

NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
Sacramento, California
Telephone: (916) 445-1888

In the Matter of the Protest of:

HAL WATKINS CHEVROLET, INC. dba)	
HAL WATKINS BMW,)	
)	
Protestant,)	PROTEST NO. PR-386-82
)	
vs.)	<u>PROPOSED DECISION</u>
)	
BMW OF NORTH AMERICA, INC.,)	
)	
Respondent.)	

PROCEDURAL BACKGROUND

1. Sometime prior to April 12, 1982, Hal Watkins Chevrolet, Inc., dba Hal Watkins BMW (Watkins), was made aware that BMW of North America, Inc., (BMWNA), intended to appoint Paul Rusnak (Rusnak) as a BMW dealer at 3832 Thousand Oaks Boulevard, Thousand Oaks, Ventura County, California.

2. On April 12, 1982, Watkins filed a protest pursuant to Vehicle Code §3060 ^{1/} alleging that BMWNA'S proposed action of establishing a new dealership in the

^{1/} All references are to the California Vehicle Code unless otherwise indicated.

Thousand Oaks/Westlake area would result in a modification of Watkins' franchise.

3. Vehicle Code §3060 provides in part that "the franchisor shall not modify...a franchise...if such modification...would substantially affect the franchisee's sales or service obligations or investment..."

4. In establishing Rusnak, BMWNA will assign a portion of Watkins' Area of Responsibility (AOR)^{2/} to Rusnak thereby diminishing the area presently assigned by BMWNA to Watkins.

5. Watkins contends that the reduction of its AOR will constitute modification of its franchise^{3/} which will substantially affect its sales or service obligations or investment.

^{2/} Area of Responsibility is a BMWNA designation of a geographical area surrounding a dealer. The AOR extends to the contiguous point of an adjacent BMW dealer's AOR.

^{3/} §331 provides in part "A franchise is a written agreement between two or more persons. . ."

6. A hearing was held before Anthony M. Skrocki, Administrative Law Judge for the Board, on July 6, 7, 8, 27, 28, 29, 30, August 2, 3, 4, 5, 6 and 11, 1982.

7. Watkins was represented by A. Albert Spar and Michael J. Flanagan of the law firm of Pilot & Spar. BMWNA was represented by Roy Brisbois of the law firm of Lewis, D'Amato, Brisbois and Bisgaard.

JURISDICTIONAL ISSUE PRESENTED

8. Did the legislature intend §3060 and §3062 to be mutually exclusive remedies available to franchisees when the conduct of the franchisor involves both an establishment of an additional franchise and the modification of a franchise?

DETERMINATION OF ISSUE

9. It is clear from the reading of §3060 that the legislature intended to safeguard the rights of franchisees by regulating the power of franchisors to modify a franchise unilaterally. Although BMWNA is attempting to establish an additional dealership and Watkins is not located within the statutorily defined relevant market area to provide the basis for a protest pursuant to §3062, this does not mean that Watkins cannot protest a modification of its franchise under §3060.

10. It is presumed that the legislature was cognizant of the fact that the geography, size of the communities, and demographics in any given area throughout the state vary greatly. As a result, it cannot be presumed that the legislature intended to limit the jurisdiction of the Board to scrutinize a franchisor's proposed conduct of establishing an additional dealership to those situations in which there happens to be an existing dealership within a 10-mile radius of the proposed location. To do so would result in creating rights in dealers in densely populated metropolitan areas but at the same time denying any rights whatsoever to dealers in sparsely populated non-metropolitan areas who may be just beyond the 10-mile radius but who may be more adversely affected by an additional dealership than would the metropolitan dealers. No such intent should be attributed to the legislature.

11. It is therefore determined that §3062 is not the exclusive protection available to a franchisee when the franchisor seeks to establish an additional dealership. To so interpret the statute would be to ignore reality. §3060 is applicable when the proposed conduct of the franchisor involves the establishing of an additional dealership and such conduct inherently includes modification of a franchise. §3060 is applicable to this protest.

