

NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
Sacramento, California 95814
Telephone: (916) 445-2080

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of)	
PH AUTOMOTIVE HOLDING CORPORATION)	
dba PACIFIC HONDA,)	Protest No. PR-1945-05
)	
Protestant,)	
)	
v.)	
)	
AMERICAN HONDA MOTOR CO., INC.,)	
)	
Respondent.)	
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In the Matter of the Protest of)	
TIPTON ENTERPRISES, INC., dba)	
TIPTON HONDA,)	Protest No. PR-1947-05
)	
Protestant,)	
)	
v.)	
)	
AMERICAN HONDA MOTOR CO., INC.,)	
)	
Respondent.)	
<hr/>		
In the Matter of the Protest of)	
BALL AUTOMOTIVE GROUP dba BALL)	
HONDA,)	Protest No. PR-1948-05
)	
Protestant,)	
)	
v.)	
)	
AMERICAN HONDA MOTOR CO., INC.,)	
)	
Respondent.)	

DECISION

At its regularly scheduled meeting of June 16, 2006, the Public members of the Board met and considered the administrative record and Proposed Decision After Remand in the above-entitled matters. After such consideration, the Board adopted the Proposed Decision After Remand as its final Decision in these matters.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 16th DAY OF JUNE 2006.



GLENN E STEVENS
Presiding Public Member
New Motor Vehicle Board

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8 STATE OF CALIFORNIA
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11 In the Matter of the Protest of)
12 PH AUTOMOTIVE HOLDING CORPORATION) Protest No. PR-1945-05
13 dba PACIFIC HONDA,)
14 Protestant,) PROPOSED DECISION
15 v.) AFTER REMAND
16 AMERICAN HONDA MOTOR CO., INC.,)
17 Respondent.)

18 In the Matter of the Protest of)
19 TIPTON ENTERPRISES, INC., dba) Protest No. PR-1947-05
20 TIPTON HONDA,)
21 Protestant,)
22 v.)
23 AMERICAN HONDA MOTOR CO., INC.,)
24 Respondent.)

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26 ///
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1 In the Matter of the Protest of)
 2 BALL AUTOMOTIVE GROUP dba BALL) **Protest No. PR-1948-05**
 HONDA,)
 3 Protestant,)
 4 v.)
 5 AMERICAN HONDA MOTOR CO., INC.,)
 6 Respondent.)

7 PROCEDURAL BACKGROUND

8 1. By letters dated March 11, 2005, to PH Automotive Holding
 9 Corporation dba Pacific Honda, ("Pacific Honda"), Tipton Enterprises,
 10 Inc., dba Tipton Honda, ("Tipton Honda"), and Ball Automotive Group
 11 dba Ball Honda, ("Ball Honda"), and March 14, 2005, to Cush Automotive
 12 Group dba Cush Honda San Diego, ("Cush Honda"), Respondent American
 13 Honda Motor Co., Inc. ("AHM" or "Honda") gave notice pursuant to
 14 California Vehicle Code¹ section 3062 of its intention to establish a
 15 new Honda franchise at Costa Bella and Lemon Grove Avenue in Lemon
 16 Grove, California. All of the Protestants are located within 10 miles
 17 of the proposed location.

18 2. The New Motor Vehicle Board ("Board") received AHM's notice
 19 on March 17, 2005.

20 3. On March 24, 2005, timely protests were filed by Protestants
 21 Pacific Honda, protest number PR-1945-05; Cush Honda, protest number
 22 PR-1946-05; Tipton Honda, protest number PR-1947-05; and Ball Honda,
 23 protest number PR-1948-05.

24 4. Pursuant to stipulation by the parties the Board entered an
 25 order dated April 4, 2005 consolidating all of the above-named
 26 protests.

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

1 5. Pursuant to Section 3066, a ten (10) day hearing was held
2 before Administrative Law Judge Merilyn Wong between September 19-23,
3 26-30, 2005 at the Board offices in Sacramento, California.

4 6. Protestants were represented by Michael J. Flanagan of the
5 Law Offices of Michael J. Flanagan, 2277 Fair Oaks Boulevard, Suite
6 450, Sacramento, California and Jonathan A. Michaels of Burkhalter,
7 Michaels, Kessler & George, 4 Park Plaza, Suite 850, Irvine,
8 California.

9 7. Respondent AMH was represented by Wallace M. Allan and Eric
10 Y. Kizirian of O'Melveny & Meyers LLP, 402 South Hope Street, Los
11 Angeles, California.

12 8. Upon submission of post-hearing briefs by the parties the
13 matter was deemed submitted on December 23, 2005.

14 9. On January 26, 2006, the Board met and considered the
15 Proposed Decision at its regularly scheduled meeting.

16 10. On February 1, 2006, the Board issued an Order Remanding the
17 Proposed Decision Dated January 23, 2006. The Order of Remand stated:

18 1. The ALJ shall consider the effect that the
19 establishment of a new Honda franchise in Lemon Grove will
20 have on the retail motor vehicle business and on the
21 consuming public's welfare within the relevant market area
22 (Veh. Code § 3063(b)), solely as it may relate to the
23 financial impact on Tipton Enterprises, Inc., dba Tipton
24 Honda ("Tipton Honda").

25 2. The ALJ shall consider whether the establishment
26 of the additional franchise in Lemon Grove would increase
27 competition and therefore be in the public interest (Veh.
28 Code § 3063(e)), or would the increased competition be

1 detrimental or ruinous to the financial welfare of Tipton
2 Honda.

3 3. In considering the above "good cause factors"
4 only, the ALJ may reopen the record to take additional
5 evidence and/or briefing from the parties.

6 4. The ALJ shall make these factual determinations
7 on the financial impact on Tipton Honda without
8 consideration of whether Tipton Honda could mitigate this
9 effect by changing the way it does business (see paragraphs
10 99-100 in Proposed Decision) in order to adapt to the new
11 established franchise.

12 11. On February 9, 2006, AHM filed a Motion to Dismiss Protest
13 of Cush Automotive Group, dba Cush Honda San Diego, and on February
14 17, 2006 Protestants' filed their opposition. On February 23, 2006,
15 AHM filed its Reply Brief in Support of AHMC's Motion to Dismiss
16 Protest of Cush Automotive Group, dba Cush Honda San Diego.

17 12. On February 23, 2006, a hearing on the motion was held
18 before Administrative Law Judge Anthony M. Skrocki. Additional briefs
19 by Protestants and Respondent were submitted on March 2, 2006 and
20 March 9, 2006 respectively. On March 13, 2006, Judge Skrocki resumed
21 the hearing on AHM's motion to dismiss the Cush protest.

22 13. Sometime prior to January 9, 2006 there was a "transfer"
23 (sale) of the Cush Automotive Group, which included Protestant Cush
24 Honda to the UnitedAuto Group (UAG). AHM contended that Cush Honda
25 should be dismissed as a Protestant in these proceedings and that
26 certain findings in the Proposed Decision relating to Cush Honda be
27 stricken.

28 14. The protest of Cush Automotive Group dba Cush Honda San

1 Diego, PR-1946-05, was dismissed.

2 15. The request of AHM to strike the findings relating
3 specifically to Cush Honda from the Proposed Decision prepared by
4 Administrative Law Judge Wong, dated January 23, 2006, was denied.
5 Judge Wong was instructed not to consider evidence concerning UAG's
6 acquisition of Cush Honda in the Remand Hearing.

7 16. On April 6, 2006, the Board issued its Decision adopting
8 Judge Skrocki's Proposed Order Granting Respondent's Motion to Dismiss
9 Protest of Cush Automotive Group, dba Cush Honda San Diego.

10 17. On March 27, 28, 29, 2006 and April 7, 2006 before
11 Administrative Law Judge Marilyn Wong at the Board offices in
12 Sacramento, California, a four (4) day hearing was held pursuant to
13 the Board's February 1, 2006, Order of Remand.

