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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protests of)	
A.P.S. MOTORS, INC., dba)	Protest Nos. PR-212-78
ALEX SATIN OLDSMOBILE MAZDA,)	
PRINCE MOTORS, INC.,)	PR-213-78
dba HAWTHORNE MAZDA, and)	
2800 WILSHIRE CORPORATION,)	PR-214-78
dba SANTA MONICA MAZDA,)	
Protestants,)	
vs.)	
MAZDA DISTRIBUTORS (PACIFIC), INC.,)	
Respondent.)	

PROPOSED DECISION

Procedural Background

1. Respondent, Mazda Distributors (Pacific), Inc., gave notice on December 28, 1978, pursuant to Vehicle Code section 3062^{1/}, of its intention to establish Lewis G. Miller (Miller) as an additional Mazda dealer at 8810 Washington Boulevard, Culver City, California.

2. A protest was filed with the New Motor Vehicle Board on December 29, 1978, by each of the following Mazda dealers:

1. All references are to the Vehicle Code unless otherwise indicated.

(a) A.P.S. Motors, Inc., dba Alex Satin Oldsmobile Mazda (Satin), 4601 Hollywood Boulevard, Hollywood, California 90027;

(b) 2800 Wilshire Corporation, dba Santa Monica Mazda, 2800 Santa Monica Boulevard, Santa Monica, California 90403;

(c) Prince Motors, Inc., dba Hawthorne Mazda, 11989 South Hawthorne Boulevard, Hawthorne, California.

3. A hearing was held pursuant to section 3066 before Richard C. Wulliger, Hearing Officer of the New Motor Vehicle Board, in Los Angeles, California, commencing on February 26, 1979. Protestants were represented by James E. Lewis, Esq., and the respondent was represented by Sidney I. Pilot, Esq.

Issues Presented

4. Protestants contend that good cause exists for not establishing the proposed dealership for the following reasons:

(a) The establishment of an additional franchise will jeopardize the permanent investment of the protestants (§3063(1));

(b) The establishment of an additional franchise will have an adverse effect on the retail motor vehicle business and the consuming public in the relevant market area (§3063(2));

(c) The establishment of an additional franchise will be injurious to the public welfare (§3063(3));

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

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

Findings of Fact

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

5. Hawthorne Mazda, a single line dealer, has been a Mazda franchisee in the Hawthorne area since 1971. It has a substantial investment at its location. On December 31, 1978, it had \$1,029,930 in assets, \$534,093 in liabilities, and \$495,837 in net worth. (RT 7, 8; Exh. 2.)

6. Satin, a dual line dealer, has been a Mazda franchisee since 1971 and an Oldsmobile franchisee since 1977. It has a substantial investment at its location. On December 31, 1978, it had \$1,762,580 in assets, \$1,142,017 in liabilities, and \$620,563 in net worth. (RT 338, 339, 699; Exh. K.)

7. Santa Monica Mazda has been a Mazda dealer since 1971. It has a substantial investment at its location. On December 31, 1978, it had \$795,516 in assets, \$698,811 in liabilities, and \$96,705 in net worth. Since 1976, Santa Monica Mazda has also sold International Scout, but is now terminating that line. International Scout is not a competitor of Mazda. (RT 711; Exh. 29, 32.)

8. Miller, the proposed new dealer, has been an automobile dealer in Culver City since 1954 and a Datsun dealer there

since 1969. On December 31, 1978, Miller's net worth was approximately \$800,000. The proposed Mazda dealership will be located on property adjacent to, but separate from, the existing Datsun facilities. Both facilities will be situated on property owned by Miller. The premises intended to be used for the Mazda facilities encompass an area of 72,000 square feet, 23,000 of which will be under roof. Miller plans to invest approximately \$250,000 in the new dealership, hire about eight to ten new employees, and be ready to open for business in fifteen to forty-five days after being permitted to do so. (RT 1123, 1124, 1126, 1127, 1138, 1156, 1180, 1181, 1203, 1204, 1205; Exh. U.)

9. Hawthorne Mazda and Satin have been profitable each year since 1971. Santa Monica Mazda has been profitable in each year since 1975. (RT 108, 109, 123, 409, 410, 411, 412, 413)

10. In 1978, Hawthorne Mazda's before tax profit was approximately \$175,000, Satin's after tax profit was approximately \$283,000, and Santa Monica's after tax profit was approximately \$49,000. (Exh. 2, 17, 29, 32.)

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

11. In 1978 the gross profit on the sale of a new RX-7^{2/} sold at the manufacturer's suggested retail price^{3/} was \$1,372.

