

1401 - 21st Street, Suite 407  
Sacramento, California 95814  
Telephone: (916) 445-1888

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protests of )  
AUTO TRENDS, INC., and ) Protest Nos. PR-245-79  
SANTA MONICA IMPORT MOTORS, ) PR-246-79  
a California Corporation, )  
Protestants, )  
vs. )  
PEUGEOT MOTORS OF AMERICA, INC., )  
Respondent. )

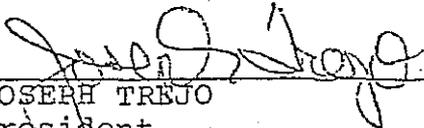
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DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the New Motor Vehicle Board as its Decision in the above entitled matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED this 22nd day of February, 1980.

  
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JOSEPH TREJO  
President  
New Motor Vehicle Board

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Procedural Background

1. Respondent Peugeot Motors of America, Inc., (Peugeot) gave notice, pursuant to section 3062 of the Vehicle Code<sup>1/</sup> by letter dated July 5, 1979, that it intended to establish a Peugeot franchise at Beverly Hills Lincoln-Mercury, Inc., (Tuttle) 8955 Olympic Boulevard, Beverly Hills, California.

2. The Protestants, Auto Trends, Inc., (Auto Trends), 4110 Lankershim Boulevard, North Hollywood, and Santa Monica Imports (Imports), 1537 Ocean Avenue, Santa Monica, located within ten miles of the proposed new dealership, filed protests and requested a hearing.

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

3. Pursuant to section 3066, a hearing<sup>2/</sup> was held before Aaron S. Resnik, Administrative Law Judge, commencing on September 10, 1979, at the Federal Building in Laguna Niguel.

4. Protestants were represented by A. Albert Spar, Esq., of the law offices of Sidney I. Pilot, a Professional Corporation; Respondent was represented by Donald F. Woods, Esq., of the law firm of Lillick, McHose, & Charles.

#### Issues Presented

5. Protestants contend that good cause exists for not establishing the proposed new franchise on Olympic Boulevard in Beverly Hills for the following reasons:

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

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

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

d) Franchisees of the same line make are providing adequate and convenient care for Peugeot owners and buyers in the relevant market area (3063(4));

e) The establishment of the additional franchise would not materially increase competition, but on the contrary, would dilute and subdivide the relevant market area so that the dealers would be unable to adequately stock vehicles and parts,

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2. The Protests were consolidated by the Board for the hearing.

and therefore would be unable to adequately serve the Peugeot owners and buyers in the area. Accordingly, it would not be in the public interest (3063(5)).

6. Peugeot contends, in addition to arguing that Protestants have not carried their burden of proof, that under section 3062 the establishment of the Beverly Hills franchise is "the reopening in a relevant market area of a dealership" within less than a year of the termination of a previous dealer.

#### FINDINGS OF FACT

##### Facts Relating to Permanency of Investment (3063(1))

7. Each of the Protestants<sup>3/</sup>, has made a substantial permanent investment in its dealership and intends to continue as a Peugeot franchisee.

8. The proposed dealer in Beverly Hills has a permanent facility and intends to make an additional investment in it and to become a permanent Peugeot dealer.

9. Auto Trends, a dual-line dealer selling both Peugeot and British-Leyland products, has been a Peugeot dealer since 1968, and has been at its present location since 1970.

10. Auto Trends' facilities consists of a building on approximately one acre of land leased from Bernard D. Miller, its President and sole owner. The dealership has an eight car showroom, nine hoists, and parking and storage areas. Auto Trends employs nine technicians, a sales manager, three salesmen two clerks, two new car get-ready men, a service writer, a service manager, a parts manager, a parts counterman, and a

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3. The Protestants are dual-line dealers; in fact, all Peugeot dealers referred to in these proceedings are dual-line.

pick-up and delivery man. Auto Trends' sales are divided evenly between Peugeot and British-Leyland.

11. Imports was enfranchised to its present owners in April, 1978. The dealership has been at its present location since 1975.

12. Gabriel Behesnilian and Vladimir Maximow each own 50% of Imports. Each of the principals has made a personal investment in the dealership of about \$45,000, and each has assumed contingent liabilities.

13. Imports' facilities include a showroom facing Ocean Avenue, sixteen service stalls and room for an additional seven service stalls behind the showroom. Imports employs five technicians, a service writer, a service manager, a parts manager, a sales manager, a bookkeeper, a telephone girl, two lot boys, a detail man, and the two principals.