14 18. Protestants were represented by Michael J. Flanagan of the
15 Law Offices of Michael J. Flanagan and Jonathan A. Michaels of
16 Burkhalter, Michaels, Kessler & George LLP. Respondent AHM was
17 represented by Wallace M. Allan and Eric Y. Kizirian of O'Melveny &
18 Meyers.

19 19. The Remand Hearing was conducted with presentation of
20 evidence relating only to Tipton Honda as required by the Board's
21 Remand Order.

22 20. Protestant Tipton Honda presented the testimony of three
23 witnesses: Kathleen Stedham, business manager of Tipton Honda; Carl
24 Woodward, Certified Public Accountant of Woodward and Associates; and
25 Ernest H. Manuel, Jr., Ph.D., President of Fontana Group, Inc.

26 21. Respondent presented the testimony of two witnesses: James
27 A. Anderson, President of Urban Science Applications, a consulting
28 firm for auto manufacturers, and Charles Phillips a Certified Public

1 Accountant from Acuitas, Inc.

2 22. Upon submission of post-remand hearing briefs by the parties
3 the matter was deemed submitted on May 10, 2006.

4 ISSUES PRESENTED AT THE REMAND HEARING

5 23. The following issues were presented at the Remand Hearing:

6 1. What will be the effect of the establishment of a
7 new Honda franchise in Lemon Grove on the retail motor
8 vehicle business and on the consuming public's welfare
9 within the relevant market area, solely as it may relate to
10 the financial impact on Tipton Honda.

11 2. Whether the establishment of an additional
12 franchise in Lemon Grove would increase competition and
13 therefore be in the public interest, or would the increased
14 competition be detrimental or ruinous to the financial
15 welfare of Tipton Honda.

16 3. The determination of financial impact, if any,
17 upon Tipton Honda shall be made without considering whether
18 or not Tipton Honda could change its business practices and
19 thereby mitigate any losses.

20 24. The Proposed Decision After Remand shall rely on and
21 incorporate by reference the findings of facts in the Proposed
22 Decision of the original hearing dated January 23, 2006.

23 THE BURDEN OF PROOF ON REMAND

24 25. Section 3066(b) states: "The franchisee shall have the
25 burden of proof to establish that there is good cause not to enter
26 into a franchise establishing or relocating an additional motor
27 vehicle dealership."

28 26. In order to prevail in its protest Tipton Honda must show

1 that any negative financial impact upon it, caused by the proposed
2 Lemon Grove establishment, outweighs the benefits to the consuming
3 public from increased competition.

4 27. Stated another way, if the establishment of a Honda dealer
5 in Lemon Grove increases competition in the market place, will the
6 increased competition be detrimental or ruinous to the financial
7 welfare of Tipton Honda. According to the Remand Order these issues
8 must be decided without regard to whether Tipton Honda should or could
9 change its business practices in response to the increased
10 competition.

11 28. As part of its burden of proof Protestant Tipton Honda must
12 show that opportunities in the Lemon Grove Relevant Market Area² (RMA)
13 for new vehicles sales are insufficient to support the establishment
14 of an additional Honda dealer, without cannibalizing new vehicle sales
15 from Tipton Honda and thereby causing it to go out of business.

16 CONTENTIONS OF THE PARTIES³

17 29. At the original and remand hearings, AHM contends that the
18 Honda brand underperforms in the Lemon Grove RMA, and this is caused
19 by weak interbrand and intrabrand competition.

20 30. Interbrand competition is market competition among dealers
21 of other line-makes, e.g. Honda vs. Toyota or Ford. Intrabrand
22 competition is market competition among dealers of the same line-make.
23 The result of intrabrand competition is referred to as insell.

24
25 ² The "relevant market area" is an area within a radius of 10 miles from the site of a
26 potential new dealership. Section 507.

27 ³ The references to testimony, exhibits, or other parts of the record contained
28 herein are examples of the evidence relied upon to reach a finding, and are not
intended to be all-inclusive.

1 Honda's definition of insell is: "Identifies Honda registrations
2 within a market that were sold by dealers located outside the market
3 area. (Proposed Decision ("PD") Footnote 6 and 8)

4 31. AHM contends that new vehicle sales opportunities are
5 available in the Lemon Grove RMA through conquest sales and through
6 the reduction of insell in the RMA.

7 32. AHM further contends that there are more than adequate new
8 vehicle sales opportunities in the Lemon Grove RMA to support the
9 establishment of a new Honda dealer, without a reduction in new
10 vehicle sales of Tipton Honda or any other RMA dealer.

11 33. Tipton Honda contends that if Honda's performance standard
12 is met, it will exceed 100%, and therefore the Orange County standard
13 is unreasonably high.

14 34. Tipton Honda contends that it will experience a significant
15 loss of geographic territory with the addition of the Lemon Grove ASA⁴.
16 Tipton Honda further contends that its geographic loss will
17 necessarily translate into loss of new vehicle sales and service which
18 will be ruinous to Tipton Honda's business.

19 35. A Honda dealer's ASA is a group of census tracts nearest the
20 dealer where it enjoys a competitive advantage over all other Honda
21 dealers not in the ASA. This advantage is based on the location where
22 customers are closer and have better access to that dealer than to any
23 other dealer. (PD Paragraph 46)

24 36. AHM contends that the loss predictions by Tipton Honda's
25 expert are exaggerated and inflated, and based on incorrect
26 assumptions. If the underlying assumptions are corrected then Tipton

27

28 ⁴ An ASA stands for Areas of Statistical Analysis.

1 Honda will still remain profitable.

2 37. AHM contends that in the case of Tipton Honda there is no
3 correlation between increased sales and increased profitability or
4 conversely decreased sales and decreased profitability.

5 GENERAL FINDINGS OF FACT

6 38. The air distances between the proposed Lemon Grove add point
7 and the protesting dealers are as follows:

8	Cush Honda	4.8 miles
9	Tipton Honda	5.1 miles
10	Ball Honda	7.0 miles
11	Pacific Honda	9.1 miles

12 (2:27; Exh. 619, Tab 1, pp. 7-8)

13 39. The air distances between the proposed Lemon Grove add point
14 and other Honda dealers in the San Diego Metro are as follows:

15	Fuller Honda	10.5 miles
16	Poway Honda	14.5 miles
17	Cush (Escondido)	26.0 miles
18	Hoehn Honda	31.6 miles

19 (2:27; Exh. 619, Tab 2, pp. 7-8)

20 FINDINGS OF FACT AND ANALYSIS OF AVAILABLE NEW VEHICLE SALES
21 OPPORTUNITIES THROUGH INTERBRAND COMPETITION

22 40. Available new vehicle sales are best expressed by
23 calculating the difference between actual sales and potential sales.
24 At the original hearing, Honda new vehicle sales in the Lemon Grove
25 RMA were compared to sales in the Orange County metro. This was
26 called the Orange County metro standard. (PD Paragraph 86)

27 41. AHM found that the Honda brand significantly underperformed
28 in the Lemon Grove RMA when compared to the Orange County metro.

