

1 NEW MOTOR VEHICLE BOARD
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HAND DELIVERED

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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD

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11 In the Matter of the Protest of
12 MEGA RV CORP. dba MCMAHON'S RV,
13 Protestant,
14 v.
15 ROADTREK MOTORHOMES, INC.,
16 Respondent.

Protest No. PR-2199-10

**ORDER CONFIRMING DECISION
TO SUSTAIN PROTEST
Vehicle Code section 3070(b)
[Modification – Colton]**

17
18 **PROCEDURAL BACKGROUND**

19 **PARTIES AND COUNSEL**

20 1. Protestant Mega RV Corp doing business as McMahon's RV (herein "Mega RV" or
21 "Protestant") is a recreational vehicle dealership, with several California and Arizona locations. Until
22 early 2012, its primary dealership location was in Irvine, California at 6441 Burt Road, #10; on or about
23 March 31, 2012, Protestant relocated that dealership to 5400 Garden Grove Boulevard, Westminster,
24 California.

25 2. Mega RV is a California corporation owned by Brent McMahon. Mega RV is a

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1 "franchisee" within the meaning of Vehicle Code section 331.1.¹

2 3. Protestant is represented by the Law Offices of Michael J. Flanagan, by Michael J.
3 Flanagan, Esquire; Gavin M. Hughes, Esquire; Erin R. Hegedus McIntosh, Esquire; and Danielle R.
4 Vare, Esquire (as of 11/21/11), 2277 Fair Oaks Boulevard, Suite 450, Sacramento, California.

5 4. Respondent Roadtrek Motorhomes, Inc. (herein "Roadtrek" or "Respondent")
6 manufactures Class B motorhomes. It is located in Kitchener, Ontario, Canada.

7 5. Roadtrek is a Canadian corporation. Roadtrek is a "franchisor" within the meaning of
8 Section 331.2.

9 6. Respondent is represented by Seyfarth Shaw, LLP, by Louis S. Chronowski, Esquire; and
10 Kavitha Janardhan, Esquire (until 5/1/12), 131 South Dearborn Street, Suite 2400, Chicago, Illinois.

11 **PRELIMINARY PROCEDURAL NOTE**

12 7. Between January and July of 2010, Mega RV filed with the New Motor Vehicle Board
13 ("Board") 18 protests alleging the failure of Roadtrek to comply with the provisions of the Vehicle Code
14 and requesting hearings on the merits of the various protests. The protests involved Mega RV's dealership
15 locations in Irvine, Colton, Scotts Valley and Palm Desert. By the first day of the hearing in August
16 2011, 12 protests had been consolidated for hearing, and six protests had been dismissed. Hereinafter, the
17 consolidated Protests shall be referred to as the "Protests."

18 8. Also in 2010, Mega RV filed with the Board two petitions (Petition Nos. P-456-10 and
19 P-457-10) against Roadtrek. Both petitions were rejected upon first consideration and the portions of the
20 petitions that sought adjudication of the dispute pursuant to Section 3050(c)(2) were dismissed by the
21 Board at the June 15, 2010, and December 3, 2010, General Meetings, respectively. The petitions also
22 requested that the Board direct the Department of Motor Vehicles (hereinafter "DMV") to conduct an
23 investigation of the allegations contained in the petitions and to order DMV to exercise any and all
24 authority over Respondent's Occupational License. These requests were also denied at the meetings noted
25

26 ¹ Hereinafter, unless otherwise indicated, all Section references are to the Vehicle Code. The statutory references are subject to
27 some qualification: although the parties are properly identified as "franchisee" and "franchisor" under Sections 331.1 and
28 331.2, it was only as of January 1, 2009 that Section 331.3 ("recreational vehicle franchise"), as well as Sections 11713.22 and
11713.23 ("written [RV] franchise agreement" and "sale of new [RV]") were enacted. Section 3072 ("establishing or
relocating RV dealerships") became effective January 1, 2004.

1 above.