2. An RX-7 is a new Mazda sports car which is in high demand and moderate supply. Many dealers are selling these vehicles for prices exceeding the suggested retail price.

3. Based on a GS model including air conditioning, sun roof, and aluminum wheels. The great majority of RX-7's sold are GS models with this equipment.

12. In 1978 the average gross profit on the sale of a new RX-7 was as follows:

District No. 2 (excluding protestants)..	\$1,792
Hawthorne Mazda.....	\$2,519
Santa Monica Mazda.....	\$2,057
Satin.....	\$1,959

(RT 1268, 1269, 1270; Exh. DD.)

13. The average gross profit on the sale of new RX-7's increased from May 1978 to January 1979 for each protestant as follows:

<u>Protestant</u>	<u>May 1978</u>	<u>January 1979</u>
Hawthorne Mazda	\$2,000 +	\$2,500 +
Santa Monica Mazda	1,400 +	2,200 +
Satin	1,700 +	2,600 +

(Exh. 3, 7, 10, 20, 31, 33.)

14. The RX-7 is readily saleable at a profit and enjoys a good reputation. A Mazda franchise is especially desirable because of the RX-7. (RT 127, 128, 129, 362, 365, 366, 484.)

15. The appointment of a new dealer in Culver City will not reduce the allocation by Mazda of new cars to existing dealers. (RT 1262, 1263.)

16. Miller has adequate facilities to accommodate the proposed new Mazda franchise. His Datsun service department is not operating to capacity and there are a sufficient number of mechanics who can be trained as Mazda mechanics and may be transferred to the Mazda operation from the surplus of Datsun mechanics. (RT 1030, 1073, 1143, 1144, 1172.)

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

17. The Metropolitan Los Angeles area has over 12 million people and is densely populated. (RT 1422; Exh. 5.)

18. In 1970 the population in the four subject market areas was as follows:

Culver City	391,000
Hawthorne	463,000
Hollywood	474,000
Santa Monica	<u>449,000</u>
TOTAL	1,777,000

(RT 1106, 1107; Exh. R, S.)

19. A population of 100,000 is sufficient to support a single line Mazda dealer. (RT 1247.)

20. Los Angeles is the most important market in the United States for Mazda as well as for other imports. (RT 560.)

21. Customers shop at different dealerships and will buy from one dealer rather than another chiefly because of the price and secondly because of service. (RT 510, 511.)

22. The approximate driving distance from the proposed dealership in Culver City to the Hawthorne dealership is 9.6 miles; to the Santa Monica dealership, 6.1 miles; and to the Hollywood dealership, 11.1 miles. (RT 651, 1088, 1089, 1091; Exh. P, Q.)

23. The following are the number of competitive dealers presently in the four subject market areas;

<u>Manufacturer</u>	<u>Culver City</u>	<u>Santa Monica</u>	<u>Hawthorne</u>	<u>Hollywood</u>
Mazda	0	1*	1*	1*
Toyota	1	1	3	1
Datsun	2	1	2	1
Honda	2	1	0	1
Volkswagen	2	2	2	1
Subaru	0	1	1	0
Fiat	2	1	2	1

*The protestants

(RT 102, 103, 104, 115, 116, 909, 910, 965, 1113, 1114, 1115; Exh. T.)

24. The following is a comparison of Mazda's sales penetration as compared to all other imports for the market areas indicated:

	1977 <u>Market Penetration</u>	1977 % Below Nat'l. Market <u>Penetration</u>	1st 9 Months of 1978 Market <u>Penetration</u>	1st 9 Months of 1978 % Below Nat'l. Market <u>Penetration</u>
U. S.	2.43%	----%	3.3%	----%
Pacific	2.12	12.8	2.49	24.6
*District No. 2 Metro Area	1.93	20.6	2.18	33.9
Hawthorne	1.83	24.7	1.91	42.1
Hollywood	1.33	45.3	1.59	51.8
Santa Monica	1.23	49.4	1.1	66.7
Culver City	.91	62.6	1.02	69.1

*Including protestants

(RT 1236-1245; Exh. V.)

Findings Relating to Adequate Competition and
Convenient Consumer Care (§3063(4)).

25. In sales of new Mazdas in the forty dealer Pacific Distributorship, protestants ranked as follows:

<u>Protestant</u>	<u>1977</u>	<u>1978</u>
Hawthorne	27	26
Satin	14	27
Santa Monica	26	28

(RT 426, 427; Exh. L, 21.)

26. In sales of new Mazdas in the 11 dealer Los Angeles area, protestants ranked as follows:

<u>Protestant</u>	<u>1977</u>	<u>1978</u>
Hawthorne	8	6
Satin	5	7
Santa Monica	7	8

(RT 477; Exh. 21.)