14. The proposed new franchisee has been a Lincoln-Mercury dealer in Beverly Hills for 24 years. Tuttle became interested in acquiring a Peugeot franchise because of the recent gasoline shortage and the resulting substantial decrease in Lincoln-Mercury sales. Peugeot was regarded as an appealing addition because it is a low volume, high profit item in the luxury class.

Facts Relating to the Effect  
on the Consuming Public (3063(2))

15. The straight line distance between Imports and the proposed dealership is 7.09 miles. The straight line distance between Auto Trends and the proposed dealership is 6.3 miles.

In both instances, the surface distance between the protestant and the proposed dealership is greater than the straight line distance. The travel time between the proposed dealership and each of the Protestants is approximately 15 to 30 minutes depending upon the time of day.

16. Peugeot has approximately 300 dealers in the United States. There are 12 dealers in Los Angeles and Orange counties, eight of which are in Los Angeles county. There are three Peugeot dealers in the relevant market area of the proposed new franchisee.

17. Automobile makes which Peugeot regards as competitors are more widely represented in the relevant market area. Audi has nine dealers; BMW seven; Mercedes six; Volvo five.

18. Peugeot dealers in the Western zone average approximately 70 car sales per year.<sup>4/</sup> Auto Trends expects to sell between 100 and 150 cars in 1979, and Imports expects to sell 100.

19. Auto Trends has ranked in the top ten Peugeot dealers nationally since 1969. For the period July, 1978, to July, 1979, Auto Trends sold 158 new Peugeots. Forty-two of these sales were made to customers residing in the Beverly Hills area.

20. Respondent has, for planning purposes, designated Santa Monica and Beverly Hills as distinct and separate market areas. These areas are in essence defined by Peugeot as areas of primary dealer responsibility.

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4. Peugeot's Western zone covers a portion of nine states from Canada to Mexico including all of California, Oregon, and Washington.

21. The area of primary responsibility for Imports includes Pacific Palisades, Santa Monica, Venice, West Los Angeles, Marina del Ray, and the western most parts of Los Angeles to the south of Venice and north of El Segundo. In addition parts of Los Angeles to the west of the Los Angeles freeway are included.

22. The area of primary responsibility for Auto Trends encompasses the southern and eastern parts of the San Fernando valley and the eastern part of Hollywood.

23. The area of primary responsibility that would be assigned to the proposed dealer would be Beverly Hills and those parts of Los Angeles that surround Beverly Hills for a distance of two to four miles.

24. The proposed dealer has been owned and operated by the Holmes Tuttle and Charles Cook families since 1955. Its capitalization exceeds 1.5 million.

25. Auto Trends' capitalization is \$100,000, and Imports' is \$250,000.

26. The proposed dealer has a flooring line from Ford Motor Credit of between two and three million dollars, and an unsecured line of credit from Bank of America of eight million dollars. Ford Motor Credit has approved a \$300,000 addition to the proposed dealer's flooring line if it obtains the Peugeot franchise. They have promised additional flooring if necessary.

27. The proposed dealer has won awards from Ford Motor Company in each of the last six years for outstanding service

and parts department. In 1978, and for several years prior thereto, the proposed dealership was designated the number one luxury car dealer in the western region of the United States for Ford.

28. The proposed dealer intends to lease Peugeots as well as sell them. Beverly Hills is the center of a substantial leasing business, and Peugeot has had little success participating in that business because it has no service facility in or near Beverly Hills.

29. The proposed dealer is located on Olympic Boulevard, one of the most heavily traveled east-west surface streets through the Beverly Hills area. It is near the business districts of Beverly Hills and Century City.

30. The proposed dealer plans to spend \$1,500 to \$2,500 per month in advertising Peugeots during the first year of its franchise. This advertising budget includes radio, newspaper, magazine, and direct mail solicitation.

31. The proposed dealer has 34 service stalls on its premises now and is planning to add two more in the immediate future. It has nine additional service stalls at his new car preparation center a few blocks away.

32. At the time Peugeot decided to enfranchise Tuttle, Peugeot had made no study or survey regarding the number of sales of Peugeots being made to customers residing in the Beverly Hills area.

33. Median family income in the three territories served by the Protestants and the proposed dealership ranks

among the highest of all areas in Los Angeles county.