2 9. On January 31, 2012, the September 20, 2010 order of consolidation for purposes of the
3 merits hearing was amended for preparation of the Proposed Decisions and Decision by the Board; the
4 new order consolidated the Protests into five groups, as follows:

Vehicle Code	Type of Protest	Filed	Protest Nos.
Section 3070(b)	Modification	January 29, 2010 January 29, 2010 January 29, 2010	PR-2198-10 (Scotts Valley) ² PR-2199-10 (Colton) PR-2201-10 (Irvine)
Section 3075	Warranty reimbursement violations	February 9, 2010 February 18, 2010 February 18, 2010	PR-2206-10 (Colton) PR-2208-10 (Irvine) PR-2209-10 (Scotts Valley)
Section 3076	Franchisor incentive program violations	February 9, 2010 February 18, 2010 February 18, 2010	PR-2205-10 (Colton) PR-2211-10 (Scotts Valley) PR-2212-10 (Irvine)
Section 3072(a)	Establishment violations	May 11, 2010	PR-2233-10 (Colton)
Section 3070(a)	"De facto termination"	July 13, 2010 July 13, 2010	PR-2244-10 (Colton/Irvine) PR-2245-10 (Scotts Valley)

17 10. A hearing on the merits of the Protests was held before Administrative Law Judge Diana
18 Woodward Hagle on the following dates in 2011: August 9 through 12; August 15 through 19;
19 September 21 through 23; September 30; November 7 through 11; November 14 and 15; November 17
20 and 18; and November 28 through December 2. Hearing dates in 2012 were the following: January 9 and
21 10; January 12 and 13; January 18 and 19; January 31; and February 1.

22 11. The hearing was re-opened for a telephonic hearing on April 26, 2012 to provide
23 evidence of the relocation of Mega RV's primary dealership location from Irvine to Westminster.

24 12. The matters were submitted on May 3, 2012.³

26 ² Subsequently, Protestant requested dismissal of Protest PR-2198-10, which was ordered on March 6, 2012.

27 ³ In October 2010, counsel for the parties stipulated to extend the time the ALJ has to render the proposed decisions from 30 to
28 60 days after the matters were deemed submitted; the time for the Board to consider the proposed decisions was also extended
from 30 to 60 days from the date the ALJ submits the proposed decisions. On May 29, 2012, counsel stipulated to extend the
ALJ's time to final and sign the proposed decisions from 60 days to 90 days, or August 1, 2012.

PENDANT FEDERAL CASE

13. The parties to these protests are also parties to an action for money damages currently pending in United States District Court in the Central District of California, Case No. CV 09-09466 SJO. The federal proceeding is stayed pending the Board's Decision in these Protests. (RT 9/21: 36-37)⁴

THE EFFECT OF THE BOARD ACTION ON AUGUST 23, 2012 (PROTEST NO. PR-2199-10)

14. Administrative Law Judge Hagle's Proposed Decision, which recommended that Protest No. PR-2199-10 asserting the claimed modification of the franchise for the Colton location be overruled, was not adopted by the Board at its August 23, 2012, Special Meeting.

15. Following lengthy public comments by counsel for the parties, the Public Members and Dealer Members of the Board deliberated in closed Executive Session. Thereafter, as to this protest, and as reflected in the Board's draft minutes of August 23, 2012, "Mr. Stevens moved to reject the Administrative Law Judge's Proposed Decision. The modification protest for Colton was sustained. Roadtrek violated Vehicle Code section 3070(b)(1)."⁵ "...Mr. Flesh seconded the motion. The motion carried unanimously."

16. The Board, acting by and through its Public Members and Dealer Members, expressly decided that the protest was sustained. Protestant had met its burden of proving that there was an intended modification and that the modification would substantially affect Protestant's sales or service obligations or investment. Generally, sustaining such a protest would further require findings that the franchisor had not met its burden under Section 3066(b) of proving good cause to modify the franchise. However, as discussed below, whether there was good cause for the modification that has been found to have occurred is irrelevant. But, because of the facts common to some of these protests, the Board has also concluded that even if the proper notices had been provided, the modification would not be permitted as Roadtrek did not establish good cause for the modification. Therefore, the Board has found

⁴ References herein to "RT" followed by a date (excluding the year) are to the transcripts of the proceedings. References to "Exh" are to Exhibits.

⁵ It is possible that the Board may refer this matter to the Department of Motor Vehicles pursuant to Section 3050(c)(1) and (c)(3). However, because of Section 3050(c), which provides in part: "A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide any matter considered by the board pursuant to this subdivision that involves a dispute between a franchisee and franchisor..." consideration of such a referral will require a separate agenda item to be considered only by the Public Members at the next Board meeting.

1 that the attempted modification is invalid for two reasons: (1) The notices required by Section 3070(b)
2 were not provided; and, (2) Roadtrek has not established good cause for the modification. See
3 further discussion below.