27. In 11 months of 1978, out of 774 new imported cars registered in the city of Culver City^{4/}, 7 were Mazdas.

(Exh. 9, 22.)

28. In 11 months of 1978, of 174 new Mazda RX-7's registered in the western and central areas of Los Angeles, 4 were registered in the city of Culver City. (Exh. 9, 12.)

29. In 11 months of 1978, of 299 selected competitive new cars registered in the city of Culver City, 3 were Mazda GLC's. Mazda registrations were lower than any of its competitors.

(Exh. 9, 14.)

4. As defined by zip code 90230.

30. In 1978, Satin sold 230 new Mazda autos, of which 31 (13.5%) were registered in the Culver City market area^{5/}. (RT 1255-1258; Exh. AA, Z.)

31. In 1978, Santa Monica Mazda sold 226 new Mazda autos, of which 33 (14.6%) were registered in the Culver City market area. (RT 1249-1252; Exh. X, Y.)

32. In 1978, Hawthorne Mazda sold 233 new autos, of which 13 (5.5%) were registered in the Culver City market area. (RT 1259-1261; Exh. BB, CC.)

33. In 1977, in the city of Culver City, out of 813 imported new cars and 2,149 cars in total (domestic and imports) registered, 8 were Mazdas, and out of 63 new imported trucks and 160 trucks in total (domestic and imported) one was a Mazda. (Exh. 9, 13.)

34. In 11 months of 1978, out of 293 new Mazda GLC's registered in the central and western areas of Los Angeles, 3 were registered in the city of Culver City. (Exh. 9, 14.)

35. Mazda's low penetration in the Culver City area is primarily due to the lack of a Mazda dealer there, and the low penetration was a factor in deciding to establish a dealership in Culver City. (RT 1163, 1164, 1299, 1300, 1401.)

36. Satin has certain deficiencies in its facilities, such as in parking and service area reception. (RT 1010-1020, 1041, 1080, 1081; Exh. O.)

37. Hawthorne Mazda has certain deficiencies in its facilities such as in access, parking, size of service area, telephone communications, and adequacy of waiting room. (RT 135, 136, 143, 144, 145, 148-150, 1020-1024, 1080, 1081; Exh. O.)

5. As defined by zip codes 90210, 90069, 90048, 90036, 90211, 90212, 90035, 90019, 90034, 90230, 90056, 90008, 90016.

38. Santa Monica Mazda has certain deficiencies in its facilities, such as in access, parking, and size of shop area. (RT 1025-1030, 1081; Exh. O.)

Findings Relating to Increased Competition
and the Public Interest (§3063(5)).

39. Mazda is attempting to increase sales and competition against other imports. (RT 130.)

40. The new dealer should increase Mazda sales, give the public an additional place to shop, and encourage more competitive pricing. (RT 1150-1152.)

41. If a retailer increases his business, his competitors should become more aggressive. (RT 522.)

42. Demand may be created by making more retailers available who will advertise the product and increase awareness. (RT 1322.)

43. The proposed new dealer has received the Nissan Quality Dealer Award as a Datsun dealer. (RT 1141, 1142, 1177, 1178.)

44. The proposed new dealer is qualified to be a Mazda dealer chiefly because of his experience, sales ability, capital, facility, reputation, business philosophy, and pricing. He should benefit Mazda and the public in many ways, especially in service, competition, and pricing. He should benefit the protestants by creating more business. (RT 1265-1267, 1271-1278, 1357, 1358.)

Determination of Issues

Protestants have failed to establish that good cause exists for not permitting the establishment of the proposed

dealership. Protestants have failed to establish that:

(a) The establishment of the additional franchise will jeopardize the permanent investment of protestants. (§3063(1))

(b) The establishment of the additional franchise will have an adverse effect on the retail motor vehicle business and the consuming public in the relevant market area. (§3063(2))

(c) The establishment of the additional franchise will be injurious to the public welfare. (§3063(3))

(d) The franchisees of the same line make in the relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the line make in the relevant market area. (§3063(4))

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

* * * * *

The following proposed decision is respectfully submitted:

The protests are overruled. Respondent is entitled to establish the Mazda dealership at the proposed location.

I hereby submit the foregoing which constitutes my proposed decision in the above-entitled matter as a result of a hearing had before me on the above dates at Los Angeles, California, and recommend its adoption as the decision of the New Motor Vehicle Board.

Dated: *June 8, 1979*

Richard C. Wulliger
RICHARD C. WULLIGER
Hearing Officer
New Motor Vehicle Board