12. BMWNA assigns a geographical area to its dealers. BMWNA establishes its standards for the dealership and in part measures the dealership's expected and actual performance based upon the area assigned. Because the proposed establishment will modify the area assigned to Watkins, the establishment of the proposed dealership and resulting modification of Watkins' assigned area cannot be viewed separately.

ISSUES PRESENTED

13. Will the establishment of Rusnak and the change in Watkins' AOR result in a modification of Watkins' franchise?

14. If there is a modification, will such modification of Watkins' franchise substantially affect Watkins' sales or service obligations or investment?

15. If there is a modification of Watkins' franchise which will substantially affect Watkins' sales or service obligations or investment, is there good cause for such modification?

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FINDINGS OF FACT

FACTS PERTAINING TO WHETHER THE ESTABLISHMENT OF RUSNAK
AND THE CHANGE IN WATKINS' AOR WILL RESULT IN A
MODIFICATION OF WATKINS' FRANCHISE

16. Seventy-five per cent of the stock of Hal Watkins Chevrolet, Inc., dba Hal Watkins Chevrolet; dba R. V. Country; and dba Hal Watkins BMW is owned by Hal Watkins. Robert Beltz owns the remaining twenty-five per cent of the stock.

17. Watkins has operated as a BMW franchisee at 411 Daily Drive, Camarillo, since 1974.

18. BMWNA utilizes uniform Dealer Agreements which are signed by all BMW franchisees. Each Dealer Agreement is accompanied by Dealer Standard Provisions and a Dealer Operating Requirements Agreement which are executed concurrently with the Dealer Agreement and are made a part of the Dealer Agreement.

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19. Hal Watkins acting as president of Hal Watkins Chevrolet, Inc., dba Hal Watkins BMW, executed a BMW Dealer Agreement dated January 1, 1982 (Agreement).^{4/} Interspersed throughout the Agreement are the following provisions:

- a) BMWNA reserves the right to grant or confer rights and privileges covering the sale and servicing of BMW products upon such other dealers selected and approved by BMWNA, whether located in dealer's geographic area^{5/} or elsewhere, as BMWNA, in its sole discretion, shall deem necessary or appropriate. (Dealer Agreement-A - page 2)

- b) ... Dealer shall conduct Dealer's BMW Operations and keep BMW Products only at Dealer's Premises; and will operate its business at Dealer's Premises during the customary business hours of the trade in Dealer's Area. (Dealer Agreement-D - page 3)

^{4/} By stipulation of the parties the Dealer Agreement dated January 1, 1982, is the operative franchise agreement.

^{5/} Emphasis added to all references to geographic areas.

- c) Dealer assumes the responsibility in the area surrounding Dealer's Premises for the promotion and sale of BMW Products, the supply of Original BMW Parts, and customer service for BMW Products. (Dealer Standard Provisions paragraph 3(a) - page 2)
- d) Throughout the term of the Agreement, Dealer shall operate Dealer's Premises during, and for not less than, the customary business hours of the trade in Dealers's Area. (Dealer Standard Provisions paragraph 4(a) - page 2)
- e) Dealer will insure that Dealer's Premises comply with the applicable provisions of the Agreement, including such reasonable requirements and standards (particularly with respect to buildings in the recommended BMW styles, size and layout of administrative, parts and storage spaces, installation of equipment, and parking facilities) as BMWNA may prescribe from time to time, after review with Dealer, pursuant to the Dealer Operating Requirements Agreement, taking into consideration the number of BMW Vehicles registered in the areas close to Dealer's

Premises and Dealer's reasonably foreseeable future requirements. (Dealer Standard Provisions paragraph 4(F) - page 3.)