4 17. It is undisputed that Respondent did not comply with the provisions of Section 3070(b)
5 requiring notices to the franchisee and the Board of such an intended modification. The statute is clear.
6 Absent such notices, a franchisor has no power to modify the franchise if the modification will
7 substantially affect the franchisee's sales or service obligations or investment, and any attempt to modify
8 the franchise without compliance with the statute is of no legal effect whether there is good cause for the
9 intended modification or not. The Board decided that it could not consider whether a franchisor (who
10 has not complied with the statute) has good cause to modify the franchise if the modification is illegal.
11 The absence of notice has the effect of barring the modification. Proving good cause for the modification
12 does not negate the requirements for the legislatively-mandated notices that must precede the intended
13 modification.

14 18. It is implicit that any findings and conclusions in the Proposed Decision that are
15 inconsistent with the Board's determination to "reject the Administrative Law Judge's Proposed
16 Decision" or inconsistent with the decision to "sustain the protest" have also been rejected.

17 19. When the Board sustained the protest on August 23, 2012, it also stated it would draft its
18 own decision which would be finalized several weeks after the Board Meeting. This Order Confirming
19 Decision is the culmination of the Board's Decision on August 23, 2012.

20 STATEMENT OF THE CASE

21 Background

22 20. On January 29, 2010, Roadtrek executed a Dealer Agreement with a recreational vehicle⁶
23 dealer other than Mega RV to sell and service Roadtrek RVs at dealership locations which Mega RV
24 alleged were within Mega RV's "exclusive" territories, as more particularly described below.

25 Modification Protest No. PR-2199-10 - Colton Dealership Location

26 21. On January 29, 2010, Mega RV filed Protest No. PR-2199-10 with the Board. The protest
27

28 ⁶ Hereinafter, recreational vehicles will sometimes be referred to as "RVs".

1 alleged that Roadtrek had violated Section 3070(b) by failing to give the required notices of Roadtrek's
2 intent to modify Mega RV's Colton, California franchise by establishing another franchisee, Mike
3 Thompson's Recreational Vehicles, dba Mike Thompsons RV Superstores ("MTRV"), in the "exclusive
4 sales area" Roadtrek had previously assigned to Mega RV (i.e., within a 60-mile radius of the dealership).
5 MTRV's Colton dealership is directly across the street from Mega RV's dealership; they are the only
6 tenants in the "Colton RV Expo". (RT 11/15:177; 1/13:17, 44, 66-67)

7 22. As stated above, Roadtrek did not provide the statutorily required notice to Mega RV or
8 the Board. Neither Mega RV nor the Board "received" the notice as required by Section 3070(b).⁷

9 **Vehicle Code Section 3070(b) - Modification of a Franchise**

10 23. Section 3070(b) provides in part the following:

11 Notwithstanding...the terms of any franchise, a franchisor of a dealer of recreational
12 vehicles may not modify or replace a franchise with a succeeding franchise if the
13 modification or replacement would substantially affect the franchisee's sales or service
14 obligations or investment, unless the franchisor has first given the board and each affected
15 franchisee written notice thereof at least 60 days in advance of the modification or
16 replacement.

17 ...

18 **PRE-HEARING ORDER RELATIVE TO ADJUDICATION OF ISSUES**

19 24. On August 3, 2011, ALJ Skrocki issued an Order Granting in Part and Denying in Part
20 Protestant's Motions in Limine.

21 25. Among other issues, the order discussed Mega RV's motion for an order dispensing with a
22 hearing regarding the "good cause" factors in Section 3071.

23 26. ALJ Skrocki did rule that no Section 3071 hearing be held. The substance of the Order is
24 the following:

25 ...Evidence as to these issues will be limited to whether the establishments of the
26 additional franchises in Colton and Irvine were within the contractually assigned territories
27 of Protestant, and if so whether they resulted in modification of Protestant's franchises and
28 come within the language of Section 3070(b)(1) which reads in part as follows:

(b)(1) Notwithstanding Section 20999.1 of the Business and Professions Code or
the terms of any franchise, a franchisor of a dealer of recreational vehicles may not
modify or replace a franchise with a succeeding franchise if the modification or

⁷ Such notice is required whenever a franchisor seeks to modify or replace a franchise with a succeeding franchise if the
modification or replacement would substantially affect the franchisee's sales or service obligations or investment. (Section
3070(b))

1 replacement would substantially affect the franchisee's sales or service obligations
2 or investment, unless the franchisor has first given the board and each affected
3 franchisee written notice thereof at least 60 days in advance of the modification or
4 replacement. ...