1 Honda also underperformed in both the larger San Diego metro and South
2 County areas. San Diego Metro and South County are areas in which
3 Tipton Honda and the proposed Lemon Grove dealer can expect to make
4 sales. (PD Paragraphs 64, 67)

5 42. According to AHM's expert, James Anderson, underperformance
6 is the result of weak interbrand competition caused by too few dealers
7 in the Honda dealer network. Having too few dealers in the RMA also
8 results in weak intrabrand competition and inadequate customer
9 convenience. Weak intrabrand competition among Honda dealers leads to
10 weak interband competition against Honda's competitors. (PD
11 Paragraphs 65, 78)

12 43. In order for Honda new vehicle sales performance in the
13 Lemon Grove RMA to perform at the same level as Orange County there
14 would have to be an additional 1,206 new Honda retail registrations.
15 In the San Diego metro an additional 1,837 new registrations would be
16 needed and South County would need an additional 977 registrations to
17 meet the Orange County standard. (PD Paragraph 64)

18 44. Bringing the Honda brand up to the Orange County metro
19 standard is achieved through "conquest sales," whereby Honda takes
20 sales from its competitors such as Toyota or Ford. (PD Paragraph 86)

21 45. It has been established that the Orange County standard is a
22 reasonable standard to measure the Honda brand performance in the
23 Lemon Grove RMA, because it is based on measurements of an adequately
24 performing area which is adjacent to the Lemon Grove study area. The
25 Orange County standard is only nominally higher than the California
26 standard. Honda penetration rates in 2004 for Orange County were
27 22.14% and 21.93% for California. (PD Paragraphs 49, 50, 51, 52 and
28 59)

1 46. At both hearings, Protestants' expert Dr. Ernest Manuel
2 unsuccessfully challenged the Orange County standard of measuring
3 Honda's performance. Dr. Manuel disagreed with the Orange County
4 standard as a benchmark because Orange County has higher household
5 incomes than the Lemon Grove RMA. He also believes that Lemon Grove
6 RMA consumers prefer domestic line-makes over foreign line-makes which
7 he calls a "domestic preference." (PD Paragraphs 53, 73; 14:41-43)

8 47. These arguments were discredited at the original hearing
9 through Mr. Anderson's testimony which demonstrated that Honda's
10 segmentation analysis accounts for both income differences and
11 domestic preferences. (PD Paragraphs 53, 72, 73, 74, and 75)

12 48. At both hearings Dr. Manuel also challenged the methodology
13 used by Mr. Anderson to calculate the sales opportunities available
14 through interbrand competition. At both hearings the experts took
15 completely different approaches to their calculations of registration
16 losses and thereby came to different conclusions about the numbers of
17 available opportunities for new vehicle sales. (PD Paragraph 90)

18 49. Although both methods were discussed at length in the
19 Proposed Decision at paragraphs 87 through 93, they are worth
20 reexamination here because of their significance in determining
21 available sales opportunities. Essentially, Mr. Anderson counts gross
22 registration losses while Dr. Manuel counts net registration losses.

23 50. To explain the differences between net and gross
24 registration losses, Mr. Anderson analogizes the situation to student
25 grades. High performing census tracts are analogous to A students;
26 census tracts performing slightly above the standard are B students;
27 census tracts that meet the standard are C students; and census tracts
28 with registrations losses are D or F students. (13:17-20)

1 51. In Mr. Anderson's analogy, suppose parents have 5 children:
2 one an A student, another a B student, a third child a C student, a
3 fourth a D student and the last one an F student. Averaging their
4 grades together, results in a C grade. Using Dr. Manuel's gross
5 registration loss model, all the children would be performing
6 adequately in school. The failing D and F students would not be
7 required to improve their grades. (13:17-20)

8 52. Using Mr. Anderson's gross registration loss model requires
9 the underperforming D and F students to bring their grades up to a C
10 or better. As applied to this hearing, additional Honda sales are
11 required to bring all the underperforming census tracts up to the
12 Orange County standard. The underperforming census tracts do not
13 benefit from being averaged with the tracts that have sales in excess
14 of the standard. (13:17-20)

15 53. Dr. Manuel counts registration losses in underperforming
16 census tracts and offsets the losses with the gains in census tracts
17 that exceed the Orange County standard and arrives at a figure of 927
18 net registration losses. Mr. Anderson counts only the losses in each
19 census tract without an offset and arrives at the figure of 1,206
20 gross registrations losses. The difference between the two figures is
21 279 registration losses. (13:17-25; 11:176-77; Exh. 700, Tab 5, p. 5;
22 Tab 3, p. 3)

23 54. Dr. Manuel testified that if all the census tracts that are
24 below average came up to average, then the penetration rate for the
25 Lemon Grove RMA would be 103.7% of the Orange County standard. Dr.
26 Manuel believes that requiring the RMA dealer's to achieve more than
27 100% is an unreasonable sales expectation. (11:150-51)

28 55. Mr. Anderson testified that 100% of the Orange County

1 standard is a minimum standard of performance necessary for adequate
2 competition in the market place. He testified that performance in
3 excess of 100% is not unreasonable based on case studies. He cited
4 Rancho Santa Margarita Honda after an add point. In that case, Honda
5 penetration effectiveness went from 96% to 113.6% and then back down
6 to 111.8% from 2001 to 2002. There are also other areas in California
7 which exceed the Orange County standard, such as Stockton at 118% and
8 the San Francisco East Bay at 130%. (13:20-23; PD Paragraph 103)

9 56. Contrary to Mr. Anderson's opinion, Dr. Manuel's net
10 registration loss approach ignores the sales opportunity available in
11 underperforming census tracts and presupposes that the Orange County
12 performance standard is a ceiling on performance rather than a minimum
13 threshold of performance that should be achieved by Honda dealers in
14 the Lemon Grove RMA. (13:17-25)

15 57. Performance meeting the Orange County standard is the
16 minimum sales penetration rate to be achieved, not a ceiling limiting
17 the number of new vehicle sales that can be made. Therefore Mr.
18 Anderson's use of gross registration loss is both reasonable and
19 appropriate in calculating available opportunity of 1,206
20 registrations. (13:17-25)

21 FINDINGS OF FACT AND ANALYSIS OF AVAILABLE NEW VEHICLE SALES
22 OPPORTUNITIES THROUGH INTRABRAND COMPETITION

23 58. An additional source of available opportunity for new
24 vehicle sales occurs by reducing the amount of insell into the Lemon
25 Grove RMA. Mr. Anderson testified that insell is the result of weak
26 intrabrand competition. Insell occurs when a dealer of the same line-
27 make who is outside the RMA sells new vehicles into the RMA. (13:23-
28 26)

1 59. Mr. Anderson testified that insell is an appropriate source
2 of available opportunity since it is an actual Honda new vehicle sale
3 to a customer who chooses to purchase his or her Honda from a less
4 convenient dealer. Surveys show that customers who buy from less
5 convenient dealers are dissatisfied with either price, selection,
6 selling approach or service offered by more convenient dealers. (13:5-
7 8)

8 60. Mr. Anderson's insell figures which include the sales from
9 two dealers who are located just outside the Lemon Grove RMA are
10 correctly criticized by Dr. Manuel. He testified that the sales of
11 Fuller Honda located only one-half mile outside the RMA and Poway
12 Honda should be excluded from insell data because of their proximity
13 to the RMA. Both Fuller Honda located to the south and Poway Honda
14 located to the north enjoy a geographic advantage over the other RMA
15 dealers to the extent that portions of their ASA's are within the RMA.
16 (12:61-68; Exh. 700, Tab 3; 12:207-10; Exh. 1517, pp. A-29, A-30, A-
17 31)

18 61. By excluding Fuller Honda and Poway Honda sales Mr. Anderson
19 recalculated his insell figures which resulted in 1,435 units of
20 insell, rather than the previous figure of 1,867 units of insell,
21 which reduces his original insell figure by 432 units. (12:61-68;
22 Exh. 700, Tab 3; 12:207-10; Exh. 1517, pp. A-29, A-30, A-31)

23 62. Both experts agree that it would be impossible to totally
24 eliminate insell from the RMA. However Dr. Manuel is misguided in his
25 attempt to arrive at a reasonable level of insell by using the Orange
26 County standard to measure insell. The rate of insell in the Orange
27 County metro is 25.6%. (11:180-94)

