into districts
23 including the Inland Empire District, which is situated in northwestern
24 Riverside and southwestern San Bernardino Counties, and which includes
25 the communities and surrounds of Corona, Fontana, Montclair, Ontario,
26 Redlands, Riverside, San Bernardino, Pomona, and Moreno Valley.

27 21. The proposed additional franchise is to be located within the
28 corporate limits of the City of Riverside, in Riverside County,

1 California, near the junction of State Routes 60 and 215 as shown in
2 Exhibit R-1 at p.003 and which is appended to this decision as A-1.
3 (See the Appendix at back.)

4 22. The site of the proposed dealership is comprised of 11 acres
5 of land and 60,000 square feet of building space presently occupied by
6 Raceway Ford, a single line-make Ford franchise. Mr. John B. McCallan,
7 Jr., is the dealer principal of Raceway Ford and applicant for the
8 proposed franchise.

9 23. The Moreno RMA as that term is used herein is the geographic
10 area enclosed by a circle having a radius of ten miles in length
11 centered upon the site of the proposed additional dealership as
12 illustrated in the map which is included herein as A-1.

13 24. The Moreno Valley PMA is an assemblage of U.S. census tracts
14 which Nissan has assigned for marketing purposes to the proposed
15 additional dealer and is as shown in Exhibit R-1, p. 001 and which is
16 attached to this decision as A-2.

17 25. The Riverside PMA is an assemblage of U.S. census tracts
18 assigned for marketing purposes by Nissan to Protestant and which lies
19 adjacent to and generally west of the Moreno Valley PMA and is likewise
20 shown in A-2.

21 26. The Moreno Valley Auto Mall is a multiple line-make facility
22 which is situated on State Route 60. The mall is occupied by
23 dealerships representing nine line-makes and includes all of the
24 existing franchises in Moreno Valley with the single exception of
25 Raceway Ford, as shown in A-1.

26 27. During most of 1992 through 1994, a Nissan dealership existed
27 in the Moreno Valley Auto Mall. From 1995 and on, Nissan has had no
28 dealership in the Moreno Valley PMA.

1 B. FINDINGS PERTAINING TO THE RELATIONSHIP BETWEEN
2 PROTESTANT AND RESPONDENT

3 28. As long ago as 1993, and continuing since that time,
4 Respondent was dissatisfied with Protestant's performance and internally
5 considered terminating Protestant's franchise.

6 29. From about 1992 and on, Nissan objected to the dualing of
7 Quaid Nissan with other line-makes and, in 1994, formally threatened
8 Protestant with termination for dualing its Nissan dealership with
9 Mazda.

10 30. On or about May 1994, Nissan staff internally recognized the
11 opportunity to use the then-impending closure of the existing Nissan
12 dealer in the Moreno Valley Auto Mall to its advantage in handling their
13 problems with Quaid.

14 31. In 1994, Nissan undertook to evaluate Quaid's operations and
15 presented Quaid with a lengthy study including recommendations for
16 improvement. Although the report was intended to be constructive, it
17 met with a negative reaction from Quaid's management.

18 32. These and numerous other matters were presented by the parties
19 together with attempts by each to justify themselves and to vilify the
20 other.⁶ While it is not necessary in order to sustain or overrule this
21 Protest to resolve every point raised by the parties, this evidence does
22 establish the fact that the relationship between Protestant and
23 Respondent was troubled and acrimonious over a protracted period of
24 time.

26
27 ⁶ These matters included incidents of hostility between Quaid
28 and Nissan's representatives, warranty audits, other litigation, etc.,
the details of which do not contribute substantially to the resolution
of this Protest.

1 C. FINDINGS PERTAINING TO NISSAN'S PERFORMANCE EVALUATION
2 MEASURES

3 33. Nissan regularly compiles and analyzes data on the sales and
4 service performance of Nissan dealers. As is typical in the industry as
5 a whole, sales performance is measured in terms of market penetration,
6 or the percent of the total new vehicle registrations in a given area
7 attributable to a particular dealer's sales. Customer satisfaction
8 indexes are based on follow-up surveys of customer's who have recently
9 purchased vehicles from a dealer. The evaluation measures are then used
10 to rank and compare the performance of dealers.⁷

11 34. A substantial part of Quaid's total vehicle sales involve the
12 sale of "program cars" which are generally late model leased vehicle
13 returns obtained from or through Nissan and sold by Quaid to consumers.
14 By making such cars available to the public, some potential new car
15 buyers are diverted from purchasing newer but more expensive vehicles.
16 Nissan does not include program car sales in its dealer sales
17 performance evaluations. Program car sales are profitable to a dealer
18 but may cause him to lose new vehicle sales resulting in low market
19 penetration scores. Quaid did not introduce actual statistics as to the
20 level of his program sales, but testified that his volume is high and
21 ranges up to as much as half of his new car inventory from time to time.

22 35. Customer Service Indexes ("CSI") can be skewed to the extent
23 that a customer survey may reflect the customer's satisfaction with the
24 service of a dealer other than the one who made the initial sale, and by
25 low response rates of surveyed customers. Robert Quaid testified for
26

27 ⁷ Findings as to Quaid's sales and service performance are
28 discussed in detail under the findings on the adequacy of competition
and convenient customer care and elsewhere in this Decision.

1 example that his CSI for August 1998 was below the average levels for
2 the Inland Empire and the Southwest Region based on only seven customer
3 responses, although he may have serviced as many as 400-600 Nissan
4 vehicles per month. For dealers such as Quaid who do substantial fleet
5 sales volumes, customer surveys can be misleading in that the sales
6 transactions and customers themselves are different from the typical
7 single vehicle purchased by a consumer.

8 36. Mr. Quaid failed to produce quantitative evidence which would
9 support a finding as to the degree to which his sales and service
10 performance is effected more than those of the dealers with which Nissan
11 compares his performance.

12
13 D. FINDINGS PERTAINING TO THE LACK OF AN AGREEMENT BETWEEN
14 PROTESTANT AND RESPONDENT FOR SALES AND SERVICE
FACILITIES

15 37. Raceway Ford submitted an application to become a Nissan
16 franchisee in April 1998.⁸

17 38. On or about May 1, 1998, Mr. William J. Kirrane, Vice
18 President for Nissan's Southwest Region, sent a letter to dealers in the
19 area announcing Nissan's intent to establish a new Nissan dealership at
20 5900 Sycamore Blvd. in Riverside, which is the location of Raceway Ford.
21 The notice did not specifically mention McCallan or Raceway Ford as the
22 dealer candidate.

23 39. Mr. McCallan, on behalf of Raceway Ford, testified that
24
25

26 ⁸ On the first day of the Hearing counsel for Protestant advised
27 the Administrative Law Judge on the record that, during discovery, he
28 had been told by counsel for Respondent that Nissan did not have a
dealer candidate for the Moreno Valley PMA and that counsel only learned
the candidate's identity two days prior to the start of the Hearing.