5 If the establishment of the additional franchises in the exclusive territories of
6 Protestant do not constitute a modification of Protestant's franchises, or even if they do
7 constitute modifications, if they are such that they do not substantially affect Protestant's
8 sales or service obligations or investment, then Section 3070(b)(1) does not require there be
9 notice of the modifications to Protestant or the Board. If this is the case, then there is no
10 right to protest the claimed modifications and there is no right to a hearing on the merits of
11 the protests that have been filed. Said another way: (a) If there is no modification of the
12 franchise, Respondent is not required to give notice of what is a "non-modification" and
13 there is no right to protest; (b) If there is a modification, but the modification will not
14 substantially affect the Protestant's sales or service obligations or investment, Respondent
15 is not required to give notice of the modification and there is no right to protest.

16 However, if the establishment of the additional franchises was within the exclusive
17 territories of Protestant and do constitute modifications of Protestant's franchises and if
18 these are modifications that substantially affect Protestant's sales or service obligations or
19 investment then Section 3070(b)(1) does require notice to Protestant and the Board. If no
20 such notice was given, the modifications are deemed ineffective (void) as a matter of law
21 and there should be no requirement that a hearing be held to provide an opportunity for
22 Respondent to show that there was good cause for the modifications, which in these cases
23 would have the effect of depriving Protestant of its exclusive territories.

24 The burden of going forward and the burden of proof as to whether there are (a)
25 modifications to Protestant's franchises, and (b) that these are modifications which
26 substantially affect Protestant's sales or service obligations or investment are upon
27 Protestant.

28 Respondent's assertion that there is no modification as Protestant no longer has a
right to the exclusive territories as it is no longer in good standing is also a question of fact
that, if asserted by Respondent at the hearing, will have to be resolved as it relates directly
to the issue as to whether there was a modification of the franchises.

As to these specific facts and issues that the provisions regarding exclusive
territories no longer existed, the burden of going forward and the burden of proof shall be
allocated to Respondent... Although this is a "claim" by Respondent it is a factual claim,
not a legal claim for which a remedy is sought. It is merely an assertion by Respondent
that no notice was needed pursuant to Section 3070 as there was no modification of the
franchise. Thus, the issue is still limited to whether there was or was not a modification of
the franchise which is within the jurisdiction of the Board as the only relief being sought is
pursuant to Section 3070.

With regards to the modification protests, the only issues that need be addressed at
the upcoming merits hearing are:

a. Was there a modification of the franchises (which includes whether the
exclusive territory provision was no longer applicable due to the assertion by Respondent
that Protestant was no longer in good standing); and, if there was a modification,

b. Whether the modification substantially affects Protestant's sales or service
obligations or investment.

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1 If Protestant cannot meet its burden of proof as to these fundamental issues, there is
2 no right to file a protest and no need for Respondent to prove there is good cause for the
3 claimed modifications.

3 If Protestant does meet its burden of proof as to these fundamental issues, and if
4 there was no notice from Respondent that satisfied the requirements of Section 3070, the
5 claimed modifications were done in derogation of the statutes and are of no effect. The
6 analysis stated as to Motion No. 1 would be applicable here. (Underline added.)

6 ...[R]egardless of which of the conclusions are made here, there is no need for a
7 hearing to address the good cause factors as stated in Section 3071. (Underline added.)

7 **EFFECT OF THE BOARD'S DECISION REGARDING THE ESTABLISHMENT OF**
8 **MTRV IN COLTON ON THIS MODIFICATION DECISION**

9 27. As stated in the above order, there would have been no need for a merits hearing on this
10 modification protest if the statutorily mandated notices had not been provided by the franchisor.
11 However, a merits hearing was held pursuant to Section 3072 involving the establishment of MTRV at the
12 Colton location. The ultimate findings and holdings in that protest (PR-2233-10) are found to be
13 applicable to this modification protest. And, as the establishment protest was sustained with Mega RV
14 having established good cause not to permit the establishment of MTRV at the Colton location, so should
15 this modification protest be sustained when the burden of proving good cause for the modification of the
16 exclusive territory as provided in the franchise would be on Roadtrek.