28 63. Dr. Manuel incorrectly reasons since the Orange County

1 standard has been proven as a reasonable measure of interbrand
2 competition, ergo it must be a reasonable measure of intrabrand
3 competition. The fallacy of Dr. Manuel's use of the Orange County
4 standard lies in the fact that the Orange County standard was not
5 constructed to measure performance of Honda dealers within the RMA
6 against Honda dealers outside the RMA, but was constructed to measure
7 Honda's brand performance against competing brands. Dr. Manuel
8 offered no rational reason to adopt the Orange County standard as a
9 measure of insell. (11:180-94; Exh. 700, Tab 4)

10 64. Next Dr. Manuel attempts to average the insell of selected
11 dealerships based on case studies. He sets up arbitrary parameters
12 which exclude dealerships that would negatively impact the conclusions
13 he attempts to achieve. Dr. Manuel fails to present evidence to show
14 that it is reasonable to average insell rates in case study markets in
15 order to determine an acceptable level of insell. (13:24-25; 12:216-
16 19; 11:186-94)

17 65. Mr. Anderson admitted that even with the establishment of
18 the Lemon Grove add point he would not expect 100% of insell to
19 disappear. Mr. Anderson testified that in well-represented markets
20 one could expect 5% insell levels. However, when insell rates
21 approach 10%, a market assessment might be warranted. (13:10)

22 66. An appropriate level of insell need not be determined at
23 this hearing, as paragraph 77 indicates there are excess sales
24 opportunities available when projected Lemon Grove sales are
25 subtracted from the total sales opportunities.

26 67. Mr. Anderson testified that insell rates are derived from
27 the presence or lack of presence of intrabrand competition. As
28 dealers of the same line-make compete more effectively against each

1 other, the same dealers become more effective competitors against
2 other brands such as Toyota and Ford. (13:24)

3 68. When a new dealer goes into business, that dealer stimulates
4 intrabrand competition which then creates greater interbrand
5 competition. As a result of this competition, registration losses and
6 insell decline. (13:24)

7 69. Mr. Anderson's adjusted insell figure of 1,435 is a
8 reasonable measure of available opportunity, despite the fact that
9 100% of insell would not be eliminated in the RMA by the proposed add
10 point.

11 FINDINGS OF FACT FOR THE TOTAL AVAILABLE NEW VEHICLE SALES
12 OPPORTUNITIES IN THE LEMON GROVE RMA

13 70. Total available new vehicle sales opportunities are
14 expressed as the sum of registration losses from interbrand or
15 conquest sales and intrabrand competition or reduced insell. Gross
16 registration losses are those registrations made by Honda's
17 competitors which are the result of interbrand competition. Insell is
18 lost opportunity because consumer studies show that consumers do not
19 purchase from the most convenient dealer selling that same line-make
20 because of price, selection, service or sales approach. (PD Paragraph
21 86)

22 71. In the Lemon Grove RMA, Mr. Anderson calculates a total of
23 2,641 available sales opportunities by adding gross registration
24 losses of 1,206 plus 1,435 adjusted insell losses. (Exh. 1517, p. A-
25 30)

26 72. Using Dr. Manuel's net registration losses the total is
27 2,362 units. It includes net registration losses of 927 units plus
28 adjusted insell losses of 1,435 units. (Exh. 1517, p. A-31)

1 73. The following are impact assessment summaries of the
2 proposed Lemon Grove establishment on available sales opportunity if
3 the new dealer performs like the average RMA dealer with 1,655 new
4 vehicle sales, or if the new dealer performs like the strongest RMA
5 dealer with 2,068 new vehicle sales. (Exh. 1517, pp. A-30, A-31)

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74. Chart I Using Gross Registration Losses:

IMPACT ASSESSMENT SUMMARY LEMON GROVE RMA DECEMBER 2004 YTD		
	AVERAGE LEMON GROVE RMA DEALER PENETRATION PROFILE	PACIFIC HONDA PENETRATION PROFILE
PROJECTED REGISTRATIONS OF THE PROPOSED LEMON GROVE DEALER IN THE LEMON GROVE RMA	1,655	2,068
LOST OPPORTUNITY IN THE LEMON GROVE RMA GROSS REGISTRATION LOSS AT EXPECTED* AVERAGE	1,206	1,206
INSELL**	1,435	1,435
TOTAL LOST OPPORTUNITY IN THE LEMON GROVE RMA	2,641	2,641
PROJECTED SALES OF THE PROPOSED HONDA DEALER AS A PERCENT OF THE TOTAL OPPORTUNITY TO THE HONDA DEALERS IN THE LEMON GROVE RMA USING EXPECTED* AVERAGE	62.7%	78.3%

*Orange County Metro Average Adjusted For Census Tract Segment Popularity
 **Excludes Fuller Honda sales in portion of Chula Vista ASA in RMA and Poway
 Honda sales in portion of Poway ASA in RMA
 (Exh. 1517, p. A-30)

75. Chart II Using Net Registration Losses:

IMPACT ASSESSMENT SUMMARY LEMON GROVE RMA DECEMBER 2004 YTD USING NET REGISTRATION LOSS		
	AVERAGE LEMON GROVE RMA DEALER PENETRATION PROFILE	PACIFIC HONDA PENETRATION PROFILE
PROJECTED REGISTRATIONS OF THE PROPOSED LEMON GROVE DEALER IN THE LEMON GROVE RMA	1,655	2,068
LOST OPPORTUNITY IN THE LEMON GROVE RMA NET REGISTRATION LOSS AT EXPECTED* AVERAGE	927	927
INSELL**	1,435	1,435
TOTAL LOST OPPORTUNITY IN THE LEMON GROVE RMA	2,362	2,362
PROJECTED SALES OF THE PROPOSED HONDA DEALER AS A PERCENT OF THE TOTAL OPPORTUNITY TO THE HONDA DEALERS IN THE LEMON GROVE RMA USING EXPECTED* AVERAGE	70.1%	87.6%

1 *Orange County Metro Average Adjusted For Census Tract Segment
Popularity
2 **Excludes Fuller Honda sales in portion of Chula Vista ASA in RMA and
Poway Honda sales in portion of Poway ASA in RMA
3 (Exh. 1517, p. A-31)

4 76. If the proposed Lemon Grove dealer achieves the degree of
5 sales effectiveness of the average RMA dealer, it can expect to sell
6 1,655 new vehicles. If Lemon Grove performs as effectively as the
7 strongest dealer, it can expect to sell 2,068 new vehicles. In either
8 case, there is still ample sales opportunity in the RMA after
9 subtracting the projected sales by the Lemon Grove dealer without
10 taking any sales away from Tipton Honda or any other RMA dealer.

11 (13:29-36)

12 77. The most conservative figure for available sales opportunity
13 is 2,362 which uses Dr. Manuel's net registration loss of 927 plus an
14 insell figure of 1,435, which excludes Fuller Honda and Poway Hondas'
15 insell. The available sales opportunity figure of 2,362 subtracting
16 the most competitive sales projection of 2,068 still leaves close to
17 300 units of insell and registration losses available. In this case
18 the proposed new dealer captures 87% of the available sales
19 opportunity. (13:27-36)

20 78. If gross registration loss figures are used, the total
21 available sales opportunity is 2,641 units, subtracting the most
22 competitive sales projection of 2,068 leaves nearly 600 units
23 available. In this case the proposed new dealer captures 78% of the
24 available sales opportunity. (13:27-36)

25 79. Future market growth is an additional source of new vehicle
26 sales in the Lemon Grove RMA. It was established that between 1990
27 and 2004, the RMA experienced moderate but steady population and
28 household growth. This trend is expected to continue through 2009.

1 (PD Paragraphs 69, 109)

2 80. If the Lemon Grove establishment is permitted the dealership
3 would not be constructed or begin operations until 2008, during this
4 time the Lemon Grove RMA will have continued to experience growth.