1 Raceway has had no formal discussions of and has not entered into any
2 specific agreement with Nissan for providing a showroom or service
3 facility for a Nissan dealership.

4 40. Raceway Ford does not intend to use its existing Ford showroom
5 for the display of Nissan vehicles.

6 41. Raceway Ford's internal plans are to use its existing
7 facilities (other than its Ford showroom) without constructing
8 additional buildings for the sale and service of Nissan vehicles, until
9 it establishes a sales history upon which to determine such additional
10 facilities as would be justified.⁹

11 42. Raceway Ford assumes it will purchase parts and equipment for
12 the service of Nissan vehicles and in the absence of any specific plan
13 or agreement, assumes it will dedicate whatever is needed by Nissan from
14 its 35-45 existing service stalls.

15 43. Raceway Ford anticipates that it could begin Nissan dealership
16 operations with no, or with only nominal increases to its existing fixed
17 costs and assumes it could sell 21 to 42 new vehicles per month at a
18 front end gross of \$2,000 per vehicle and a net after fixed and semi-
19 fixed cost of 60 percent.

20 44. To the extent that Raceway Ford might be permitted to conduct
21 Nissan sales without a showroom facility, customers could be exposed to
22 outdoor temperatures in the range of 105 to 109 degrees during months.

23 45. To the extent that Raceway Ford might conduct Nissan sales and
24 service operations without adequate facilities, customers could be led
25 to conclude that Raceway is not making a significant commitment to the
26

27 ⁹ Raceway Ford apparently contemplates the interim use of some
28 temporary (portable) structures to house Nissan office operations.

1 Nissan brand and product.

2 46. To the extent that Raceway Ford may be permitted to engage in
3 retail sales and service without providing or undertaking a financial
4 commitment to provide facilities commensurate with those of other Nissan
5 dealers in the RMA, it may be properly inferred that Raceway Ford would
6 be able to escape capital costs and could, to that degree, offer
7 products and services at pricing levels significantly below those of
8 competing RMA dealers.

9 47. Raceway Ford has not ruled out the possibility of constructing
10 a separate and exclusive Nissan facility at some time in the future.

11 48. Nissan's witness, Mr. Kirrane, testified that in order for Mr.
12 McCallan to be approved as a Nissan dealer, he will "eventually" be
13 required to provide separate and exclusive facilities meeting Nissan's
14 facility guides. Mr. Kirrane explained that "eventually" could mean 24
15 months and that an interim operation could be undertaken with Nissan's
16 approval of a term agreement depending on the dealer's capacity to
17 provide service. Mr. Kirrane had not discussed any term agreement with
18 Mr. McCallan.

19 49. Mr. Kirrane stated that even if Mr. McCallan were not
20 appointed at the designated location, Nissan "may have another
21 candidate."

22 50. Neither Respondent nor Mr. McCallan attempted to explain why
23 Nissan announced that it was filling the Moreno Valley open point
24 without first having approved a particular dealer and without having
25 reached any understanding as to the facilities that would be provided,
26 nor why these matters had not been determined prior to the Hearing.

27 ///

28 ///

1 E. FINDINGS PERTAINING TO THE SITE OF THE PROPOSED
2 ADDITIONAL DEALERSHIP

3 51. At about the time of the 1994 closure of the Nissan dealership
4 in the Moreno Valley Auto Mall, Nissan undertook a market study of the
5 Moreno Valley PMA, in which Mr. William W. Bivens, Nissan's regional
6 general manager in 1994, and Mr. Kirrane participated.

7 52. The 1994 Market Study concluded that Nissan should seek to re-
8 establish representation in Moreno Valley, either at its former location
9 in the Moreno Valley Auto Mall or near the junction of State Routes 60
10 and 215.¹⁰

11 53. The Moreno Valley Auto Mall is situated just east of the
12 geographic center of the Moreno Valley PMA, while the site of the
13 proposed new dealership at the location of Raceway Ford is near the
14 western boundary of the PMA and approximately 7 miles west of the Auto
15 Mall as shown in A-1.

16 54. Employment and retail shopping opportunities in the RMA and
17 the area generally tend to be located toward the west, and travel
18 volumes are higher in the vicinity of the junction of the 60 and 215
19 freeways and Raceway Ford, than at the Moreno Valley Auto Mall.

20 55. Opinions differed within Nissan's management as to whether the
21 replacement dealer should be established in the Moreno Valley Auto Mall
22 or at the 60/215 junction. Mr. Bivens was impressed by the fact that
23 Raceway Ford had located near the junction, and along with Mr. Kirrane,
24 believed that traffic patterns and nearby retail establishments favored
25 the junction over the Auto Mall.

26 _____
27 ¹⁰ At that time, Raceway Ford had already opened near the
28 junction of the 60 and 215 freeways after relocating from its former
site in Riverside.

1 56. Nissan undertook to update the Moreno Valley Market Study in
2 1998. The conclusions of the update were identical to those of the 1994
3 study with respect to the two alternate locations for a Nissan
4 dealership.

5 57. Nissan's expert witness, Mr. Longo, undertook a computer based
6 optimal location study using the census tracts where Nissan vehicles
7 have been registered to determine on the basis of straight line
8 distances the optimal location for an additional Nissan dealership in
9 the Inland Empire District. His study determined that the optimal
10 location would be in the census tract in which the Moreno Valley Auto
11 Mall is located.

12 58. Mr. Longo also determined that for the Moreno Valley PMA the
13 current average distance between consumers and Nissan dealers is 9.0
14 miles, and that with the proposed new dealership located at the Raceway
15 Ford location, the distance would be reduced to 5.7 miles. On cross-
16 examination it was determined that if the new Nissan dealership were
17 located instead at the Moreno Valley Auto Mall, the distance would be
18 further reduced to 5.3 or 5.4 miles.

19 59. Although the difference of between 5.7 and 5.3 miles in
20 average distances does not appear significant, the heaviest
21 concentrations of population and competitive segment industry
22 registrations in the Moreno Valley PMA are immediately adjacent to the
23 Moreno Valley Auto Mall.

24 60. Within the RMA as a whole, an additional area of concentrated
25 population and registration density exists to the west and northwest
26 along the 91 Freeway corridor, the bulk of which lies within the
27 Protestant's PMA.

28 ///

1 F. FINDINGS PERTAINING TO PERMANENCY OF THE INVESTMENT

2 61. Quaid's dealer principal, Robert A. Quaid, began his
3 professional career in the retail motor vehicle industry in 1966 after
4 earning a graduate degree in mechanical engineering from General Motors
5 Institute (now Kettering University). After a term of employment with
6 General Motors, Quaid became a franchise owner in 1971 and has held
7 various line-make franchises over the years. Mr. Quaid first became a
8 Nissan franchisee in the City of Riverside in 1983.

