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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

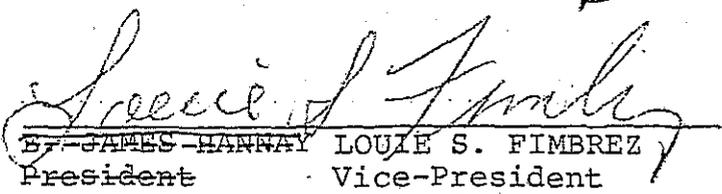
In the Matter of the Protest of )  
DBD DATSUN, INC., dba DICK )  
BARBOUR DATSUN, ) Protest No. PR-403-82  
 )  
 ) Protestant, )  
 )  
 ) vs. )  
 )  
NISSAN MOTOR CORPORATION IN U.S.A., )  
 )  
 ) Respondent. )  
 )

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 12th day of January, 1983.

  
~~BY JAMES HANNAY~~ LOUIE S. FIMBRES  
President Vice-President  
New Motor Vehicle Board

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DICK BARBOUR DATSUN )  
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 Protestant, )  
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 vs. )  
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 NISSAN MOTOR CORPORATION )  
 IN U.S.A. )  
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 Respondent, )  
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 \_\_\_\_\_ )  
 ZEE DATSUN, INC., )  
 )  
 Interested Individual. )  
 \_\_\_\_\_ )

PROPOSED DECISION

PROTEST NO. PR-403-82

PROCEDURAL BACKGROUND

1. By letter dated August 16, 1982, Nissan Motor Corporation (Nissan) gave notice to Dick Barbour Datsun (DBD) of Nissan's intention to relocate Zee Datsun, Inc. (Zee) from its former location at 626 South Euclid, Fullerton, California to 6700 Manchester, Buena Park, California.

2. On August 18, 1982, DBD filed a protest with the New Motor Vehicle Board (Board) pursuant to Vehicle Code §3062.<sup>1/</sup>

<sup>1/</sup> All references are to the California Vehicle Code unless otherwise indicated.

3. On August 24, 1982, Zee was granted status as an interested individual pursuant to Vehicle Code §3066(a).

4. A hearing was held before Sam W. Jennings, Chief Administrative Law Judge for the Board. The hearing was conducted on the following dates: September 22, 23, 28, 29, 30, October 1, 19, 20, and 21, 1982.

5. DBD was represented by Brown Smith and Steven P. Wadsworth of the law firm of Hillyer & Irwin. Nissan was represented by Robert Cooper and Elizabeth Grimes of the law firm of Gibson, Dunn & Crutcher and by Ann Jennings of Nissan. Zee was represented by Michael J. Flanagan and Sidney I. Pilot of the law firm of Pilot & Spar.

#### ISSUES PRESENTED

6. Protestant contends that there is good cause for not relocating the franchise for the following reasons:

- a) The protestant's investments are permanent and will be adversely affected by the relocation of the franchise; [§3063(1)]
- b) There will be an adverse effect on the retail motor vehicle business and the consuming public in the relevant market area; [§3063(2)]

- c) The relocation of the franchise will be injurious to the public welfare; [§3063(3)]
  
- d) The Nissan franchisees in the relevant market area are providing adequate competition and convenient consumer care for the Datsun vehicles in the market area, including adequate motor vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel; [§3063(4)] and
  
- e) The relocation would not increase competition and would not be in the public interest. [§3063(5)].

FINDINGS OF FACT

FACTS RELATING TO THE PERMANANCY OF INVESMENT  
[3063(1)]

7. Dick Barbour Datsun, Inc. was formed in 1973 and is wholly owned by the partnership of Barbour, Ream, and Smathers Investments (partnership). The partnership is owned equally by Richard Barbour, Putnam Ream, and James Smathers.

8. The partnership leases the real property upon which DBD operates from Clara and Jack Goldstein for approximately \$3,000 per month. The lease term is for 20 years

and 4 months which commenced in June of 1973. The lease contains three 5-year options.

9. DBD leases the land and facilities from the partnership for \$11,000 per month. The buildings, completed May 1, 1974, will revert to the lessor (Goldsteins) at the end of the lease term.

10. The following represents investments made to date by the partnership:

Buildings and Improvements	\$488,670
Machinery and Equipment	<u>185,707</u>
Total	\$674,377

11. The following represents investments made to date by DBD:

Capital Equipment	\$ 93,814
Parts and Accessories Equipment	2,525
Leasehold Improvements	48,671
Furniture and Fixtures	<u>12,593</u>
Total	\$157,603

12. The estimated fair market value of the facilities and equipment utilized by DBD is \$1,200,000 to \$1,400,000.

13. Zee is a wholly owned subsidiary of A. N. Campbell, Inc. John Campbell, III is president of A. N. Campbell, Inc. and vice president of Zee Datsun.