5 (PD Paragraphs 69, 115, 116)

6 81. There are sufficient lost opportunities from inter- and
7 intra- brand competition to allow the establishment of the Lemon Grove
8 franchise without taking sales away from Tipton Honda. Factoring
9 growth in the RMA from 2004 through 2008, the first year in which the
10 Lemon Grove dealer could be operative, is further insurance against
11 loss of sales by Tipton Honda.

12 FINDINGS OF FACT AND ANALYSIS OF FINANCIAL IMPACT ON TIPTON HONDA

13 82. At the original hearing, Dr. Manuel constructed ASAs to
14 evaluate the percent loss to Tipton Honda resulting from the Lemon
15 Grove add point. His ASA models based on "closer in drive time,"
16 "based on drive time," and "closer in air distance" produced loss
17 percentages ranging from a high of 62.5% to a low of 14.5%. (Exh.
18 1517, p. A-01)

19 83. At the remand hearing, Mr. Anderson methodically dissected
20 out the flaws in Dr. Manuel's ASAs. Mr. Anderson testified that the
21 "closer in drive time" model was flawed because many of Tipton Honda
22 customers who would be closer to the Lemon Grove dealer are already
23 closer to some other Honda dealer, and therefore their purchase
24 decisions were not based on proximity to the dealership. The only
25 Tipton Honda customers who are at risk because of the proposed Lemon
26 Grove establishment are those customers in the Lemon Grove ASA who
27 were formerly in the Tipton Honda ASA. (12:158-65; Exh. 1517, p. A-
28 O2A)

1 84. Customers who are already closer to one or more Honda
2 dealers would remain closer to those Honda dealers with or without the
3 Lemon Grove add point. Therefore Tipton Honda did not enjoy a
4 geographic advantage over those customers. If geographic proximity
5 was the most significant sales factor, customers would never have
6 purchased a new vehicle from Tipton Honda in the first place. (12:159)

7 85. Therefore the "closer in drive time" distance is
8 fundamentally flawed and incorrect. By eliminating the percentage
9 loss based on "closer in drive time," the loss estimates by Dr. Manuel
10 are reduced in range from a high of 47.5% to a low of 14.5%. (12:159-
11 65)

12 86. The "based on drive time" ASA created by Dr. Manuel is
13 inaccurate because it incorrectly assigns eight (8) census tracts to
14 the Lemon Grove dealer which unrealistically reduces Tipton Honda's
15 ASA. Mr. Anderson utilized software programs and recorded actual
16 drive times to show that the eight (8) census tracts are improperly
17 assigned to Lemon Grove and should remain part of Tipton Honda's ASA.
18 (12:160-65; 194-97; 14:104-07; Exh. 1517, pp. A-12 - A-17)

19 87. Mr. Anderson also disagrees with Dr. Manuel's calculations
20 that record only losses in Tipton Honda's primary geographic advantage
21 area but ignores gains in its secondary geographic advantage area.
22 This incorrect calculation distorts the potential impact on Tipton
23 Honda. (12:161-62; Exh. 1157, p. A-02A)

24 88. In addition, Dr. Manuel's impact models are flawed because
25 they are not based on Tipton Honda's actual new and used car sales, or
26 units in operation (UIOs). Dr. Manuel merely looked at the change in
27 the geographic advantage areas of Honda expected registrations,
28 competitive registrations, households, and units in operation. He did

1 not examine the change in Tipton Honda's actual new and used car
 2 sales, or UIOs. (12:162-65)

3 89. While it could be useful for other purposes to show a
 4 reduction in households in Tipton Honda's ASA, if the households that
 5 formed the reduction did not buy Hondas or any other new cars, then
 6 those households would be irrelevant to any impact analysis on Tipton
 7 Honda. (12:162-65)

8 90. The same is true for Honda registrations. If Tipton Honda
 9 did not make any sales in the changed geographic area, then the lack
 10 of sales should not have any impact on Tipton Honda. (12:162-63)

11 91. While Mr. Anderson believes that there will not be any
 12 financial impact on Tipton Honda, he has nevertheless corrected Dr.
 13 Manuel's data and has developed the following chart to illustrate
 14 impact. (12:166-69)

15 Manuel Estimated Impact Percentages Based on Actual Tipton Customers -
 16 Models 1-6 (No Competitive Response)

	Tipton's New Retail Honda		
	Primary	Secondary	Total*
Manuel Drive Time ASA	-19.2	+10.2	-14.1
Manuel Revised Drive Time ASA	-12.5	+3.5	-10.8
Urban Science ASA	-9.6	+3.8	-7.7
2004-2008 Growth Urban Science ASA			+20.55**
	Tipton's Used Honda		
	Primary	Secondary	Total*
Manuel Drive Time ASA	-13.3	+3.4	-11.6
Manuel Revised Drive Time ASA	-10.1	+0.2	-10.0
Urban Science ASA	-9.1	+3.0	-7.6
2004-2008 Growth Urban Science ASA			
	Tipton's Parts & Service (Active UIOs)		
	Primary	Secondary	Total*
Manuel Drive Time ASA	-23.1	+11.2	-17.5
Manuel Revised Drive Time ASA	-15.2	+3.3	-13.5
Urban Science ASA	-12.1	+4.6	-9.8
2004-2008 Growth Urban Science ASA			+43.2***

27 * Primary +50% of Secondary

** Honda expected registrations increase 375 units or 20.5%

28 *** Honda active UIOs increase 2,533 plus 417 new UIOs or 43.2%

(Exh. 1517, p. A-02A)

1 92. If Tipton Honda maintains its current business practices and
2 does not respond to the increased competition from the proposed Lemon
3 Grove dealer the projected loss in new Honda retail sales under the
4 three scenarios would be as follows:

5 "Manuel Drive Time ASA"	14.1% loss;
6 "Manuel Revised Drive Time ASA"	10.8% loss;
7 "Urban Science ASA"	7.7% loss.

8 (12:166-70; Exh. 1517, p. A-02A)

9 93. Tipton Honda's projected loss in used car sales under the
10 three scenarios are as follows:

11 "Manuel Drive Time ASA"	11.6% loss;
12 "Manuel Revised Drive Time ASA"	10.0% loss;
13 "Urban Science ASA"	7.6% loss.

14 (12:166-70; Exh. 1517, p. A-02A)

15 94. Tipton Honda's projected loss in parts and service business
16 based on active UIOs under the three scenarios are:

17 "Manuel Drive Time ASA"	17.5% loss;
18 "Manuel Revised Drive Time ASA"	13.5% loss;
19 "Urban Science ASA"	9.8% loss.

20 (12:166-70; Exh. 1517, p. A-02A)

21 95. All of the above-figures are significantly lower than the
22 inflated loss projections of 20%-62% made by Dr. Manuel. (Exh. 1517,
23 p. A-01)

24 96. The projected impact of loss of new vehicle sales with
25 corrections would range from 7.7% to 14.1%. The projected impact of
26 loss on Tipton Honda used vehicle sales would range from 7.6% to
27 11.6%. The projected impact of loss on parts and service by the
28 active units in operation count would range from 9.8% to 17.5%. (Exh.

1 1517, p. A-02A)

2 97. Mr. Anderson testified that any new vehicle sales losses by
3 Tipton Honda would be offset by future growth in the market place.
4 Based on registration data from 1995 to 2004, Mr. Anderson projected a
5 20.5% increase in expected Honda registrations from 2004-2008.
6 (12:172-77; Ex 1517, pp. A-02A, A-18)

7 98. Of the three models, Urban Science's ASA is the most
8 accurately designed ASA for loss projections because it is based on
9 distance and consumer behavior. The Urban Science ASA is constructed
10 by using several factors, including air distance to the next closest
11 Honda dealer, traffic and shopping patterns, geographical barriers,
12 and road networks. (PD Paragraph 46) Dr. Manuel's models are single
13 dimensional based only on drive times and thus less reliable and
14 dependent on road and traffic conditions. The Urban Science ASA
15 projects a 7.7% new vehicle sales loss. (12:159; 170-71; Exh. 1517, p.
16 A02A)

17 99. The above chart in Paragraph 91 also shows that UIOs are
18 projected to grow 43.2% by 2008. This number far exceeds the high
19 projections of a 17.5% decrease in active UIOs Honda as a growing
20 brand means increases in UIOs. Once a vehicle comes into the UIO
21 market, it remains a UIO for at least 10 years. More Hondas are added
22 to the UIO market than are dropped off the market which makes for
23 cumulative growth in UIOs. (12:178-82) (12:172-77; Exh. 1517, pp. A-
24 02A, A-18A)

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100. The following charts offer comparisons for potential impact based on Mr. Anderson's corrections of Dr. Manuel's models and Urban Science's model.