- f) Within the limitations, if any, resulting from the quantity of BMW Vehicles made available to Dealer by BMWNA, Dealer shall use its best efforts to achieve the best possible sales performance obtainable in its area for BMW Vehicles. Such sales performance shall be evaluated on the basis of such reasonable criteria as may be determined from time to time by BMWNA. (Dealer Standard Provisions paragraph 5(b) - page 4)
- g) Dealer agrees that, in addition to maintaining the minimum inventory of Original BMW Parts required under Paragraph 9(a), Dealer will acquire, and at all times maintain, such inventory of available BMW Products as is necessary in accordance with the current and reasonably foreseeable volume of Dealer's business and to further Dealer's sales activities and to assure satisfactory customer service and supply of Original BMW Parts for owners of BMW Vehicles in Dealer's area. (Dealer Standard Provisions paragraph 10(g) - page 10)

20. The following terms are those which were underlined in the above quotes from the Agreement and were not defined within the Agreement:

Dealer's geographic area.

Dealer's Area

area surrounding Dealer's Premises

Dealer's area

areas close to Dealer's Premises

its area for BMW Vehicles.

21. BMWNA designates certain zip code areas geographically surrounding a dealer as the dealer's AOR. The AOR extends to the contiguous point of an adjacent BMW dealer's AOR.

22. The Agreement does not use the language Area of Responsibility.

23. Watkins is held to standards based in part upon geographical areas referred to in the Agreement.

24. The proposed action of BMWNA will result in a modification of the AOR assigned to Watkins by BMWNA.

DETERMINATION OF ISSUE AS-TO WHETHER THE ESTABLISHMENT
OF RUSNAK AND THE CHANGE IN WATKINS' AOR WILL RESULT
IN A MODIFICATION OF WATKINS' FRANCHISE

25. It is determined that the geographical areas referred to in the franchise agreement are reasonably susceptible of being interpreted as including the AOR assigned to Watkins by BMWNA.

26. It is also determined that the geographical references in the agreement include the AOR assigned to Watkins by BMWNA.

27. It is further determined that modification of the geographical area used to establish standards imposed upon Watkins by BMWNA is a modification of the franchise.

FINDINGS OF FACT

FACTS PERTAINING TO WHETHER THE MODIFICATION WILL
SUBSTANTIALLY AFFECT WATKINS' SALES

28. Watkins is located at 411 Daily Drive, Camarillo, in proximity to Highway 101, between Carmen and Los Pasos.

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29. The following represents the towns and cities contained within Watkins' present AOR, Watkins' proposed AOR, and the AOR proposed for Rusnak:

<u>Watkins' Present AOR</u>	<u>Watkins' Proposed AOR</u>	<u>Rusnak's Proposed AOR</u>
Camarillo	Camarillo	Moor Park
Fillmore	Fillmore	Simi Valley
Moor Park	Oak View	Thousand Oaks
Oak View	Ojai	Piru
Ojai	Oxnard	Aguora ^{6/}
Oxnard	Port Hueneme	
Piru	Santa Paula	
Port Hueneme	Somis	
Santa Paula	Ventura	
Simi Valley		
Somis		
Thousand Oaks		
Ventura		

30. The franchise does not impose any restrictions upon the right of Watkins to sell BMW vehicles into any geographical area.

^{6/} The Aguora area is presently assigned to the Canoga Park AOR.

31. The following chart represents the number of retail sales of BMWs made by Watkins for the calendar years indicated:

<u>1979</u>	<u>1980</u>	<u>1981</u>
273	188	258

32. The following chart represents the number of retail sales of BMWs by Watkins to customers in the areas indicated:^{7/}

<u>Number of Retail Sales By Watkins to Customers Residing in:</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>
Watkins' Present AOR	246	123	176
Watkins' Proposed AOR	227	95	152
Rusnak's Proposed AOR	21	29	27
Other Geographical Areas	25	64	79

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^{7/} Source is retail delivery cards submitted by Watkins to BMWNA.