17 28. In the establishment protest, Mega RV was found to have established good cause not to
18 allow the establishment of MTRV at the Colton location. Considering all the evidence introduced during
19 the consolidated hearing, it is also concluded that Roadtrek did not meet its burden of proof to establish
20 good cause to permit the modification of the franchise terms granting Mega RV the exclusive territory.
21 The proper procedure, when there are no notices, would be to declare any conduct improperly or illegally
22 consummated as being void *ab initio*, thus requiring the franchisor to comply with the statute and give the
23 required notices.

24 29. However, the Board is cognizant of the fact that in this matter, discovery has been
25 completed, and a merits hearing has been held. It would be a waste of the parties' and the Board's
26 resources to start over again. Therefore, the Board, under these unique circumstances only is treating the
27 protest as though it had been filed after notice had been given and received, and is ruling in favor of
28 Protestant on the merits of the protest, as well as ruling on the legal effect of the lack of required notice to

1 the Protestant and the Board. The Board specifically finds that Protestant Mega RV is not harmed by this
2 approach, as it will have prevailed on both the establishment protest and the modification protest. By the
3 Board's Order, Roadtrek is prevented from modifying the franchise for the Colton location and is
4 prevented from establishing the additional dealership at the Colton location. Likewise Roadtrek is not
5 adversely affected by merging the findings and conclusions of the modification protest with the
6 establishment protest, as the Board's Order is consistent as to the ultimate effect of the decision on
7 Roadtrek. The basic issues and facts between the modification protest and the establishment protest were
8 generally the same. The Board concludes that the only material difference is which of the parties had the
9 burden of proof as to the ultimate issues in each protest. Under the facts of these matters, Mega RV has
10 met its burden of proving good cause in not permitting the establishment of the additional Roadtrek
11 dealership in Colton. This is the same ultimate outcome as in the modification case.

12 ISSUES PRESENTED

13 30. Did Roadtrek sustain its burden of proof of establishing that Mega RV had no franchise
14 right to an exclusive territory since (as Roadtrek alleges) Mega RV was no longer in "good standing"
15 under the Roadtrek franchise agreement?

16 31. If Roadtrek fails to sustain its burden of proof stated above, did Mega RV sustain its
17 burden of proof of showing that Roadtrek's establishment of an additional Roadtrek franchise within
18 Mega RV's "contractually assigned exclusive territory" was a "modification" of Mega RV's Colton
19 franchise?

20 32. If Mega RV sustained its burden of proof that its franchise was "modified" by the
21 establishment of an additional Roadtrek franchise which meant that Mega RV had lost the right to the
22 exclusive territory provided in the franchise, did Mega RV sustain its burden of proof of showing that the
23 "modification" substantially affected Mega RV's sales or service obligations or investment?

24 PROTESTANT'S CONTENTION

25 33. Mega RV contends that Roadtrek's establishment of additional Roadtrek franchisees within
26 Mega RV's "contractually assigned exclusive territories" were "modifications" of Mega RV's franchise.

27 34. Consequently, Protestant maintains that the modifications depriving Mega RV of its
28 contractual right to an exclusive territory substantially affect its sales and service obligations, as well as

1 its investment in the Roadtrek franchise. Roadtrek was required to give notice to Protestant and the Board
2 of such modification, which it did not. Since Roadtrek did not give Protestant and the Board notice prior
3 to modifying its franchise, the modification should be deemed void and MTRV's Roadtrek franchise
4 should be required to cease operations. (Protestant's Post-Hearing Opening Brief, p. 20)

5 **RESPONDENT'S CONTENTION**

6 35. Respondent contends there was no modification since Mega RV no longer has a franchise
7 right to the exclusive territories as Mega RV was no longer in "good standing" under the Dealer
8 Agreement. Roadtrek further contends that the determination of whether Mega RV is in "good standing"
9 is not a matter within the jurisdiction of the Board. It was within Roadtrek's discretion to determine
10 whether Mega RV was in "good standing" and entitled to maintain exclusive territories under the Dealer
11 Agreement. Therefore, Roadtrek was under no statutory obligation to give notice to Mega RV of its
12 establishment of an additional Roadtrek franchise.