9 62. Quaid Nissan is located in the Riverside Auto Mall on State
10 Route 91, a major freeway which runs generally east to west linking San
11 Bernardino on the east of Riverside to the coastal population centers of
12 Orange County and the Los Angeles area. Quaid Nissan is part of Quaid
13 Imports which consists of a 13 acre complex purchased by Mr. Quaid in
14 1983 and which now represents a total of 12 different line-makes.

15 63. Quaid's complex includes, in relevant part, three showrooms,
16 shop facilities, an office complex, employee and customer amenities, a
17 body shop, a used vehicle lot, and several outdoor display areas.

18 64. The Nissan portion of Quaid's facility consists of a showroom
19 and outdoor display area currently dualed with Volkswagen and parts and
20 service facilities shared with other line-makes.

21 65. On the basis of his ownership and a recent bank appraisal, Mr.
22 Quaid values his property, including improvements, at \$12,250,000.

23 66. Inclusive of all line-makes Quaid represents, the facility
24 stocks an average vehicle inventory valued at 11 to 12 million dollars.
25 Quaid estimates his parts inventory is in the range of \$350,000 to
26 \$400,000, and has invested some \$500,000 in tools and equipment, with an
27 unspecified large some of money having been invested in employee
28 training.

1 67. In addition Mr. Quaid is part owner of a reader board sign
2 advertising the location of the Riverside Auto Mall and owns an off-site
3 freeway sign. Under Mr. Quaid's management, his Nissan dealership is
4 consolidated with his entire operation, and he considers his Nissan
5 franchise to be an integral part of his complex.

6
7 G. FINDINGS PERTAINING TO WHETHER THE FRANCHISEES OF THE
8 SAME LINE-MAKE IN THE RELEVANT MARKET AREA ARE
9 PROVIDING ADEQUATE COMPETITION AND CONVENIENT CONSUMER
10 CARE

11 68. Protestant's facilities in Riverside are as described in the
12 findings on the permanency of the investment, *supra*. Protestant meets
13 or exceeds Nissan's guide requirements for land and buildings based on
14 his total planning volume for 1997.

15 69. Toward assessing the adequacy of interbrand competition in the
16 RMA, Respondent compared its sales in the Moreno Valley and Riverside
17 PMA's as against those of its two primary competitors, Toyota and Honda.
18 The analysis supports the conclusion that Nissan is substantially "out-
19 sold" by these competitors, although not, perhaps, to the degree shown
20 in the data because Respondent's figures do not include data for the
21 entire RMA and because they show only Quaid's sales in its own PMA.¹¹

22 70. Quaid's sales penetration for the years 1996 to 1998 year to
23 date June was consistently low in comparison to figures for the Los
24 Angeles (LADMA) area, the Inland Empire District and the Southwest
25 Region as shown in the table below:

26
27 ¹¹ Respondent's analysis shows no Nissan sales in the Moreno
28 Valley PMA based on the fact that no Nissan dealer is there. Nissan
does, in fact, have sales to customers which are being made by Quaid and
other Nissan dealers which Respondent chose to ignore in its analysis.

Comparative Market Penetration

Year	Quaid	LADMA	District	Region
1996 car	4.0	8.2	10.3	9.6
1996 Truck	4.6	9.2	13.4	11.3
1997	4.2	9.4	8.6	10.5
1998 YTD	2.6	6.9	5.1	7.8

Source: Exhibit R-11

71. As a measure of the adequacy of customer care, Nissan's CSI data for 1994 through August 1998 is shown below comparing the Protestant's scores to the Southwest Region average and by Quaid's rank. In the table, NPI reflects customer satisfaction with the sale, NSI refers to post-sale service by the dealer, and F1 reflects customer satisfaction when repairs are performed correctly on the first attempt.

Protestant's Customer Satisfaction Indices

Year	NPI			NSI			F1		
	Quaid	Region	Rank	Quaid	Region	Rank	Quaid	Region	Rank
1994	73.9	83.8	83/85	70.0	76.2	77/85	na	na	na
1995	80.3	83.8	73/84	67.1	74.6	74/83	na	na	na
1996	75.7	84.99	73/76	72.2	77.1	68/80	80.4	79.2	35/80
1997	71.9	83.28	60/62	73.9	78.26	57/71	78.7	79.2	37/71
1998 to July	81.4	83.4	46/64	65.6	79.57	68/69	63.0	80.2	68/69
1998 August	100	81.4	na	58.1	77.3	na	57.1	79.3	na

Source: Exhibit R-12 and P12

72. As the table above illustrates, Quaid has ranked consistently near the bottom in NPI and NSI over the period and its performance is very low in all categories. Nissan considers Quaid's service performance to be unacceptable.

73. Respondent's principal evidence concerning the adequacy of competition in the RMA was presented by Mr. Longo as the Nissan Motor Corporation Moreno Valley Open Point Study 1998 (identified and referred

1 to throughout as Exhibit R-1). The study employed an eight-step
2 methodology designed and utilized by Urban Science Applications, Inc.,
3 over the past 15 years for the purpose of determining the adequacy of
4 representation of new motor vehicle manufacturers and distributors.

5 74. The methodology consists of the following eight steps: (1)
6 defining a study area, (2) selecting an appropriate standard of sales
7 performance, (3) assessing the performance of dealers in the study area
8 in comparison with the selected performance standard, (4) determining
9 the likely causes for any variation between actual performance and the
10 performance standard, (5) evaluating a proposed solution for improving
11 actual sales performance, (6) accessing the likely impact of the
12 proposed solution, (7) reviewing comparable actual experience to test
13 the validity of the analysis, and (8) finalizing the conclusions and
14 recommendation of the study.

15 75. For the study area, Mr. Longo selected Nissan's Inland Empire
16 District within which there are six existing Nissan dealerships and the
17 proposed additional Nissan dealership, each having a separate assigned
18 PMA. The study area was further divided into the Moreno Valley RMA
19 within which are three existing Nissan dealerships, including Metro San
20 Bernardino Nissan, Metro Redlands Nissan and the Protestant, Quaid
21 Imports.

22 76. In establishing an appropriate comparative sales performance
23 standard, Mr. Longo reviewed Nissan's percentage of total industry
24 retail sales (referred to as "market penetration") in the market
25 segments in which Nissan competes for the years 1995 through 1997, for
26 the study area (including the Moreno Valley PMA and the RMA) and the
27 Southwest Region and the nation, as set forth in Exhibit R-1, p. 004 and
28 005 and which are attached hereto as A-3 and A-4.

1 77. Mr. Longo selected Nissan's 1997 market penetration rate for
2 the Southwest Region for a trial performance standard. To adjust the
3 standard for any differences in customer preferences as to the various
4 vehicle types (segments) in the Region as opposed to the RMA, Mr. Longo
5 extracted the percentage of the total industry registrations captured by
6 each segment for the Region and for the RMA.¹² Finding that customer
7 preferences in the RMA exceeded those in the Region for the compact,
8 sport specialty, van and compact truck segments but were lower than the
9 Region for the mid-size, sports and compact utility types, he adjusted
10 the Regional performance measure accordingly from the original 9.95 to
11 10.34 for comparison with the actual Nissan market penetration in the
12 RMA of 7.90.