Manuel Profitability Analysis - Tipton Honda - With Corrections Manuel Drive Time ASA Illustrative Year Based on 2004					
	Total Sales	Loss Percent	Amount Lost	Contribution Per Unit	Lost Net Profit (Before Bonus & Tax)
New Honda Retail Vehicle Department	1785*	14.1%	252	\$1,220	\$307,440
Used Honda Retail Vehicle Department	358*	11.6%	42	\$1,375	\$ 57,750
Service Department	\$2,401,030	17.5%	\$420,180	\$ 470**	\$197,485
Parts & Accessories Department	\$3,692,097	17.5%	\$646,117	\$ 223**	\$144,084
					\$706,759

* Sales show in units

** Profit contribution per \$1,000 of sales
(Exh. 1517, p. A-03A)

Manuel Profitability Analysis - Tipton Honda - With Corrections Manuel Drive Time Revised ASA Illustrative Year Based on 2004					
	Total Sales	Loss Percent	Amount Lost	Contribution Per Unit	Lost Net Profit (Before Bonus & Tax)
New Honda Retail Vehicle Department	1785*	10.8%	193	\$1,220	\$235,460
Used Honda Retail Vehicle Department	358*	10.0%	36	\$1,375	\$ 49,500
Service Department	\$2,401,030	13.5%	\$324,139	\$ 470**	\$152,345
Parts & Accessories Department	\$3,692,097	13.5%	\$498,433	\$ 223**	\$111,151
					\$548,456

* Sales show in units

** Profit contribution per \$1,000 of sales
(Exh. 1517, p. A-05B)

Manuel Profitability Analysis - Tipton Honda - With Corrections
 Urban Science ASA
 Illustrative Year Based on 2004

	Total Sales	Loss Percent	Amount Lost	Contribution Per Unit	Lost Net Profit (Before Bonus & Tax)
New Honda Retail Vehicle Department	1785*	7.7%	137	\$1,220	\$167,140
Used Honda Retail Vehicle Department	358*	7.6%	27	\$1,375	\$ 37,125
Service Department	\$2,401,030	9.8%	\$235,301	\$ 470**	\$110,591
Parts & Accessories Department	\$3,692,097	9.8%	\$361,826	\$ 223**	\$ 80,687
					\$395,544

* Sales show in units

** Profit contribution per \$1,000 of sales
 (Exh. 1517, p. A-07A)

101. Tipton Honda's projected lost net profit before taxes and bonus under the three models are:

Manuel Drive Time ASA	\$706,759
Manuel Revised Drive Time	\$538,456
Urban Science ASA	\$395,544

102. In 2004 Tipton Honda had a net profit before bonus and tax of \$1,328,709. An "after bonus" figure was not used in Mr. Anderson's calculations because the bonuses are equivalent to dividends or distributions of profits from the business and is unrelated to the financial stability of the business. (13:146-47) Kathleen Stedham, Tipton Honda's business manager, testified that bonuses to herself, Mr. Peterson and the owner Harold B. Tipton were based on percentages of each months profits. (11:39)

103. Mr. Anderson developed the following charts after correcting Dr. Manuel's profitability analysis:

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1 Manuel Profitability Analysis - Tipton Honda - With Corrections
 2 Manuel Drive Time ASA
 3 Illustrative Year Based on 2004

3 Profitability Before Add Point

4	Net Profit (Before Bonus & Tax)	\$1,328,709
5	Dealership Net Worth	\$4,097,737
6	Return on Net Worth (Before Bonus & Tax)	32.4%
7	U.S. Average Dealership Return on Net Worth (Exh. 1517, A-04A)	24.3%

9 Profitability After Add Point

10	Net Profit (Before Bonus & Tax) Before Add Point	\$1,328,709
11	Less Impact of Add Point	\$ 706,759
12	Net Profit (Before Bonus & Tax)	\$ 621,950
13	Dealership Net Worth Before Add Point	\$4,097,737
14	Less Impact of Add Point	\$ 706,759
15	Dealership Net Worth	\$3,390,978
16	Return on Net Worth (Before Bonus & Tax) (Exh. 1517, p. A-04A)	18.3%

17 Manuel Profitability Analysis - Tipton Honda - With Corrections
 18 Manuel Drive Time Revised ASA
 19 Illustrative Year Based on 2004

19 Profitability After Add Point

20	Net Profit (Before Bonus & Tax) Before Add Point	\$1,328,709
21	Less Impact of Add Point	\$ 548,456
22	Net Profit (Before Bonus & Tax)	\$ 780,253
23	Dealership Net Worth Before Add Point	\$4,097,737
24	Less Impact of Add Point	\$ 548,456
25	Dealership Net Worth	\$3,549,281
26	Return on Net Worth (Before Bonus & Tax) (Exh. 1517, p. A-06B)	22.0%

27 ///

28 ///

1 Manuel Profitability Analysis - Tipton Honda - With Corrections
2 Urban Science ASA
3 Illustrative Year Based on 2004

4 Profitability After Add Point

5	Net Profit (Before Bonus & Tax) Before Add Point	\$1,328,709
6	Less Impact of Add Point	\$ 395,544
7	Net Profit (Before Bonus & Tax)	\$ 933,165
8	Dealership Net Worth Before Add Point	\$4,097,737
9	Less Impact of Add Point	\$ 395,544
10	Dealership Net Worth	\$3,702,193
11	Return on Net Worth (Before Bonus & Tax)	25.2%
12	(Exh. 1517, p. A-08A)	

13 104. Dr. Manuel's corrected models show that Tipton Honda could
14 show decreased profits ranging from \$400,000 to \$700,000. Based on
15 2004 data, even if Tipton Honda were to experience losses of this
16 magnitude it would still be profitable, albeit not as profitable as
17 before.

18 105. Tipton Honda's 2004 net profits before bonus and tax was
19 \$1,328,709. If the highest impact of \$706,759 were to occur, Tipton
20 Honda would still have net profits before bonus and tax of \$621,950.