14. Zee operated from a facility on Euclid Avenue, in the town of Fullerton pursuant to a lease, the terms of which expired on August 31, 1981. Zee elected not to renew the lease, because the monthly lease payment would have increased from \$5,300 per month to \$7,800 per month thereby making its operation economically unfeasible. Zee operated from the Fullerton location on a month-to-month lease arrangement until approximately August of 1982 at which time Zee's operation ceased.

15. The proposed Zee site on Manchester Boulevard in Buena Park is the former location of Park Porsche-Audi (Park) which relocated in August 1982. Park relocated and became a dual franchise with Cotton-Goff Volkswagen (Cotton-Goff). Park and Cotton-Goff dual facility is located across the street from the proposed Zee location. Park and Cotton-Goff are wholly owned subsidiaries of A. N. Campbell, Inc.

16. A. N. Campbell, Inc. owns approximately 3 acres of vacant property at the corner of Manchester Boulevard and Dale Street which is located approximately 500 feet from the proposed Zee location.

17. Zee intends to relocate to the former Park Porsche-Audi facility until a new facility can be constructed on the vacant property. Zee is committed to construct a new facility within 2 1/2 years from the date of the relocation.

18. The land and building at the proposed location has a fair market value of approximately \$1.2 million. The vacant property would be used as a storage lot by Zee until the new facility is constructed. The vacant lot is valued at approximately \$300,000.

19. Zee owns equipment and fixed assets valued at between \$35,000 to \$40,000, which was utilized at the former Euclid facility. These assets and equipment will be moved to the proposed location in the event the relocation is permitted.

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FACTS RELATING TO THE EFFECT ON RETAIL MOTOR VEHICLE  
BUSINESS AND THE CONSUMING PUBLIC IN THE RELEVANT  
MARKET AREA [§3063(2)]

20. The following chart represents the population and percent of increase in population for the areas indicated and years indicated:

<u>City</u>	<u>1970</u>	<u>1980</u>	<u>Percentage Increase</u>
Buena Park	63,646	64,112	0.7
Fullerton	85,987	101,876	18.5
Cypress	31,569	43,638	38.2

21. As of October 1981, the former Zee location had a daily traffic count of approximately 30,000 vehicles; the proposed location has a daily traffic count of approximately 146,000 vehicles.

22. The geographical area between DBD and the proposed Zee location is level, with no rivers, mountains or natural barriers.

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23. The following chart represents the straight line distances, driving distances and driving times from the proposed location and the dealerships indicated:

<u>From Proposed Zee (Buena Park) To:</u>	<u>Straight Line Miles</u>	<u>Driving Miles</u>	<u>Driving Minutes</u>
Former Zee (Fullerton)	3.0	3.2	9
DBD (Cypress)	3.2	4.9	10
*Anaheim Datsun (Anaheim)		6.1	11
Moon Datsun (Cerritos)		7.1	15
Sun Datsun (Whittier)		7.4	16
Downey Datsun (Downey)		9.6	18
Brea Datsun (Brea)		11.4	19

\*No additional straight line distances available.

FACTS RELATING TO WHETHER IT IS INJURIOUS TO THE  
PUBLIC WELFARE FOR THE FRANCHISE TO BE RELOCATED  
[\$3063(3)]

24. In the event the relocation is permitted, Zee would be the closest Datsun dealer to the Fullerton community. In the event the relocation is not permitted, Zee would not be able to resume its operations at an alternate proximate location.

25. There was no evidence presented to indicate that it would be injurious to the public welfare if the relocation is permitted to occur.

FACTS RELATING TO WHETHER THE DATSUN DEALERS IN THE  
RELEVANT MARKET AREA ARE PROVIDING ADEQUATE COMPETITION  
AND CONVENIENT CONSUMER CARE FOR DATSUNS IN THE MARKET AREA  
[\$3063(4)]

26. DBD is located on 5 1/2 acres of land, with 230 feet of frontage property on Lincoln Avenue. There is room to display approximately 20 vehicles in front of the showroom. The DBD showroom has capacity to display approximately 10 vehicles. DBD utilizes 2 acres for vehicle storage.

27. DBD's service department has 18 service stalls and three additional stalls which are available for alignments, wheel balancing, and miscellaneous purposes. DBD has a body shop for painting vehicles, frame alignments, undercoating, and detailing vehicles.