33. The following chart represents BMW's penetration as a percentage of its total competition^{8/} in the Watkins AOR and District 1^{9/} for the years indicated:

	<u>1979</u>	<u>1980</u>	<u>1981</u>
Watkins' AOR	11.5%	10.1%	10.9%
District 1	11.8%	12.1%	13.1%

34. Camarillo and the Thousand Oaks/Westlake area are separated by a range of mountains that delineate the western edge of the Canejo Valley. Traveling between Camarillo and the Thousand Oaks/Westlake area requires traveling over the Canejo grade which is approximately 7.2 miles long and ascends approximately 1300 feet in elevation.

35. The proposed location in Westlake is situated within the postal community of Thousand Oaks. The Westlake area is located close to the Los Angeles County-Ventura County line.

^{8/} Total competition consists of certain line makes which BMWNA designates for purposes of comparing the number of registrations of new vehicles in certain geographical areas as an indication of sales activity.

^{9/} District 1 is the BMWNA designation of the geographical area from the Los Angeles metropolitan area northbound to San Luis Obispo and encompasses 14 BMW dealerships.

36. See Attached Map (page 15A).

37. The following represents the distance from Watkins to the areas indicated:

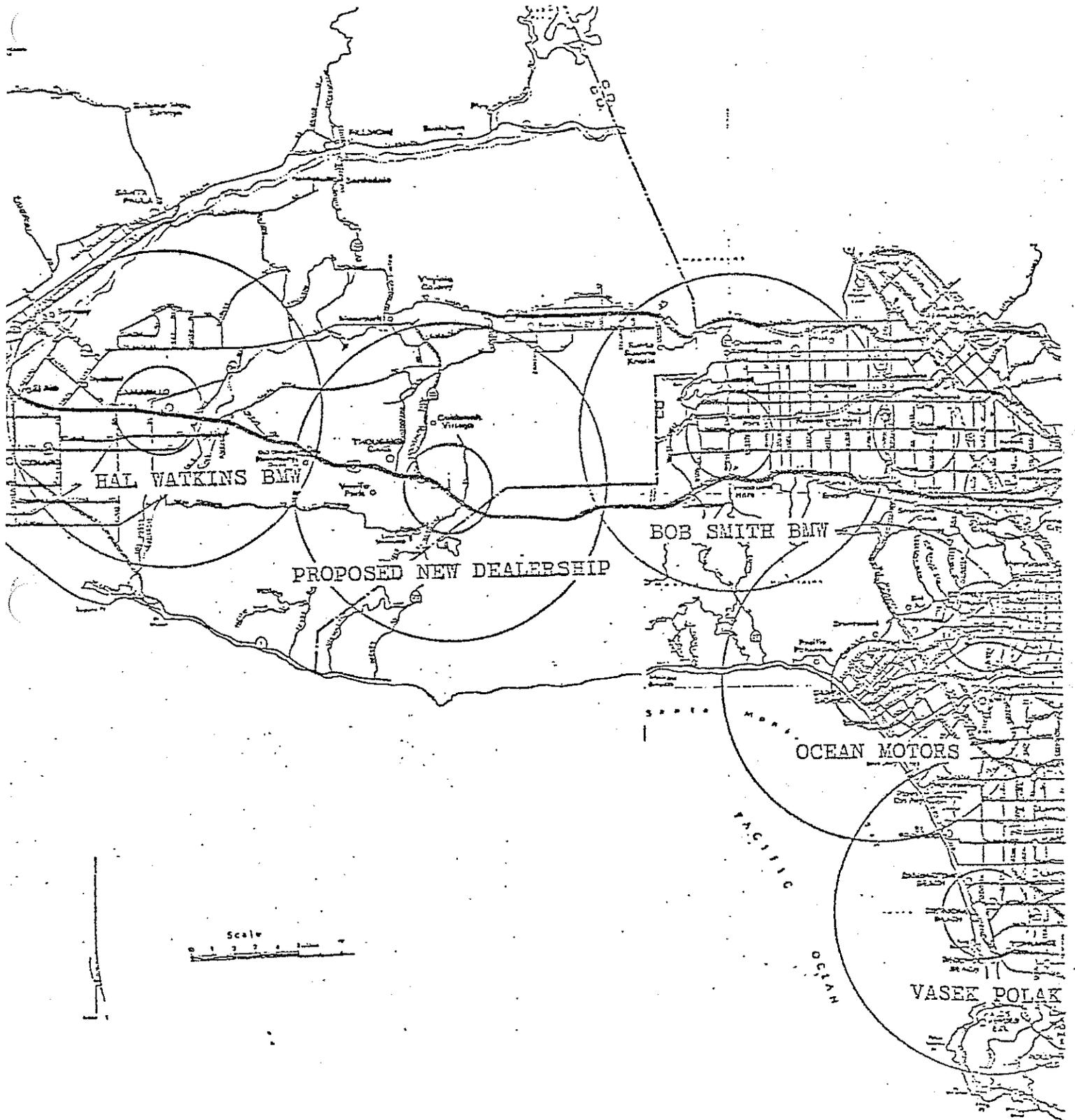
<u>Watkins To:</u>	<u>Driving Miles</u>	<u>Driving Minutes</u>
Westlake (Proposed Location)	15.2	25
Canoga Park	16.2	--
Newbury Park	7.2	--
Oxnard	7	20
Point Mugu	8.1	--