21 106. By 2008, and accounting for growth in the market place,
22 Tipton Honda could gain net profits before bonus and tax of
23 approximately \$500,000. Adding \$520,834 to 2004 net profits of
24 \$1,328,709 would result in net profits of \$1,849,543 in 2008. (12:185-
25 87)

26 107. Tipton Honda's expert Carl Woodward testified that according
27 to the National Automobile Dealers Association (NADA), the profit
28 margins for the average dealer in the United States was 1.7% in 2004
and 1.6% in 2005. The profit margins for Tipton Honda were 1.8% in
2004 and 1.5% in 2005. Profit margins are determined by taking net

1 profits and dividing it by total sales. A secondary method of
2 determining dealer profitability is to look at what net profit
3 represents as a return on investment. (11:90, 95, 97)

4 108. If the Lemon Grove dealership had gone into business in
5 2004, Tipton Honda could have had a 4.8% loss in new vehicle sales or
6 a net loss of 87 units. However, through projected market growth by
7 2008, Tipton Honda would experience a gain of 5.7% or a net gain of
8 102 units. This would be the case if Tipton Honda does nothing to
9 respond to the enhanced competition of another dealer in the network.
10 (12:187-88; 13:32-34)

11 109. Dr. Manuel through regression analysis attempts to correlate
12 the reduction in new vehicle sales, used vehicle sales, or parts and
13 service sales with a necessary reduction in profits. In Dr. Manuel's
14 regression analysis with respect to new vehicle sales, only 20% of the
15 variation in Tipton Honda's new vehicle department profit is explained
16 by increases or decreases in new vehicle sales. The remaining 80%
17 variations in profits are due to other factors. (12:75-76; Exh. 700,
18 Tab 6)

19 110. AHM's expert Charles Phillips analyzed Tipton Honda's
20 financial statements from 2000-2004 and found that in 3 out of 4
21 years, the profitability of new vehicle sales moved in the opposite
22 direction. In those years when new vehicle sales went up, profit went
23 down and vice versa. This also occurred in used vehicle sales, and
24 parts and service. Therefore Dr. Manuel's conclusion that a decrease
25 in sales inevitably leads to a decrease in profit is erroneous.
26 (13:171-74; Exh. 1518)

27 111. Dr. Manuel presented 13 selected case studies involving
28 Honda add points. According to Dr. Manuel the percentage of change

1 before and after the add points "adjusted for at bats" in all cases
2 the dealers with one exception, experienced losses ranging from 5.3%
3 to 39.3%. Despite the losses Dr. Manuel stated that he did not know
4 of any of the dealers going out of business, with the exception of
5 Honda of Slidell which ceased business because of Katrina. In fact
6 Dr. Manuel admitted that he did not know of any instance where a Honda
7 dealer was forced out of business because of an add point. (12:34-37;
8 98)

9 112. Dr. Manuel's 13 selected case studies are misleading to the
10 extent that they exclude the remaining dealers totaling 56 who have
11 been affected by add points. The exhibit showing all add points is
12 attached hereto as Exhibit A, which shows the percent of dealer sales
13 before and after Honda add points. The chart also shows that on
14 average the 56 dealers showed a net gain of 10.7% after an add point
15 went in. Nearly 65% or 36 out of 56 dealers enjoyed gains after the
16 add point and only 7% of the dealers or 4 dealers sustained the
17 largest losses of 15%-20%. (Exh. 715, Tab 14; 13:52-53)

18 FINDINGS OF FACT AS TO WHETHER INCREASED COMPETITION
19 WILL BE DETRIMENTAL OR RUINOUS TO TIPTON

20 113. The Oxford English Dictionary defines "ruinous" as bringing
21 or tending to bring ruin; disastrous, destructive, pernicious and
22 defines "detrimental" as causing loss or damage; harmful, injurious,
23 hurtful.

24 114. It can be argued that detrimental and ruinous are ends of a
25 spectrum, with detrimental meaning to cause any harm however small at
26 one end of the spectrum and ruinous meaning the closure of the
27 business.

28 115. Any harm to Tipton Honda must be weighed against the loss of

1 benefit to the consuming public. If a new franchise was established,
2 the public would certainly benefit from the increased competition.
3 The customers would also benefit from the added convenience of an
4 additional dealer. However, it would not be in the public interest if
5 Tipton Honda sustained losses so great that it would be forced out of
6 business. If Tipton Honda were to go out of business, there would be
7 no benefit to the consuming public because the level of competition
8 would remain the same with Tipton being replaced by Lemon Grove.

9 116. If Tipton Honda were to go out of business the public
10 interest would not be served as employees would lose their jobs, the
11 city would lose a tax generating business, and the Tipton family would
12 lose its business of 30 years.

13 117. It is therefore with great care and deliberation that the
14 facts are examined to determine the likelihood that Tipton Honda will
15 lose significant business or be forced out of business because of the
16 Lemon Grove establishment. There are several important reasons why it
17 is both highly unlikely and highly improbable that Tipton Honda will
18 lose significant business or go out of business because of the Lemon
19 Grove establishment.

20 1. AHM has demonstrated that there is sufficient business
21 to be transacted in the Lemon Grove Relevant Market Area to
22 support the opening of a new franchise without taking any
23 business away from Tipton Honda.

24 2. Under the stewardship of general manager Mike Peterson,
25 Tipton has been profitable for the past 10 years. In 2004,
26 Tipton Honda showed a pre-tax net profit before bonus of
27 \$1,328,709. In 2005 Tipton Honda is expected to sell between
28 1,800 and 1,900 new vehicles and between 700 and 800 used

1 vehicles. There is no indication that Tipton Honda's strong
2 sales and profitability will not continue in the future.

3 3. Tipton Honda has developed a strong and loyal customer
4 base over the past 30 years which is a distinct advantage over a
5 new market place competitor.

6 4. The Lemon Grove Relevant Market Area has experienced
7 and will continue to experience moderate and steady population
8 and household growth in the future.

9 5. The earliest the Lemon Grove dealership could open
10 would be sometime in 2008. By this time Honda expects growth in
11 new vehicle sales which would offset any losses predicated on
12 2004 figures.

13 6. The Honda brand is continuing to grow and it has not
14 been shown that any Honda dealer has gone out of business as a
15 result of the establishment of a new Honda franchise.

16 DETERMINATION OF ISSUES

17 The determination of issues in the Proposed Decision dated
18 January 23, 2006 is incorporated by reference.

19 A. Respondent AHM has affirmatively proven that there is
20 sufficient business to be transacted in the Lemon Grove RMA to support
21 the establishment of a Honda franchise in Lemon Grove.

22 B. AHM has affirmatively proven that the proposed establishment
23 of a dealership in the Lemon Grove Relevant Market Area is unlikely to
24 cause Tipton Honda to have negative profitability in its business.

25 C. AHM has affirmatively proven that it is unlikely that the
26 establishment of an additional franchise will be ruinous to the
27 financial welfare of Tipton Honda.

28 D. AHM has affirmatively proven that the unlikely negative

1 impact to Tipton Honda's business in the form of reduced profits would
2 be offset by the increased competition and customer convenience and
3 would therefore be in the public interest. (Section 3063(b) and (e))

4 E. AHM has proven the above determinations A through D are made
5 without consideration as to whether Tipton Honda could mitigate any
6 impact by changing any of its current business practices.

7 F. Protestant Tipton Honda has failed to meet its burden of
8 proof to show that the establishment of an additional franchise in
9 Lemon Grove would likely cause significant loss of business or would
10 likely be ruinous to its financial welfare.

11 G. Tipton Honda has failed to show that any detriment it might
12 suffer would outweigh the benefit of increased competition and
13 customer convenience to the consuming public.

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Dealers Adjacent to Add Points