13 78. Mr. Longo subjected the adjusted performance standard to two
14 tests to determine its adequacy. First, he compared the standard to
15 Nissan's actual 1997 market penetration performance in each census tract
16 in the Inland Empire District and determined that the standard had been
17 met or exceeded in "very many areas," and although the Inland Empire
18 District as a whole did not meet the standard, small areas of it,
19 principally clustered around existing Nissan dealerships did so.

20 79. Mr. Longo's second test was to observe that during the period
21 when there was a Nissan dealership in the Moreno Valley Auto Mall, the
22 Moreno Valley PMA performed at 109.3 percent and 99.6 percent of the
23 adjusted Regional standards for the years 1992 and 1993, but fell to
24 only 75.5 percent effectiveness when the Moreno Valley Nissan dealership
25

26 ¹² "Market segments" is an industry term referring to the various
27 types of vehicles which comprise the entire industry market. In the
28 relevant time period, Nissan competed in the seven market segments shown
in A-4 and the analysis includes market percentages for those vehicle
types only.

1 closed.

2 80. Although Mr. Longo concluded on the bases of these tests that
3 the adopted adjusted Regional performance standard was reasonable,
4 subsequent independent review of R-1 p.011 by the Administrative Law
5 Judge determined that the standard was actually only reached in some 82
6 or 25.6 percent of the 320 census tracts in the Inland Empire District.
7 not only did the District as a whole fail to attain the adjusted
8 standard, neither is there any evidence in the record to show that the
9 standard was met by any of its nine PMA's. Furthermore, it is
10 remarkable that the Moreno Valley PMA performed at 109.3 percent of the
11 Regional standard in 1992 in that it appears from the legend in R-1
12 p.012 that the dealership did not even open until June of that year.
13 The observation for the year 1994 is less surprising in that the Moreno
14 Valley Nissan dealer closed its doors in August of that year, leaving
15 only the single anecdotal account of 1993. In addition, Mr. Longo did
16 not consider other geographic areas such as all or portions of Southern
17 California from which to derive a potentially more reasonable standard.
18 These matters require the Board, even though the selected standard may
19 be considered somewhat reasonable, to give less weight to the adjusted
20 Southwest Region standard than it might have otherwise given.

21 81. Mr. Longo's next step was to compare actual Nissan sales
22 performance in the Moreno Valley PMA and the RMA with the adjusted
23 Southwest Region standard. This analysis shows that sales in the RMA
24 during the period 1995-1997 fell short of the level indicated by the
25 standard, reaching 76.5 percent of the expected performance in 1995,
26 69.3 percent in 1996 and 76.4 in 1997. That portion of the RMA sales
27 attributable to Protestant accounted for 7.7 percent in 1995, 7.0
28 percent for 1996 and 8.0 percent in 1997. Likewise Nissan sales in the

1 Moreno Valley PMA also fell short of the standard, at 72.3 percent in
2 1995, 63.7 percent in 1996 and 71.7 percent in 1997. Quaid's
3 contribution in the PMA was 10.1 percent in 1995, 6.9 percent in 1996
4 and 8.8 percent in 1997.

5 82. Mr. Longo next performed the same comparative analysis for
6 each of the Nissan dealers in the RMA with respect to their performance
7 in their respective PMAs, the result of which is shown graphically
8 below:

9 Sales Effectiveness of RMA Dealers in Their PMAs

Nissan RMA Dealer	1995	1996	1997
Riverside PMA Percent Effectiveness	66.9	61.5	68.8
PMA Dealer Contribution (Quaid)	10.8	11.1	10.7
San Bernardino PMA Percent Effectiveness	84.0	77.4	89.4
PMA Dealer Contribution	21.2	13.7	22.8
Redlands PMA Percent Effectiveness	67.9	69.1	78.6
PMA Dealer Contribution	18.0	27.5	34.5

16 Source: Exhibit R-1 p. 015-017

17 83. On the basis of this analysis, Nissan's performance in the
18 RMA, the Moreno Valley PMA, and within the PMAs assigned to each of the
19 three existing Nissan dealers in RMA as well, falls short of Nissan's
20 expected level based on the adjusted Southwest Region standard.

21 84. Mr. Longo next examined demographic characteristics of the
22 population in the Moreno Valley PMA and the RMA to determine whether the
23 sales performance shortfall could be attributed to characteristics of
24 the population in the RMA. Based on Mr. Longo's analysis of trends in
25 population and household growth, household income, and employment, none
26 of these factors can adequately explain the shortfall in Nissan's sales
27 performance. The analysis also revealed a substantial area of high
28 population and household density in immediate proximity to the site of

1 the Moreno Valley Auto Mall and that households in the RMA are forecast
2 to increase from 234,581 in 1997 to 254,054, an increase of 19,473, by
3 the year 2002.

4 85. Mr. Longo next considered whether Nissan's performance
5 shortfall in the RMA could be attributed to the structure of the dealer
6 network now serving the area. To do so Mr. Longo plotted the number of
7 new vehicle registrations attributable to each Nissan dealer in the
8 Inland Empire by distance from that dealer. In so doing, Mr. Longo was
9 able to show each dealer's market penetration declines over increasing
10 distance from the dealership. On this basis Mr. Longo concluded that
11 the Inland Empire dealers generally were too far from the RMA to
12 penetrate the market effectively. As to the three Nissan dealers within
13 the RMA specifically, this analysis shows that Metro Redlands was able
14 to penetrate the market at a level of about 1.4 percent at its 9.0 mile
15 distance from the proposed new dealership, Metro San Bernardino at a
16 distance of 9.8 miles reached 1.7 percent and Protestant, at a distance
17 of 8 miles reached only 0.9 percent. This analysis would tend to
18 support the proposition that the RMA dealers are not effectively
19 penetrating the RMA market. In addition it appears that Protestant,
20 which is actually closest to the proposed additional dealer is the least
21 effective of the three.

22 86. Mr. Longo's methodology did not include consideration of
23 dealer operations or practices as a factor in determining the adequacy
24 of Nissan's representation in the RMA.

25 87. Mr. Longo's analysis of customer convenience as a factor of
26 the average distances between all competitive industry registrations in
27 the RMA and the nearest represented line-make dealer showed that
28 Nissan's present average is, along with the Kia and Mazda brands,

1 presently the highest at 9.0 miles. The other line-makers in the RMA
2 have average distances ranging from 4.4 to 6.7 miles, the majority being
3 in the Moreno Valley Auto Mall and having an average distance of 5.4
4 miles.