38. The following chart represents the 1981 estimated population for the areas indicated:

<u>Area</u>	<u>Population</u>	<u>Households</u>
Watkins' Proposed AOR	346,585	118,000
Rusnak's Proposed AOR	231,272	73,000

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THE CAMARILLO-THOUSAND OAKS MARKET AREA



39. The following chart represents the 1980 population and the number of BMW dealers presently located in the areas indicated:

<u>Area</u>	<u>Population</u>	<u>Number of BMW Dealers</u>
Ventura County	529,899	1
Los Angeles County	7,477,657	13
Orange County	1,931,570	4
San Diego County	1,861,846	4

If Rusnak is established, there will be two BMW dealerships in Ventura County.

DETERMINATION OF ISSUE AS TO WHETHER THE MODIFICATION
WILL SUBSTANTIALLY AFFECT WATKINS' SALES

40. Establishment of the proposed dealership will result in a modification of Watkins' franchise and will substantially affect Watkins' sales.

FINDINGS OF FACT

FACTS PERTAINING TO WHETHER THE MODIFICATION WILL
SUBSTANTIALLY AFFECT WATKINS' SERVICE OBLIGATIONS

41. The number of units in operation ^{10/} (UIOs) within a dealer's AOR bears a relationship to the number of service stalls, hoists, and service technicians BMWNA requires a dealer to maintain.

^{10/} Units In Operation are the number of BMWs registered in a geographical area measured over a given period of time.

42. The following represents the actual count of UIOs for Watkins' present AOR, Watkins' proposed AOR and the AOR proposed for Rusnak for 1981 based upon the BMW registrations from 1975 to 1981:

	<u>UIOs</u>	
Watkins' Present AOR	1116	
Watkins' Proposed AOR	<u>619</u>	
Watkins' Loss	497	(45% Loss)
Rusnak's Proposed AOR	572 ^{11/}	

43. BMWNA utilized the following formula to project the number of UIOs in Watkins' present AOR for the purpose of determining Watkins' service department requirements for 1982:

1977 through June 1980 registrations in Watkins' AOR
 Plus
 Watkins' actual sales July 1980 through December 1980
 Plus
 Watkins' 1981 annualized sales
 Plus
 1982 BMWNA Proposed Sales Planning Guide for Watkins^{12/}
 Equals
 Total projected UIOs

^{11/} Includes 75 UIOs derived from realignment of Aguora from Canoga AOR to Rusnak's proposed AOR.

^{12/} The 1982 Sales Planning Guide is based on 1/3 1980 sales + 1/3 1981 annualized sales + 1/3 market potential (as computed by BMWNA).