13 36. The words in Section 3070(b) "notwithstanding...the terms of any franchise", according to
14 Respondent "...mean that the notice and protest requirements, when triggered by a modification, cannot
15 be waived by a dealer agreement. Here, the notice and protest requirements of Section 3070(b) have not
16 been triggered by a modification." (Underline in original; Respondent's Reply to Protestant's Post-
17 Hearing Brief, p. 20)

18 **IDENTIFICATION OF WITNESSES AND EXHIBITS**

19 **PROTESTANT'S WITNESSES**

20 37. Brent McMahon is the president and CEO of Mega RV Corp, doing business as
21 McMahon's RV. (RT 8/9: 76-173; 8/10: 14-244; 8/11: 6-267; 8/12: 7-249; 8/15: 6-205; 8/16: 6-124)

22 38. Paul Schilperoort is the Director of Operations at Mega RV, a position he has held since
23 mid-2008. His duties include overseeing the "...daily operations of the entire company, which entail
24 service and parts, the sales operations, and the accounting office". He initially was hired in November
25 2005 as service and parts director. (RT 8/16:127-220; 8/17:117-218; 8/18:6-215; 8/19:8-211; 9/21:9-190;
26 9/22: 6-71; 1/31:207-226; 2/1:6-144; 4/26:30-100)

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1 39. Frank De Gelas⁸ is the President of Mike Thompson's RV Super Stores, which operate
2 RV dealerships in five locations in Southern California, including Colton, California.⁹ (RT 1/13:7-77)

3 **RESPONDENT'S WITNESSES**

4 40. Jeff Hanemaayer is the son of the founder of Roadtrek. Until 2009, he was Chairman of
5 the company, handling marketing, finance and accounting. He described himself and James Hammill
6 "...more as co-CEO's...", each involved in different areas of the company. (Exh 601; RT 11/14:11-249;
7 11/15:6-166)

8 41. James Hammill is President and CEO of Roadtrek. He was initially hired as General
9 Manager in April 2005. He was appointed President around the beginning of 2007 and was named a
10 Director of the company in 2008. He oversees "...all operations, everything tangible about the company,
11 reporting to the board of directors... sales, manufacturing, engineering, quality, materials, purchasing...
12 [e]ssentially all departments." (RT 9/22: 73-242; 9/23:6-220; 11/7:8-217; 11/8:9-187; 11/9:6-225; 11/10:
13 6-208; 11/11:6-93)

14 **EXHIBITS**

15 42. Exhibit 600 is the Dealer Agreement between the parties which was executed on February
16 22, 2006. It establishes Roadtrek franchisees at Mega RV's Irvine and Colton dealership locations.

17 43. Exhibit 685 is the Roadtrek Motorhomes, Inc. Dealer Agreement with MTRV which was
18 executed on January 29, 2010. It establishes Roadtrek franchisees at MTRV's dealership locations in
19 Santa Fe Springs, Fountain Valley (two locations), and Colton (directly across the street from Mega RV's
20 dealership).

21 **FINDINGS OF FACT**¹⁰

22 **PRELIMINARY FINDINGS**

23 44. Roadtrek is a Class B motorhome manufacturer headquartered in Kitchener, Ontario,
24 Canada. (RT 11/14:12-13) The company, founded by Jacques Hanemaayer, was previously known as
25 _____

26 ⁸ Frank De Gelas was called as an adverse witness under Evidence Code section 776.

27 ⁹ MTRV has three year-round locations in Southern California and one temporary location. The Fountain Valley location has
an address on both sides of the freeway and is counted as two locations. (RT 1/13:8)

28 ¹⁰ References herein to testimony, exhibits or other parts of the record are examples of evidence relied upon to reach a finding
and are not intended to be all-inclusive.

1 Home & Park Motorhomes. (RT 11/14:12-15; 1/10:148-149)

2 45. Brent McMahon, the owner of Mega RV, started in the recreational vehicle business
3 working with his stepfather, who owned a dealership (and who also sold Roadtrek RVs) at TraveLand,
4 which once was a large multi-dealer RV park in Irvine, California. On December 1, 2000, Brent
5 McMahon incorporated Mega RV Corp and started his own small dealership selling used RVs on one of
6 the TraveLand lots. On April 9, 2001, he established Mega RV as a new recreational vehicle dealer.
7 (Exh 1; RT 11/15:177; 1/13:66-67)

8 46. On February 22, 2006, Roadtrek and Mega RV entered into a Dealer Agreement covering
9 Mega RV's Irvine, Colton and Stanton dealership locations. (Exh 600) The agreement was for a three-
10 year period, and the parties contemplated that the agreement would be renewed. (Exh 600, Section 520)