28. The DBD facility contains approximately 37,000 square feet of building space which includes storage area, service overhang, and the body shop. (RT 1-49) The facility is a two-story structure which contains a fleet and leasing office, general office, mechanics' lounge, three parts rooms, records room, and business managers' office which are all located on the second floor of the structure.

29. The DBD service department is operating at approximately 50% to 60% of capacity.

30. DBD employs approximately 60 personnel.

31. The DBD facility was built to meet Nissan standards and has been used by Nissan as a model for national advertising training films, and illustrations.

32. The initial proposed Zee location site is situated on approximately 1 acre of land.

33. The proposed relocation site is intended to be a temporary facility until a new facility can be built. The proposed temporary relocation site does not need Nissan's recommended facility guide. The new car sales building represents 51% of the facility guide and the total sales land is 66% of Nissan's facility guide. There is no used car sales building and land available is 25% of the facility guide. The service and parts building, land and stalls substantially meet Nissan's requirements. Overall land is 57% of Nissan's facility guide. Total land and building represents 64% of Nissan's facility guide.

34. Zee intends to employ 35 personnel which will include 10 service technicians, 2 service writers, and 1 service manager.

35. Zee intends to invest approximately \$180,000 to establish a parts inventory at the proposed location.

FACTS RELATING TO WHETHER THE RELOCATION WOULD  
INCREASE COMPETITION AND THEREFORE BE IN THE  
PUBLIC INTEREST [§3063(5)]

36. The following represents retail sales of Datsun trucks and cars, including fleet sales, for the dealerships indicated, for the years indicates:

<u>Dealership</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u> <sup>2/</sup>
DBD	1310	1142	1055	628
Zee	845	956	793	351
Sun Datsun	815	843	819	445
Moon Datsun	1009	947	1201	652
Downey Datsun	1119	1193	1290	1693
Target Datsun	1399	1609	1183	733
Anaheim Datsun	1167	1095	1025	954
Santa Ana Datsun	1591	1453	1210	671
Coast Datsun	1130	992	796	458

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<sup>2/</sup> Sales through August 1982.

37. The following represents retail sales of Datsun trucks and cars, including fleet sales for the areas and years indicated:

<u>Area</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u> <sup>3/</sup>
National	566,932	621,425	578,092	371,559
L.A. Region <sup>4/</sup>	81,420	87,477	75,772	45,501
District N1 <sup>5/</sup>	13,147	14,872	13,221	7,525

38. The following represents new Datsun registrations as a percent of total import registrations, for the areas and years indicated:

<u>Area</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u> (May YTD)
National	19.2%	20.7%	19.4%	20.6%
L.A. Region	19.5%	21.2%	19.6%	18.9%
District N1	18.3%	20.7%	19.4%	18.3%

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<sup>3/</sup> Sales through August 1982.

<sup>4/</sup> L.A. Region is defined as the geographical area extending from a point above Bakersfield through Southern California, State of Arizona, and Las Vegas, Nevada.

<sup>5/</sup> District N1 encompasses all the Datsun dealers located in Orange County except San Clemente and includes Moon Datsun and Sun Datsun which are located in L.A. County.

DETERMINATION OF ISSUES

39. Protestant has failed to prove that there is good cause for not permitting the relocation in that:

- A. Protestant proved that its investment is permanent, but failed to prove that its investment will be adversely affected;
- B. Protestant failed to prove that the relocation will have an adverse effect on the retail motor vehicle business and consuming public in the relevant market area;
- C. Protestant failed to prove that the relocation will be injurious to the public welfare;
- D. Protestant failed to prove that there is adequate competition and convenient consumer care for the owners of Datsun motor vehicles in the market area, including adequate vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel; and
- E. Protestant failed to prove that the relocation would not increase competition and failed to prove that the relocation would not be in the public interest.

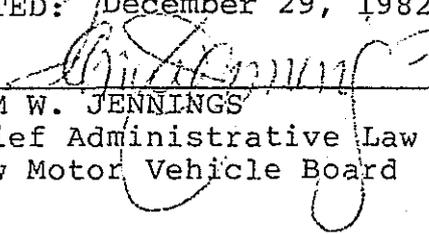
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The following proposed decision is respectfully submitted;

The protest is overruled. Nissan is permitted to relocate Zee to 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, and recommend its adoption as the decision of the New Motor Vehicle Board.

DATED: December 29, 1982

  
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SAM W. JENNINGS  
Chief Administrative Law Judge  
New Motor Vehicle Board

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