44. The following formula utilized by BMWNA, represents the relationship between the projected UIOs and any dealer's service requirements (the following formula is hypothetical and not the actual computation for Watkins):

SERVICE DEPT. GUIDELINES FOR DEALER OPERATING REQUIREMENTS

Technicians:

$$\text{UIOs in AOR} \times .70 = X$$

(X = Estimated number of UIO's that will return for service)

$$X \times 4.25 = Y$$

(Yearly frequency of repair) (Total repair orders per year)

$$Y \times 3.4 \text{ hours} = Z$$

(Amount avg. labor time per repair) (Total labor time)

$$Z \div 1597 \text{ hours} = \text{\# of Technicians}$$

(Total \# of productive man work hours)

equals:

$$600 \times .70 = 420 \times 4.25 = 1785 \times 3.4 = 6,069 \div 1597 = 3.8 \text{ technician}$$

Work Stalls:

$$1.5 \text{ stalls per technician} = 1.5 \times 3.8 = 5.7 (6) \text{ stalls}$$

Hoists:

$$1/2 \text{ the amount of workstalls} = 3 \text{ hoists}$$

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45. The following represents BMWNA's 1982 service department requirements^{13/} for Watkins as compared to Watkins' actual service department:

	<u>1982 Requirements</u>	<u>1982 Actual</u>
Service Technicians	8	8
Service Stalls	12	16
Hoists	6	6

46. The establishment of the proposed dealership and resulting reduction in UIOs in Watkins' AOR will result in a reduction in the Watkins' service requirements, the number of service technicians, the number of service stalls, and the number of hoists required by BMWNA.

DETERMINATION OF ISSUE AS TO WHETHER THE ESTABLISHMENT
WILL SUBSTANTIALLY AFFECT WATKINS' SERVICE OBLIGATIONS

47. Based upon BMWNA's own premise that the dealer's service volume is in large part dependent upon the number of UIOs, Watkins' service volume will decrease in some proportion to the decrease in number of UIOs (assuming no increase in repairs of BMWs due to increased population and/or sales).

^{13/} The service department requirements are specified in the Dealer Operating Requirements Agreement dated January 1, 1982.

48. The decrease in service volume is attributable to the fact that the UIOs are now going to be shared by Watkins and the proposed dealer, Rusnak.

49. Establishment of the proposed dealership will result in a modification of Watkins' franchise and will substantially affect Watkins' service obligations.

FACTS PERTAINING TO WHETHER THE MODIFICATION OF THE
FRANCHISE WILL SUBSTANTIALLY AFFECT WATKINS' INVESTMENT

50. Hal Watkins is the president and sole shareholder of Hal Sales Corporation. Hal Sales Corporation is a holding company for various assets and real property developments in which Hal Watkins has an economic interest.

51. Hal Sales Corporation, the holding company for Hal Watkins' assets, has borne the expense for all capital improvements at Watkins.

52. Hal Sales Corporation owns the land and buildings from which Watkins operates.

53. Watkins is located on 2.4 acres of land. Watkins' facilities contain approximately 100,000 square feet of floor space. The property has a fair market value of approximately \$2,200,000.

54. In 1977, Hal Sales Corporation leased the facilities to Watkins for 10 years for \$6,000 per month. The lease was renegotiated in 1979 and the monthly lease payment was increased to \$10,000. The lease was renegotiated again in 1981 and the monthly lease payment was reduced to \$6,000, but Watkins has continued to pay \$10,000 per month to Hal Sales Corporation.

55. Watkins was also a franchisee of Alfa Romeo and Renault prior to acquiring the BMW franchise in 1974. Watkins ceased selling Alfa Romeos and Renaults and became an exclusive BMW franchisee in 1976.

56. In 1977, Watkins' facility was expanded by constructing a double deck parts department, 15 service stalls, customer waiting lounge, and a general manager's office. The total cost of the improvements was \$262,523.55.

57. Watkins has, in addition to other equipment, two Sun Diagnostic Scopes, one BMW Test Unit, and FMC balancing equipment.