5
6 H. FINDINGS PERTAINING TO THE EFFECT ON THE RETAIL MOTOR
7 VEHICLE BUSINESS AND THE CONSUMING PUBLIC IN THE
8 RELEVANT MARKET AREA

9 88. Nissan's customer convenience factor of 9 miles would be
10 improved to 5.7 miles at the proposed new dealer location, and as noted
11 above, to 5.4 if a Nissan dealership were located in the Moreno Valley
12 Auto Mall.

13 89. The proposed location at Raceway Ford is about the same
14 distance from the Moreno Valley Auto Mall as it is from Protestant's
15 location in Riverside. This would result in the proposed dealership
16 having not only proximity to the Moreno Valley market, but proximity to
17 Protestant's market as well.

18 90. Protestant's witness, Robert Quaid, testified that he would
19 not oppose the establishment of an additional Nissan dealership if it
20 were to be located in the Moreno Valley Auto Mall.

21 91. The establishment of a second Nissan dealership in the City of
22 Riverside could negatively effect the value of Protestant's dealership
23 in that Riverside would no longer be a single dealer community.

24 92. The bulk of Protestant's sales are made to customers within
25 eight miles from his location. The proposed location at Raceway Ford
26 being seven miles from Protestant would place the additional dealership
27 within this area. Such proximity could cause some erosion of dealer
28 profits due to the partial overlap of the markets of Protestant and the
proposed dealership.

1 93. Quaid is currently a profitable Nissan dealership. For 1998,
2 Quaid Imports anticipates earning a total of up to \$17 million in gross
3 revenues from its Nissan sales and service operations.

4 94. To the extent that the proposed dealership might begin
5 operations without a substantial capital commitment, it would have a
6 substantial advantage in competing with Protestant.

7 95. Intensive competition between the proposed dealership and
8 Protestant could cause Protestant to reduce non-profitable services it
9 now provides to customers such as maintaining its large parts inventory,
10 free minor repair services, and courtesy transportation.

11 96. Respondent's expert witness undertook a quantitative
12 assessment of the effect of an additional dealership based on the
13 ability of an additional dealership to capture sales in the RMA now
14 being lost to other competing line-makes and made by Nissan dealers
15 outside the RMA.

16 97. Using the adjusted Southwest Region performance standard
17 applied to 1997 performance, Mr. Longo estimated that Nissan is
18 currently losing 473 sales in the RMA to competing brands.

19 98. By matching Nissan 1997 sales registered in the RMA to the
20 selling Nissan dealers located outside the RMA, Mr. Longo determined
21 that insell accounted for 972 registrations. In theory, an additional
22 dealer in the RMA would help Nissan meet interbrand competition and
23 would have the advantage of proximity to RMA customers in competing with
24 Nissan dealers located outside the RMA.

25 99. Combining the potential 473 sales from those now lost to
26 interbrand competitors and the 972 sales from insell, Mr. Longo
27 determined that there are total potential sales of "1,445 units
28 available for (an additional) dealer in (the Moreno Valley RMA) to sell

1 before it would impact any existing dealer in the RMA."

2 100. Mr. Longo estimated that the sales of an additional dealer
3 would likely be 331 units based on the average sales performance of the
4 existing dealers in the Inland Empire District or up to 497 assuming the
5 additional dealer performs as well as the best-performing dealer in the
6 District. Accordingly, Mr. Longo determined that of the total potential
7 sales opportunity, an additional dealer would absorb between 22.9 and
8 34.4 percent of the estimated potential sales. Based on the fact that
9 the potential sales represented by interbrand competition and insell
10 vastly exceed the projected sales of an additional dealer, he concludes
11 that the existing RMA dealers would not lose any sales.¹³ Mr. Longo's
12 conclusion assumes that, somehow, every sale by an additional dealer
13 would be made to an RMA customer who either would have purchased a
14 competing brand or a Nissan vehicle from a dealer outside the RMA. The
15 factual basis for such assumption was not identified.

16 101. A reasonable alternative to Mr. Longo's assumption that all of
17 the additional dealer's sales would come from interbrand competition and
18 insell, would be that at least some of that dealer's sales could also
19 come from the cross-sales of three existing Nissan dealers in the RMA as
20 well.¹⁴ Metro Redlands, Metro San Bernardino and the Protestant, in
21 1997, accounted for 164, 104 and 146 Nissan registration, respectively,
22 for a total of 414 RMA sales. There is no logical reason why an
23 additional dealer would eschew these sales in favor of potential
24

25 ¹³ Mr. Longo repeated his analysis for the Inland Empire as a
26 whole with similar results.

27 ¹⁴ "Cross-sell" is an industry term for sales into a geographic
28 area by other same line-make dealers in the same area. It is
distinguishable from insell which consists of sales in an area by same
line-make dealers located outside the area.

1 interbrand or insell opportunity.

2 102. Mr. Longo's analysis did not take into account the potential
3 effect of an additional dealership on the profitability of existing
4 dealers.

5 103. Mr. Longo's analysis would produce the same result whether the
6 proposed location were the Moreno Valley Auto Mall or Raceway Ford.

7

8 I. FINDINGS PERTAINING TO WHETHER IT IS INJURIOUS TO THE
9 PUBLIC WELFARE FOR AN ADDITIONAL FRANCHISE TO BE
10 ESTABLISHED

11 104. The additional franchise would result in increased opportunity
12 for residents of the Moreno Valley area to obtain Nissan products and
13 services.

14 105. An additional Nissan dealership would provide some new
15 employment opportunities in the area, but these would be "nominal" if
16 the new dealer is established at Raceway Ford.

17 106. Any additional local tax revenues generated by the proposed
18 dealership at Raceway Ford would accrue to the City of Riverside.

19 107. To the extent that an additional dealership might operate
20 without a commitment to establish adequate facilities, competition could
21 cause Protestant to reduce costs by cutting services and personnel at
22 its dealership.

23

24 J. FINDINGS PERTAINING TO WHETHER THE ESTABLISHMENT OF AN
25 ADDITIONAL FRANCHISE WOULD INCREASE COMPETITION AND
26 THEREFORE BE IN THE PUBLIC INTEREST

27 108. Respondent's expert witness, Mr. Longo, testified that the
28 establishment of an additional dealer could, in some cases, increase
29 competition in a way that is positive in that it can result in increased
30 sales not only for the additional dealer but existing dealers as well.

1 In support of this Mr. Longo introduced three examples where another
2 manufacturer had established additional dealerships in the vicinity of
3 Moreno Valley which resulted in increased market penetration for the
4 line-makes involved. As a fourth example, Mr. Longo offered the
5 experience of Nissan's former dealership in the Moreno Valley Auto Mall.
6 In that case, the loss of the Moreno Valley dealer coincided with a drop
7 in penetration performance and an increase in insell in the Moreno
8 Valley PMA and with a drop in performance by other dealers in the RMA,
9 including Protestant, as well.