11 47. As indicated above, on January 29, 2010, Respondent Roadtrek executed a Dealer
12 Agreement¹¹ with MTRV to sell and service Roadtrek motorhomes. Frank De Gelas, President/Secretary
13 of MTRV signed on behalf of the dealership and James Hammill signed on behalf of Roadtrek. The
14 Dealer Agreement created a franchisee-franchisor relationship in which there were four MTRV dealership
15 locations from which Roadtrek motorhomes would be sold and serviced: Santa Fe Springs (the "head
16 office"), Fountain Valley (two locations), and Colton, California. (Exh 685; RT 4/26:18-19)

17 48. The distances between Mega RV's Colton and Irvine locations and MTRV's locations are
18 outlined as follows:

	MTRV Santa Fe Springs	MTRV Ward Street Fountain Valley	MTRV Talbert Avenue Fountain Valley	MTRV Colton
Mega RV Irvine	21.4 miles	10.8 miles	10.9 miles	35.9 miles
Mega RV Colton	42.9 miles	43.6 miles	43.5 miles	0.2 miles

19 (Exh 63)

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21
22
23
24 All MTRV locations are located within a 60 mile radius of Mega RV's Irvine and Colton locations and
25 are thus within the exclusive territories assigned to Mega RV under its franchise for the Irvine location
26 and the Colton location.

27
28 ¹¹ The Roadtrek-MTRV Dealer Agreement (Exh 685) is a "written recreational vehicle franchise agreement" pursuant to Sections 331.3, 11713.22 and 11713.23.

**FINDINGS RELATING TO ROADTREK'S CLAIM THAT MEGA RV HAD NO
FRANCHISE RIGHT TO AN EXCLUSIVE TERRITORY BECAUSE MEGA RV
WAS NO LONGER IN "GOOD STANDING" UNDER THE DEALER AGREEMENT**

49. The Dealer Agreement which Roadtrek and Mega RV executed on February 22, 2006 established Mega RV's Roadtrek franchise. The Dealer Agreement required Mega RV, in order "...to remain in good standing under this Agreement...", to "stock" and "prominently display" a total of 22 Roadtrek vans (four different models) at each of Mega RV's three dealership locations. (Exh 600, Section 109)

50. As long as Mega RV maintained its "good standing" status, Roadtrek guaranteed that it would not locate another dealer within a "...60 mile radii..." of each dealership location and that Mega RV would "...have the exclusive right to purchase, display and resell Roadtreks, parts and accessories in the [Dealer's] Territory...". (Exh 600, Sections 107 and 108) As long as Mega RV remained in "good standing" under the agreement, it would not only retain its "exclusive" dealer territories but would also receive full cooperation from Roadtrek "in all special promotions" (Exh 600, Sections 107, 108, 520).

51. Therefore, under the Dealer Agreement, Mega RV had an "exclusive" Roadtrek territory within a "60 mile radii" of its Colton dealership which was then (and now) located in the Colton RV Expo. Frank De Gelas, the owner of MTRV, also had an RV dealership in the Colton RV Expo. Presently, MTRV and Mega RV are the only two tenants in the Colton RV Expo and are located directly across the street from one another. (RT 8/10:180; 11/15:177; 1/13:66-67)

52. Section 3070(b) bars a franchisor from franchise modifications unless there is compliance with the terms of the statute regarding notices. Section 3070(b) clearly states that it is applicable "Notwithstanding the terms ... of any franchise..." As indicated in paragraph 22, Roadtrek did not provide the requisite notices. The fact that Roadtrek is now asserting that the exclusive territory is a term that may be modified upon the claimed loss of good standing without compliance by Roadtrek with the notice requirements of Section 3070(b) is not persuasive to this Board. The following language, "Notwithstanding...the terms of any franchise, a franchisor of a dealer of recreational vehicles may not modify..." indicates that a franchisor must provide the Section 3070(b) notice to all franchisees in all instances in which the modification would substantially affect the franchisees' sales or service obligations or investment. To conclude otherwise negates the clear language of the statute, results in circular

1 reasoning, and would open the door for franchisors to become “their own judge” and decide what may be
2 permitted to be modified by the terms of the franchise alone, thus avoiding the applicability of Section
3 3070(b).

4 53. For purposes of determining whether there was a modification of the franchise, the contract
5 term permitting the modification upon the asserted loss of Mega RV’s “good standing” is not relevant.