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DETERMINATION OF ISSUE AS TO WHETHER THE MODIFICATION
WILL SUBSTANTIALLY AFFECT WATKINS' INVESTMENT

58. Based upon the above facts and the previous determinations that the establishment will result in the modification of Watkins' sales and service obligations there will likewise be a concomitant adverse effect on Watkins' investment.

FACTS PERTAINING TO WHETHER THERE IS GOOD CAUSE TO
MODIFY WATKINS' FRANCHISE

A. FACTS PERTAINING TO THE AMOUNT OF BUSINESS TRANSACTED
BY WATKINS, AS COMPARED TO THE BUSINESS AVAILABLE TO
WATKINS [§3061(1)]

59. The following chart represents the number of retail sales of BMWs made by Watkins for the calendar years indicated:

<u>1979</u>	<u>1980</u>	<u>1981</u>
273	188	258

60. The following chart represents the number of retail sales of BMWs by Watkins to customers in the areas indicated:

<u>Number of Retail Sales By Watkins to Customers Residing in:</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>
Watkins' Present AOR	246	123	176
Watkins' Proposed AOR	227	95	152
Rusnak's Proposed AOR	21	29	27
Other Geographical Areas	25	64	79

61. The following chart represents BMW's penetration as a percentage of its total competition in Watkins' AOR and District 1 for the years indicated:

	<u>1979</u>	<u>1980</u>	<u>1981</u>
Watkins' AOR	11.5%	10.1%	10.9%
District 1	11.8%	12.1%	13.1%

B. FACTS RELATING TO THE EXTENT OF THE INVESTMENT NECESSARILY MADE AND OBLIGATIONS INCURRED BY WATKINS TO PERFORM ITS PART OF THE FRANCHISE AND FACTS RELATING TO THE PERMANANCY OF INVESTMENT [§3061(2) and §3061(3)]

62. Seventy-five per cent of the stock of Hal Watkins Chevrolet, Inc., dba Hal Watkins Chevrolet; dba R. V. Country; and dba Hal Watkins BMW is owned by Hal Watkins. Robert Beltz owns the remaining twenty-five per cent of the stock.

63. Watkins has operated a BMW franchise at 411 Daily Drive, Camarillo, since 1974.

64. Hal Watkins is the president and sole shareholder of Hal Sales Corporation. Hal Sales Corporation is a holding company for various assets and real property developments in which Hal Watkins has an economic interest.

65. Hal Sales Corporation, the holding company for Hal Watkins' assets, has borne the expense for all capital improvements at Watkins.

66. Hal Sales Corporation owns the land and buildings from which Watkins operates.

67. Watkins is located on 2.4 acres of land. Watkins' facilities contain approximately 100,000 square feet of floor space. The property has a fair market value of approximately \$2,200,000.

68. In 1977, Hal Sales Corporation leased the facilities to Watkins for 10 years for \$6,000 per month. The lease was renegotiated in 1979 and the monthly lease payment was increased to \$10,000. The lease was renegotiated again in 1981 and the monthly lease payment was reduced to \$6,000, but Watkins has continued to pay \$10,000 per month to Hal Sales Corporation.

69. Watkins was also a franchisee of Alfa Romeo and Renault prior to acquiring the BMW franchise in 1974. Watkins ceased selling Alfa Romeo and Renaults and became an exclusive BMW franchisee in 1976.

70. In 1977, Watkins' facility was expanded by constructing a double deck parts department, 15 service stalls, customer waiting lounge, and a general manager's office. The total cost of the improvements was \$262,523.55.

C. FACTS RELATING TO WHETHER IT IS INJURIOUS OR BENEFICIAL TO THE PUBLIC WELFARE FOR THE FRANCHISE TO BE MODIFIED [§3061(4)]

71. The proposed location in Westlake is situated within the postal community of Thousand Oaks. The Westlake area is located close to the Los Angeles County-Ventura County line.