10 109. Mr. Longo's examples may tend to support the proposition that
11 increased intrabrand competition can result in increased penetration
12 performance and reduced insell levels, but they do not disprove the
13 contrary that competition can also have deleterious effects. In any
14 case, the examples must be given little weight in that none involved an
15 additional dealer locating as close as seven miles from an existing
16 dealer, and none involved the harmful competition in the absence of a
17 capital investment by the additional dealer.

18 110. Considering that Nissan's largest import competitors, Toyota
19 and Honda, have dealerships in the Moreno Valley portion of the RMA, and
20 that Nissan has not been represented there since 1994, an additional
21 Nissan dealership in Moreno Valley would increase interbrand competition
22 for import sales and would be in the public interest.

23 111. To the extent that the proposed Nissan dealer might engage in
24 retail sales without first having committed to making a substantial
25 capital investment in the form of showroom and other facilities
26 commensurate with Respondent's generally applied standards and guides,
27 the increased competition would not be in the public interest in that it
28 would enable the proposed dealership to compete with existing dealers in

1 the RMA without providing adequate consumer facilities and without the
2 need to recover capital costs through its vehicle pricing.

3
4 CONCLUSIONS

5 112. Protestant's investment in its Nissan franchise is permanent.
6 Absent a binding agreement with Respondent, the investment of the
7 proposed new dealership cannot be ascertained.

8 113. The establishment of an additional new dealership in the
9 Moreno Valley would benefit the retail motor vehicle business in that it
10 would result in an increase in Nissan registrations through more
11 effective interbrand competition. The consuming public would benefit
12 from increased access to Nissan products and services.

13 114. Quaid is an experienced Nissan dealer with personnel,
14 financial and facilities resources to compete effectively with an
15 additional dealer so long as that dealer has made a reasonable
16 investment in capital facilities.

17 115. Except as regards the issue of the proposed dealer's
18 facilities, the Protestant failed to establish that the additional
19 dealer in the RMA would be injurious to the public welfare.

20 116. The franchisees of the same line-make in the RMA are not
21 presently providing adequate competition and convenient consumer care
22 for Nissan motor vehicles in the market area.

23 117. The establishment of an additional Nissan franchise in the RMA
24 having facilities commensurate with those of other dealers in the RMA
25 would increase competition and would therefore be in the public
26 interest.

27 118. The validity of Respondent's analysis of Protestant's sales
28 and service performance analysis, is reduced somewhat by the fact that

1 Respondent does not consider a dealer's fleet and program vehicle sales
2 and that consumer satisfaction indexes may be based on skewed and
3 inadequate consumer responses. Protestant, however, failed to show the
4 magnitude of the inaccuracies or the degree to which comparisons between
5 Protestant and other Nissan dealers may be invalid.

6 119. The absence at the time of the hearing of any plan and binding
7 agreement between the proposed new dealer and Respondent for capital
8 facilities creates a situation in which it is possible that the proposed
9 new dealership will have a significant competitive advantage over the
10 existing Nissan dealers in the RMA and that adequate facilities will not
11 be provided to consumers within any determinable time. So long as such
12 a situation exists both the retail motor vehicle business and the
13 consuming public would be harmed.

14 120. The proposed location of the additional Nissan dealership at
15 the site of Raceway Ford would not of itself have a substantial negative
16 effect on the retail motor vehicle business in the RMA. Where as here,
17 existing dealers in the RMA are not providing adequate competition and
18 convenient consumer care, the possibility that other sites, such as the
19 Moreno Valley Auto Mall, for an additional dealership may exist in the
20 RMA, or that there may be relative advantages and disadvantages among
21 them, is a matter to be addressed by the industry and not the Board.

22 121. The evidence adduced at hearing showing that the relationship
23 between Protestant and Respondent has been a troubled and acrimonious
24 one circumstantially supports Protestant's position that Respondent to a
25 degree intends the additional dealership to have a negative effect on
26 Protestant. The selection of the site of Raceway Ford rather than the
27 Moreno Valley Auto Mall for the additional dealership, whether
28 influenced by the parties' relationship or not, is independently

1 supported by travel patterns and other retail development in close
2 proximity to Raceway Ford.

3 122. The absence, however, of a facilities agreement between
4 Respondent and its proposed dealer, and of any explanation thereof, are
5 without any independent justification whatsoever. In consideration of
6 the evidence presented on this issue by both of the parties, the Board
7 must conclude that it is more probable than not that Respondent either
8 intends harm to Protestant or is unconscionably indifferent thereto.

9 123. Based on the evidence and argument presented at the hearing
10 and the findings made herein, the Board concludes that, while an
11 additional dealership should be established in the Moreno Valley RMA, it
12 should not be established in the absence of a contractual agreement
13 between Respondent and the proposed dealership which will ensure a
14 capital investment on the part of the proposed dealer to provide
15 adequate showroom, service and associated facilities.

16 124. The Board recognizes that Nissan and its proposed additional
17 dealer may, at any time hereafter, enter into an appropriate facilities
18 agreement. Therefore, the Board should provide a means for avoiding
19 unnecessary re-litigation of this matter. The Board will grant leave
20 for a period of up to one year in which Respondent may conclude an
21 agreement for facilities and issue appropriate notice as provided in
22 Vehicle Code section 3062(a). In the event of a Protest thereof by
23 Quaid Imports, the Board's decision will be made on the basis of its
24 findings in this Decision, and the evidence adduced at any subsequent
25 protest should be limited to: (1) the issue of whether or not the
26 proposed dealership will provide adequate capital facilities; and (2)
27 any material and substantial changes as to those matters on which
28 findings have been made in this Decision.

1
2 PROPOSED DECISION

3 The protest is SUSTAINED. Respondent shall not establish an
4 additional franchise in the Moreno Valley RMA. Respondent is granted
5 leave for a period of one year beginning on the effective date of this
6 Decision in which it may, pursuant to § 3062, notify the Board and each
7 Nissan franchisee in the relevant market area of its intention to
8 establish an additional dealership or to relocate an existing dealership
9 within or into the RMA.