<u>Dealer</u>	<u>Distance</u>	<u>Dealer</u>		<u>% Change</u>	<u>Unit Change</u>	<u>Honda Change in Dealer ASA</u>	<u>Comments, Other Actions in Market</u>
		<u>Sales* Before</u>	<u>Sales* After</u>				
Majestic Honda Sales**	23.1	513	410	-20.1%	-103	+341	Out of State, Not in Market
Maroone Honda of Hollywood Sales	9.7	2,565	2,052	-20.0%	-513	+620	Sales lost to Maroone Honda of Miami
Clair Honda Sales**	4.6	890	729	-18.1%	-161	+375	Built New Facility on Site 2003/2004
Premier Honda Sales**	17.7	546	450	-17.6%	-96	+10	Nationwide sales only down 3%
College Park Honda Sales	12.9	1,608	1,370	-14.8%	-238	+94	Tischer Buy/Sell 2001
Ken Dixon Honda Sales	21.0	583	500	-14.2%	-83	+65	Tischer Buy/Sell 2001
Lokey Honda Sales	8.8	1,345	1,189	-11.6%	-156	+97	Crown Honda relocated 2001
Rick Roush Honda Sales	24.3	1,103	995	-9.8%	-108	+189	25 Miles, Out of Market
Honda of Covington Sales**	24.2	653	608	-6.9%	-45	+97	24 Miles, Out of Market
Babylon Honda Sales	5.8	1,400	1,315	-6.1%	-85	+328	
Weir Canyon Honda Sales**	18.3	698	659	-5.6%	-39	+28	
Weymouth Honda Sales**	11.8	863	821	-4.9%	-42	+314	
Ray Fladeboe Honda Sales**	6.6	1,405	1,354	-3.6%	-51	+251	Raised then lowered price, Hardin new GSM, Built new facility on site
Brighton Honda Sales***	18.8	719	701	-2.5%	-18	+135	19 Miles, Out of Market
Tischer Honda Sales	11.1	631	617	-2.2%	-14	+219	New Operator
Allon Blakley Honda Sales	51.0	199	197	-1.0%	-2	+38	
Huntington Honda Sales	9.2	3,177	3,159	-0.6%	-18	+275	
Nardy Honda Sales	10.1	1,309	1,305	-0.3%	-4	+253	
Sport Honda Sales	9.1	1,144	1,142	-0.2%	-2	+297	
Bernardi Honda Sales**	11.2	1,419	1,417	-0.1%	-2	+267	Built New Facility on Site 2003
Baron Honda Sales	13.2	999	1,000	0.1%	1		
Tamaroff Honda Sales***	7.7	832	835	0.4%	3		
Northwest Honda Sales	16.6	789	792	0.4%	3		
Sunnyside Honda Sales	25.0	880	906	3.0%	26		
Herson's Honda Sales	6.6	2,060	2,126	3.2%	66		
Jay Honda Sales	14.5	1,302	1,346	3.4%	44		
Coral Spring Honda Sales	13.8	2,680	2,802	4.6%	122		
Mike Pruitt Honda Sales	10.6	1,033	1,123	8.7%	90		
Pohanka Honda Sales	13.9	749	819	9.3%	70		
Honda West Sales	14.7	1,178	1,289	9.4%	111		
Lindell Honda Sales	16.0	1,067	1,199	12.4%	132		
Maroone Honda of Miami Sales	10.4	1,733	1,961	13.2%	228		
Herson's Honda Sales	13.6	2,186	2,488	13.8%	302		
Park Honda Sales	19.7	917	1,050	14.5%	133		
Tampa Honda Land Sales	17.0	1,126	1,300	15.5%	174		
Crown Honda Sales	15.2	1,017	1,179	15.9%	162		
Leesburg Honda Sales	16.3	724	851	17.5%	127		
Wesaloh Honda Sales**	12.0	897	1,085	21.0%	188		
Don Jacobs Honda Sales	22.5	889	1,084	21.9%	195		
Honda Sanla Ana Sales**	14.6	819	1,001	22.2%	182		
Howard Cooper Honda Sales***	22.0	751	922	22.8%	171		
Pat Peck Honda Sales**	42.4	539	668	23.9%	129		
Brown's Honda City Honda Sales	17.5	722	900	24.7%	178		
Shockley Honda Sales	27.5	522	657	25.9%	135		
Ourisman Honda Sales	12.7	528	682	29.2%	154		
Anderson Honda Sales***	11.5	927	1,236	33.3%	309		
Silko Honda Sales**	22.6	606	809	33.5%	203		
Fischer Honda Sales***	18.6	374	506	35.3%	132		
O'Donnell Honda Sales	8.6	1,190	1,673	40.6%	483		
Rosenthal Honda Sales	17.1	1,109	1,609	45.1%	500		
Heritage Honda of Westminster Sales	24.7	363	561	54.5%	198		
Gateway Honda Sales	15.5	473	738	56.0%	265		
Honda Cars of Corona Sales**	17.0	648	1,111	71.5%	463		
Desert Honda Sales	8.9	1,010	1,753	73.6%	743		
Sunshine Honda Sales***	8.3	702	1,410	100.9%	708		
Norm Reeves Honda Temecula Sales**	27.4	859	1,728	102.1%	873		
TOTALS		57,966	64,180				
AVERAGE INCREASE				10.7%			

<u>Summary</u>		
<u>Percent Change</u>	<u>Number of Dealers</u>	<u>% of Total</u>
-20.1% to -15%	4	7.1%
-15% to -10 %	3	5.4%
-5% to -10 %	4	7.1%
-5% to 0%	9	16.1%
0% to 5%	7	12.5%
5% to 10 %	3	5.4%
10% to 15%	4	7.1%
<u>15% to 102%</u>	<u>22</u>	<u>39.3%</u>
Totals	56	100.0%

Source: Urban Science 635768
 Data By: R.L. Polk & Co. and AHM

*Sales in Study Area
 **Dealer Sales Beyond Year After
 ***Dealer Sales 2000-2002

CHANGES IN SALES AND REGISTRATIONS
2000 - 2004

	2000	2001	2002	2003	2004	% Change 2000 - 2004
National Represented ASAs Honda Registrations	918,460	965,040	995,387	1,100,727	1,115,575	21%
Zone 5 Represented ASAs Honda Registrations	123,355	136,238	145,203	166,092	169,036	37%
ASA 6 - Norwood						
Boch Honda Sales*	0	172	1,097	2,718	2,679	
Boch Honda National Sales	0	257	3,035	3,982	4,194	
Actual Honda Registrations	1,022	1,068	1,502	1,814	1,667	65%
Expected** Honda Registrations	1,070	1,124	1,169	1,406	1,395	30%
ASA 1 - Lincoln, Rhode Island						
Majestic Honda Sales*	513	522	417	438	410	-20%
Majestic Honda National Sales	1,086	1,136	875	910	864	-20%
Actual Honda Registrations	1,041	1,113	1,136	1,360	1,382	33%
Expected** Honda Registrations	985	1,072	1,093	1,296	1,352	37%
ASA 2 - Weymouth						
Weymouth Honda Sales*	863	917	872	838	821	-5%
Weymouth Honda National Sales	1,023	1,089	1,052	1,008	991	-3%
Actual Honda Registrations	1,449	1,381	1,585	1,805	1,763	22%
Expected** Honda Registrations	1,691	1,755	1,774	2,104	2,107	25%
ASA 3 - Natick						
Bernardi Honda Sales*	1,419	1,405	1,256	1,388	1,417	0%
Bernardi Honda National Sales	2,791	2,755	2,559	2,845	2,877	3%
Actual Honda Registrations	1,851	1,440	1,555	1,785	1,818	17%
Expected** Honda Registrations	1,262	1,315	1,297	1,470	1,505	19%
ASA 4 - Boston						
Clair Honda Sales*	890	816	579	640	729	-18%
Clair Honda National Sales	1,320	1,134	913	949	1,076	-18%
Actual Honda Registrations	1,120	1,235	1,422	1,652	1,495	33%
Expected** Honda Registrations	1,028	1,125	1,172	1,331	1,316	28%
ASA 5 - Raynham						
Silko Honda Sales*	606	780	732	804	809	33%
Silko Honda National Sales	744	1,039	1,044	1,235	1,167	57%
Actual Honda Registrations	836	1,029	1,132	1,314	1,289	54%
Expected** Honda Registrations	1,210	1,301	1,366	1,644	1,650	36%
Adjacent Dealers (5)						
Dealers' Sales*	4,291	4,440	3,856	4,108	4,186	-2%
Dealers' National Sales	6,964	7,153	6,443	6,947	6,975	0%
Actual Honda Registrations	5,997	6,198	6,830	7,916	7,747	29%
Expected** Honda Registrations	6,175	6,568	6,705	7,842	7,930	28%

*Norwood Area Sales

**Zone 5 Represented ASAs Average Adjusted For Local Segment Popularity

GEOG REF: H00-COMP_Norwood_MA_Area

SOURCE: USAI Using R.L. Polk & Co. and AHM Data
633886

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