72. The following represents the distance from Watkins to the areas indicated:

<u>Watkins To:</u>	<u>Driving Miles</u>	<u>Driving Minutes</u>
Westlake (Proposed Location)	15.2	25
Canoga Park	16.2	--
Newbury Park	7.2	--
Oxnard	7	20
Point Mugu	8.1	--

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73. The following chart represents the 1981 estimated population for the areas indicated:

<u>Area</u>	<u>Population</u>	<u>Households</u>
Watkins' Proposed AOR	346,585	118,000
Rusnak's Proposed AOR	231,272	73,000

74. The following chart represents the 1980 population and the number of BMW dealers presently located in the areas indicated:

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Ventura County	529,899	1
Los Angeles County	7,477,657	13
Orange County	1,931,570	4
San Diego County	1,861,846	4

If Rusnak is established, there will be two BMW dealers in Ventura County.

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D. FACTS RELATING TO WHETHER WATKINS HAS ADEQUATE MOTOR VEHICLE SALES AND SERVICE FACILITIES, EQUIPMENT, VEHICLE PARTS, AND QUALIFIED SERVICE PERSONNEL TO REASONABLY PROVIDE FOR THE NEEDS OF THE CONSUMERS OF BMW MOTOR VEHICLES AND HAS BEEN AND IS RENDERING ADEQUATE SERVICES TO THE PUBLIC [§3061(5)]

75. The following represents BMWNA's 1982 service department requirements for Watkins as compared to Watkins' actual service department staffing and equipment:

	<u>1982 Requirements</u>	<u>1982 Actual</u>
Service Technicians	8	8
Service Stalls	12	16
Hoists	6	6

76. The establishment of the proposed dealership and resulting reduction in UIOs in Watkins' AOR will result in a reduction in Watkins' service requirements, the number of service technicians, the number of service stalls, and the number of hoists required by BMWNA.

77. No evidence was presented to indicate that Watkins did not have adequate sales and service facilities, equipment, vehicle parts, and qualified service personnel to meet consumer needs.

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E. FACTS RELATING TO WHETHER WATKINS FAILS TO FULFILL THE WARRANTY OBLIGATIONS OF THE FRANCHISOR TO BE PERFORMED BY WATKINS [§3061(6)]

78. No facts were presented to indicate Watkins has failed to fulfill warranty obligations.

F. FACTS RELATING TO THE EXTENT OF WATKINS' FAILURE TO COMPLY WITH THE TERMS OF THE FRANCHISE [§3061(7)]

79. No facts were presented to indicate that Watkins failed to comply with the terms of the franchise.

DETERMINATION OF ISSUES AS TO WHETHER THERE IS GOOD CAUSE TO MODIFY WATKINS' FRANCHISE

It is determined that there is not good cause for the modification of Watkins' franchise in that:

- (a) BMWNA failed to prove that the amount of business transacted by Watkins is inadequate as compared to the business available to Watkins; [§3061(1)]

- (b) BMWNA failed to prove that the investment made and obligations incurred by Watkins to perform its part of the franchise was not substantial; [§3061(2)]

- (c) BMWNA failed to prove that Watkins' investment was not permanent; [§3061(3)]

- (d) BMWNA failed to prove that it would be beneficial to the public welfare for the franchise to be modified; [§3061(4)]

- (e) BMWNA failed to prove that Watkins does not have adequate sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of consumers of BMW vehicles and failed to prove that Watkins has not been and is not rendering adequate services to the public; [§3061(5)]

- (f) BMWNA failed to prove that Watkins failed to fulfill the warranty obligations of BMWNA to be performed by Watkins; [§3061(6)] and

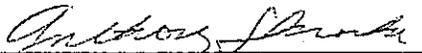
- (g) BMWNA failed to prove that Watkins failed to comply with the terms of the franchise.
[§3061(7)]

The following proposed decision is respectfully submitted;

The Protest is sustained. BMWNA has not established good cause to modify Watkins' franchise.

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

DATED: December 31, 1982



ANTHONY SKROCKI
Administrative Law Judge
New Motor Vehicle Board