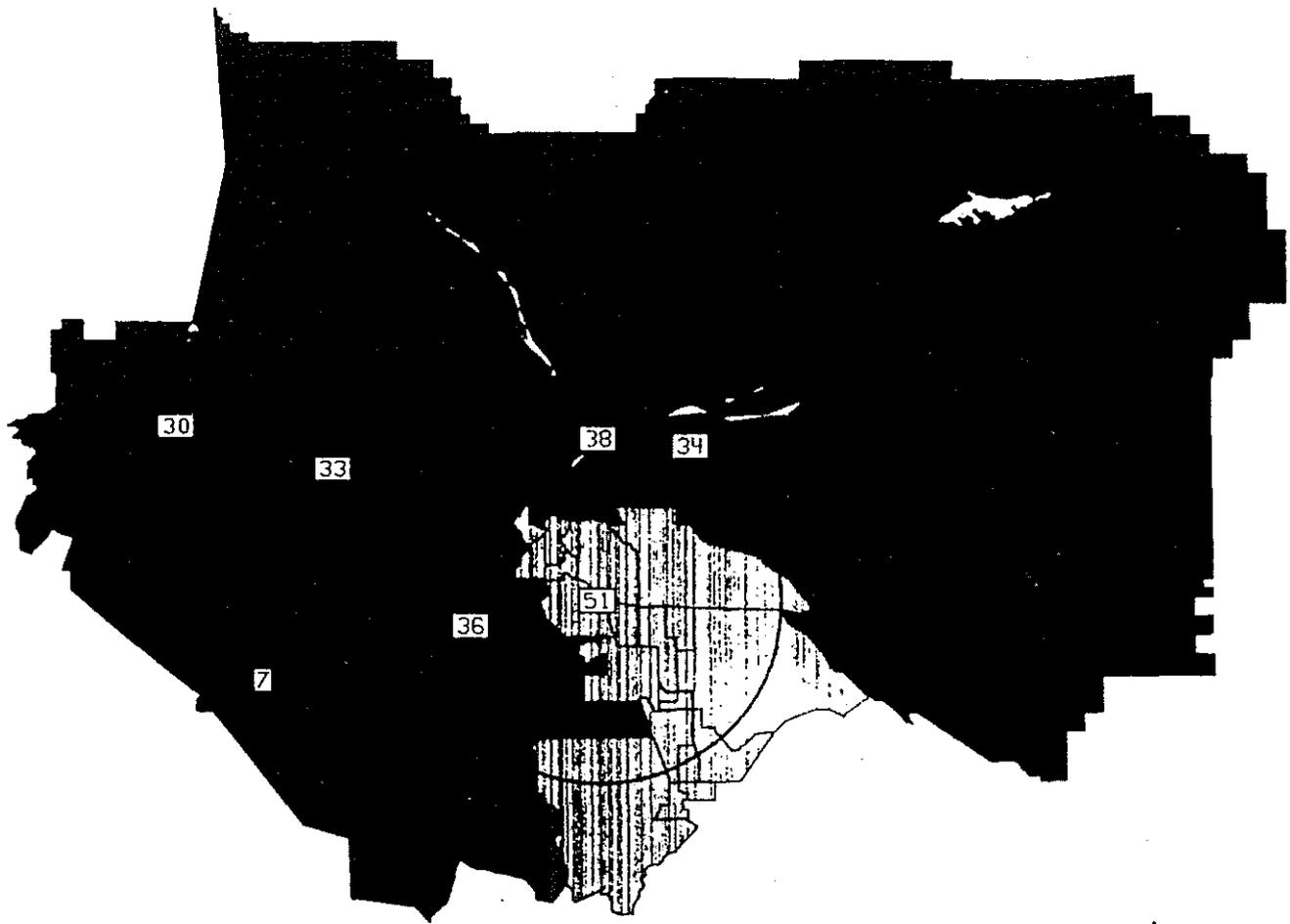
10 In the event of a Protest by Quaid Imports, Inc., arising from
11 notice given as provided herein, the findings in this Decision shall
12 have the effect of *res judicata* except as to the existence of a
13 contractual agreement between Nissan Motor Corporation, U.S.A., and any
14 proposed additional or relocating franchisee for the provision by that
15 franchisee of adequate facilities for the sales and service of Nissan
16 motor vehicles, and as to any material changes in any matter which is
17 the subject of the findings herein.

18
19 I hereby submit the foregoing
20 which constitutes my proposed
21 decision in the above-entitled
22 matter, as the result of a
23 hearing before me, and I
24 recommend the adoption of this
25 proposed decision as the
26 decision of the New Motor
27 Vehicle Board.

28 DATED: 11/4/98

By: Kenneth B. Wilson
KENNETH B. WILSON
Administrative Law Judge

27 Sally Reed, Director, DMV
Tom Novi, Chief,
28 Occupational Licensing Branch, DMV



7	TERRY YORKS	CORONA
13	FONTANA	FONTANA
30	METRO MONTCLAIR	MONTCLAIR
33	EMPIRE NISSAN	ONTARIO
34	METRO REDLANDS	REDLANDS
36	QUAID IMPORTS	RIVERSIDE
38	METRO SAN BERN	SAN BERNARDINO
50	POMONA	POMONA
51	PROPOSED POINT	MORENO VALLEY