6 **FINDINGS RELATING TO WHETHER THE ESTABLISHMENT OF AN ADDITIONAL ROADTREK**
7 **FRANCHISE WITHIN MEGA RV’S EXCLUSIVE TERRITORY WAS A MODIFICATION OF**
8 **MEGA RV’S COLTON FRANCHISE**

9 54. Section 108 of the Dealer Agreement expressly states that:

10 Dealer territory shall be limited to an area within 60 mile radii of Irvine, California, Colton,
11 California and Stanton California. So long as Dealer [Mega RV Corporation, doing
12 business as McMahon’s RV, having its head office at 1312 RV Center Dr #16, Colton, CA,
13 USA, 92324 and doing business at 1312 RV Center Dr #16, Colton, CA, 92324 and at 6441
14 Burt Road #10, Irvine, CA 92618] remains in good standing during the terms of this
15 [Dealer] Agreement, [Roadtrek] will not locate another dealer within Dealer’s territory.

16 55. It is indisputable that establishing an additional Roadtrek franchisee within these
17 geographic areas is in derogation of the express terms of the franchise. Although Roadtrek asserted that it
18 was merely exercising its contractual right as to this express term in the franchise, it cannot avoid the
19 applicability of Section 3070(b)(1). What Roadtrek did with regard to the establishment of MTRV had
20 the legal effect of depriving Mega RV of the exclusive territory that had been granted to it under the terms
21 of the franchise. Whether Roadtrek claims it had the right to do so, and no matter what it may be called,
22 this constitutes a “modification” of the franchise and is thus governed by Section 3070(b)(1), and the
23 Legislative intent in requiring proper notices to franchisees and the Board.

24 56. Thus, if the modification of the franchise language regarding the exclusive territory
25 granted to Mega RV substantially affected Mega RV’s sales or service obligations or investment,
26 Roadtrek was required to provide the notices mandated by Section 3070(b). Then Roadtrek would be
27 precluded by the statute from modifying or attempting to modify the franchise until the passage of 60
28 days after the effective date of such notices. Similarly, if Mega RV had received the notice, and if Mega
RV had filed a protest within 30 days from receipt of the notice, Roadtrek would remain barred by the
statute from attempting to modify the franchise until there is a finding by the Board that there is “good
cause for the modification.” (Section 3070(b)(1))

1 57. The absence of such required notices meant that Roadtrek remained barred by the statute
2 from modifying the franchise until Roadtrek complied with the statute. This would be so even though
3 Roadtrek may ultimately have had good cause for the modification.

4 **FINDINGS RELATING TO WHETHER MEGA RV SUSTAINED ITS BURDEN OF PROOF OF**
5 **SHOWING THAT THE MODIFICATION SUBSTANTIALLY AFFECTED MEGA RV'S SALES OR**
6 **SERVICE OBLIGATIONS OR INVESTMENT**

7 58. According to [Protestant's witness] Brent McMahon, a dealer would not take on a
8 franchise if the franchisor would not guarantee an exclusive territory. (RT 8/9:130-133) A dealer must
9 have a territory in which it is able to sell vehicles without a same line-make dealership on every corner.
10 (RT 8/9:130-133) The lack of an exclusive territory affects not only a dealer's sales ability but its parts
11 and service business. (RT 8/9:133-135)

12 59. In order to meet its sales and service obligations under a Dealer Agreement, a dealer must
13 make certain investments in its franchise. To maintain service facilities, there are expenditures for parts,
14 maintenance of infrastructure, service technicians, diagnostic and service equipment. (Exh 609; RT
15 8/9:134; 8/10:96, 100)

16 **ANALYSIS**

17 60. Here, as shown in the chart in paragraph 48, Roadtrek established four MTRV dealerships
18 in the exclusive territory assigned to Mega RV's Colton dealership. One of these four additional MTRV
19 dealerships was established in the Colton RV Expo directly across the street from Mega RV's Colton
20 dealership. As indicated above, there are only two tenants in the Colton RV Expo - Mega RV and
21 MTRV, and both are franchisees of Respondent. These two dealers will now be competing for sales and
22 service business not only within the exact same geographic area, but directly across the street from one
23 another.

24 61. MTRV is not new to the RV industry and has a number of years' experience in this
25 industry. It is likely that MTRV will be an aggressive competitor with the resources and the ability to
26 increase competition for the sale of Roadtrek RVs to the point where due to their proximity, there would
27 be excessive and unwarranted competition that would not be in the public interest. There is no increased
28 or additional convenience to the public by having two dealers each serving the same customers from what
is in actuality the "same location".