34. Peugeot's penetration rate in the Santa Monica and North Hollywood areas are below its national average and western zone average, and declined after the termination of the Lail Bros. franchises in the western part of Los Angeles in 1978.<sup>5/</sup>

35. In 1977, the year before the Lail Bros. franchises were terminated, the Protestants were among the top ten dealers in sales in the country.

Facts Relating to the Public Welfare (Section 3063(3))

36. Although Peugeot compares itself with Mercedes-Benz and other expensive import cars, it has a generally more limited marketing appeal.

37. Historically the sales of Peugeots in the United States have been limited and currently Peugeot is having difficulty marketing its cars. Peugeot is currently offering a \$1,000 factory rebate on the purchase of a Peugeot. None of the lines with which Peugeot considers itself to be competitive is currently offering a rebate.

38. In addition to offering rebates on its 604 gas engine model, Peugeot has had a shortage of diesels in 1979 and Imports had back orders unfilled on these cars.

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5. See New Motor Vehicle Board, PR-174-78 and PR-175-78. The Lail Bros. franchises at 1422 S. La Cienega Boulevard, Los Angeles, CA 90035, and 230 S. Western Avenue, Los Angeles 90004, were terminated for, among other reasons, failing to maintain adequate flooring.

39. Peugeot's sales were reduced by about 25% in 1978 because its 1978 504 gasoline engine models were not certified for sale in California and Peugeot was still selling 1977 models in California in 1978.

40. Peugeot anticipates a reduction in production and delivery of its 1980 models.

41. Six Peugeot dealers in Los Angeles county went out of business between 1970 and 1974.

Facts Relating to Adequate Competition and Convenient  
Consumer Care (3063(4))

42. Peugeot recognizes that each of the Protestants is providing adequate competition and convenient consumer care in its respective area of primary responsibility. Peugeot contends that adequate competition and convenient consumer care are not being provided in the Beverly Hills area.

43. The sales and service receipts of the two Protestants were higher before the termination of the Lail Bros. franchises in 1978 than they have been since.

44. In its decision on the termination protests filed by the Lail Bros. franchises the Board found: "Peugeot intends to replace both franchises as fast as possible."

45. The presence of a large, modern, conveniently located sales and service facility for Peugeot in Beverly Hills will stimulate consumer interest and demand in Peugeots and should ultimately prove of benefit to the Protestants.

Facts Relating to Increased Competition  
in the Public Interest (3063(5))

46. Prior to the time of acquisition of Imports, the Behesnilian-Maximow group were investigating acquisition of other franchises including but not limited to Renault.

47. The present owners of Imports did not rely upon the absence of the Lail Bros. franchise at its La Cienega address when deciding to acquire Imports.

48. The presence of the proposed franchise, located on a principal east-west street, running from downtown Los Angeles through Beverly Hills and terminating in Santa Monica, will stimulate demand for Peugeots in all of the western part of Los Angeles county.

49. The areas served by the Protestants and the area to be served by the proposed franchisee offer excellent territory for the sale and service of Peugeots.

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## DETERMINATION OF ISSUES

1. Protestants have failed to sustain their burden of proof.

2. Protestants have failed to establish that good cause exists for not establishing the proposed franchise for the following reasons:

a) Both the Protestants and the proposed new dealership have permanent investments in their facilities; the Protestants' investments would not be jeopardized by the opening of the proposed dealership.

b) Protestants have failed to show that the opening of a new dealership will have a detrimental effect on the business of selling and servicing Peugeot automobiles in the relevant market area.

c) The creation of the new dealership will insure greater intrabrand and interbrand competition in the relevant market area, thereby benefiting the consuming public.

d) Although Protestants have provided convenient consumer care without apparent deficiency, establishment of the new dealership will result in improvement in this regard in the relevant market area.

e) The establishment of the additional franchise would increase competition and therefore be in the public interest.

f) Since the proposed dealership is the establishment of an additional franchise rather than "a reopening of a dealership which has not been in operation . . ." for less than one year, section 3062 is applicable to this dispute.

\* \* \* \* \*

Wherefore the following order is hereby made:

The protests are denied.

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 Laguna Niguel, California, and recommend its adoption as the decision of the New Motor Vehicle Board.

Dated: February 11, 1980.



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AARON S. RESNIK  
Administrative Law Judge  
New Motor Vehicle Board