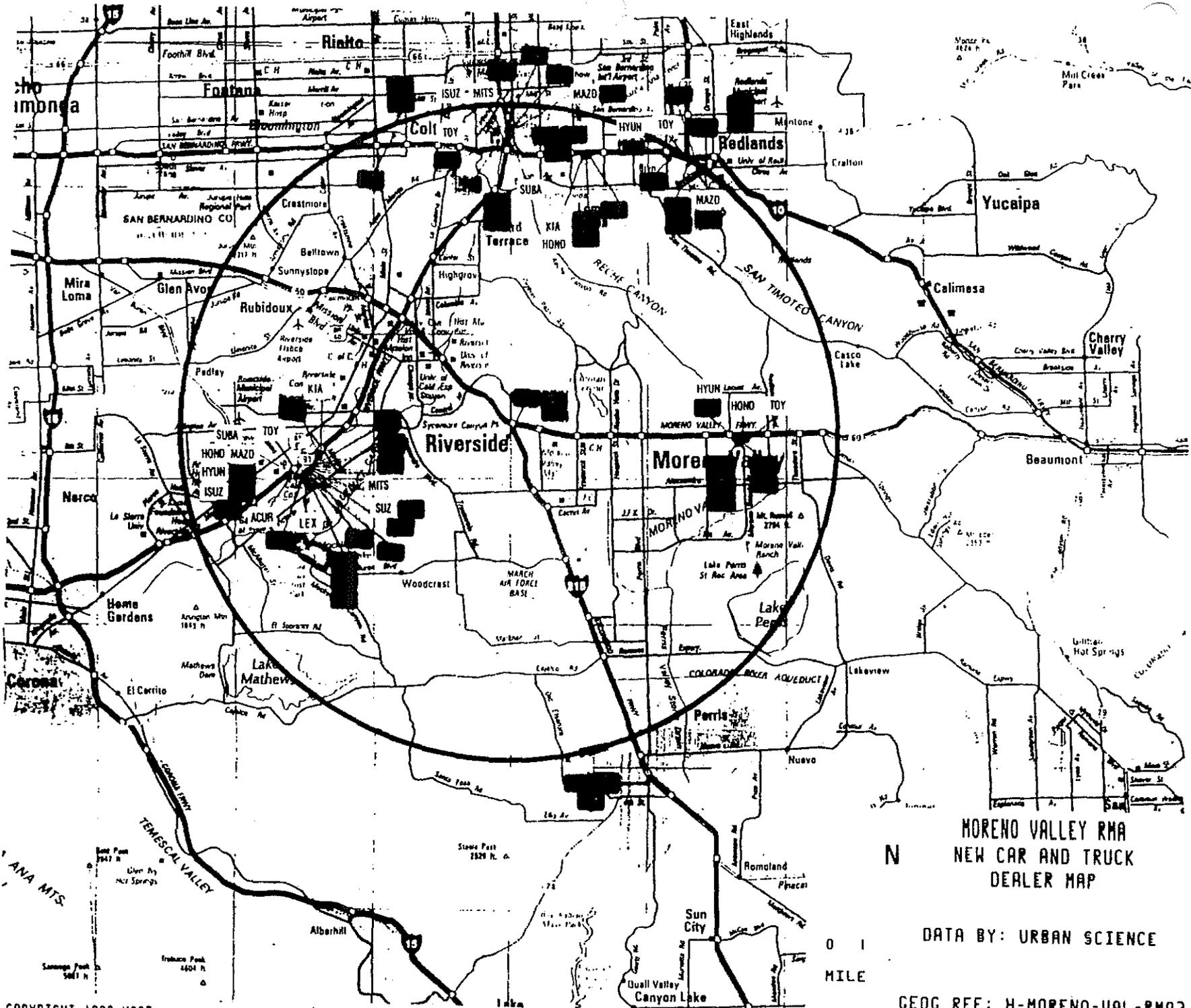


**INLAND EMPIRE METRO
WITH 10 MILE RING
AROUND PROPOSED
POINT**



GEOG REF: H-INLAND-MET3

RAY V. PUGH



**MORENO VALLEY RMA
NEW CAR AND TRUCK
DEALER MAP**

DATA BY: URBAN SCIENCE

GEOG REF: H-MORENO-VAL-RMA3
URBAN SCIENCE APPLICATIONS, INC.
LONG BEACH, CALIFORNIA

0 1
MILE

NISSAN MOTOR CORPORATION USA

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NISSAN MOTOR CORPORATON USA

PENETRATION PERCENTAGE COMPARISON
COMPETITIVE INDUSTRY REGISTRATIONS
RETAIL CAR AND TRUCK

YEAR	MORENO VALLEY PMA	MORENO VALLEY RMA	INLAND EMPIRE METRO	SOUTHWEST REGION	NATIONAL
1995	7.29	7.74	9.62	9.92	7.07
1996	6.74	7.34	8.87	10.37	6.96
1997	7.43	7.90	8.79	9.95	7.04

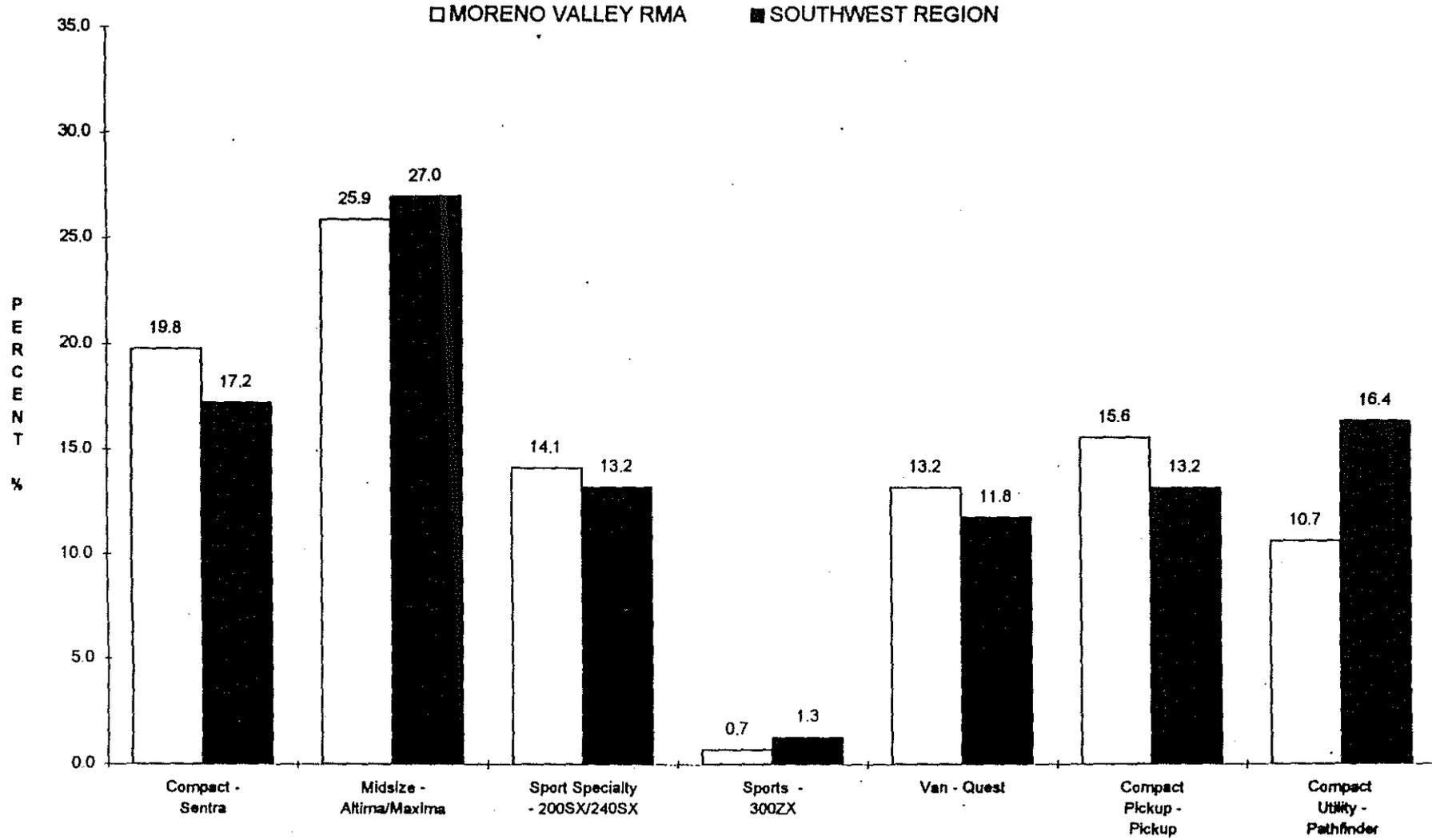
Appendix A-3

GEOG REF: H-MORENO-VAL-RMA3; H-INLAND-MET3

Source: Urban Science using The Polk Company data

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DECEMBER 1997 CYTD PRODUCT POPULARITY COMPARISON
PERCENT OF RETAIL COMPETITIVE REGISTRATIONS



Geog Ref: H-MORENO-VAL-RMA3

Data Source: The Polk Company

Appendix A-4