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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of )  
RAY FLADEBOE LINCOLN-MERCURY, )  
INC., dba RAY FLADEBOE ISUZU, ) Protest No. PR-499-83  
Protestant, )  
vs. )  
AMERICAN ISUZU MOTORS, INC., )  
Respondent. )

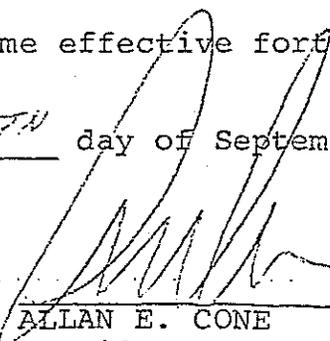
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DECISION

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 27<sup>th</sup> day of September, 1984.

  
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ALLAN E. CONE  
President  
New Motor Vehicle Board

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RAY FLADEBOE LINCOLN-MERCURY, INC.,	)	
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dba RAY FLADEBOE ISUZU,	)	
	)	
Protestant,	)	Proposed Decision
	)	
vs.	)	
	)	
AMERICAN ISUZU MOTORS, INC.,	)	
	)	
Respondent.	)	

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Procedural Background

1. By letter dated November 21, 1983, AMERICAN ISUZU MOTORS, INC. (Isuzu) notified RAY FLADEBOE LINCOLN-MERCURY, INC. dba RAY FLADEBOE ISUZU (Fladeboe) of its intention to terminate Fladeboe's Isuzu franchise effective January 31, 1984. The letter stated that the notice was being given "pursuant to Sections V, A, 2(e) and (i) of the Isuzu Dealer Sales and Service Agreement," and set forth the specific grounds for the proposed termination as (1) a failure to "maintain the authorized facility for the sale of Isuzu products open for business" and (2) an attempt "to conduct your

dealership operations from a facility other than the one authorized by the Isuzu Dealer Sales and Service Agreement."

(Exhibit F1)

2. On November 30, 1983, Fladeboe filed a protest with the New Motor Vehicle Board (Board) under the provisions of Vehicle Code Section 3060.<sup>1/</sup>

3. A hearing on the protest was held before Kent Hori, Administrative Law Judge for the Board. The hearing was conducted on March 19, 20, 21, 22; May 29, 30; June 11, 12, and 18, 1984.

4. Isuzu was represented by Donald F. Woods, Jr., Esq. of Lillick, McHose & Charles. Fladeboe was represented by Michael J. Flanagan, Esq. of Pilot & Spar.

#### Preliminary Findings of Fact

5. Ray Fladeboe Lincoln-Mercury Inc. presently operates five franchises at the Irvine Auto Center in Orange County. The franchises are: British Motor Corp. (Jaguar), Honda, Isuzu, Lincoln-Mercury, and Volkswagen. The Volkswagen franchise was

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

acquired in approximately November 1983. Up until that time Isuzu products were displayed in a showroom devoted exclusively to Isuzu. The address of this showroom is 20 Auto Center Drive, Irvine CA.

6. Upon acquiring the Volkswagen franchise Fladeboe, without the permission of Isuzu, moved the Isuzu products from the exclusive showroom to the Lincoln-Mercury-Jaguar showroom at 16 Auto Center Drive. Fladeboe moved the Isuzu products out of the exclusive showroom because of the shortage of Isuzu automobiles. Volkswagen products are now housed in the showroom formerly utilized for Isuzu products. The Fladeboe Honda showroom is at 18 Auto Center Drive.

7. The notice of termination was issued less than one week after the Isuzu products were moved. The fact that Isuzu products are no longer housed in an exclusive showroom is the sole reason for Isuzu's desire to terminate the franchise.

#### Issues Presented

8. Vehicle Code Section 3066 imposes upon Isuzu the burden of proving good cause for termination. Although Isuzu's decision to terminate the franchise was based solely upon the failure of Fladeboe to provide Isuzu with an exclusive

showroom, Section 3061 provides that the Board shall consider the existing circumstances, including, but not limited to, all of the following:

a) The amount of business transacted by Fladeboe as compared to the business available to it [3061(a)];

b) The investment necessarily made and obligations incurred by Fladeboe to perform its part of the franchise [3061(b)];

c) The permanency of investment [3061(c)];

d) Whether it is injurious or beneficial to the public welfare for Fladeboe's Isuzu franchise to be terminated, and its business disrupted [3061(d)];

e) Whether Fladeboe had adequate sales and service facilities, equipment, parts and qualified service personnel to reasonably provide for the needs of the consumers for Isuzu motor vehicles, and whether Fladeboe had been rendering adequate service to the public [3061(e)];

f) Whether Fladeboe failed to fulfill the warranty obligations of Isuzu to be performed by Fladeboe [3061(f)];  
and

g) The extent of Fladeboe's failure, if any, to comply with the terms of the franchise [3061(g)].

Findings of Fact

A. FACTS RELATING TO THE AMOUNT OF BUSINESS TRANSACTED BY FLADEBOE AS COMPARED TO THE BUSINESS AVAILABLE TO IT [3061(a)].

9. Isuzu's decision to terminate Fladeboe's Isuzu franchise was not based upon the failure of Fladeboe to transact a sufficient amount of business. The only reason for the termination was the failure of Fladeboe to provide an exclusive showroom for Isuzu. Isuzu is willing to allow Fladeboe to continue as a franchisee if the Isuzu products are returned to an exclusive showroom.

10. All Japanese cars, including Isuzus, have been and are in limited supply due to export restrictions imposed by the Japanese government. Because of high demand and low supply, Isuzu allocates passenger cars to its dealers.

11. Because of the export restrictions on cars, Isuzu cannot meet the demands of its dealers and its dealer body cannot increase Isuzu's car market penetration beyond that permitted by the number of cars available.

12. There are no restrictions on the exportation of trucks and therefore there is no general shortage of Isuzu trucks.

13. Isuzu allocates cars to a dealer based in part upon the number of Isuzu trucks sold by a dealer.

14. In 1983 Fladeboe accepted virtually every Isuzu passenger car allocated to him. This resulted in the receipt of an average of 6 to 7 cars per month. In 1983 Fladeboe also accepted a significant number of trucks allocated to him given the fact that many of the trucks offered were 1982 models and/or less popular diesel powered trucks.

15. Although Fladeboe's truck sales decreased in 1983 as compared to 1982 and import truck registrations in Orange County increased in 1983 compared to 1982, Isuzu presented no evidence as to the market penetration or lack thereof of Isuzu trucks attributable to Fladeboe as compared to its other dealers.

B. FACTS RELATING TO THE INVESTMENT NECESSARILY MADE AND OBLIGATIONS INCURRED BY FLADEBOE TO PERFORM ITS PART OF THE FRANCHISE [3061(b)].

16. There are five hundred (500) shares of Ray Fladeboe Lincoln-Mercury, Inc. issued. Fifty (50) shares are owned by Bruce Fladeboe, Ray Fladeboe's son, two (2) shares are owned by Barbara Marcott, two (2) shares are owned by Keith Swanson, and four hundred forty-six (446) shares are owned by Ray Fladeboe and his wife.

17. In 1975, Mr. Fladeboe acquired the Lincoln-Mercury franchise for the Irvine area.

18. Mr. Fladeboe was instrumental in the establishment of the Irvine Auto Center. Through a series of meetings with Ford Motor Company, Irvine Company and several other dealers, the Irvine Auto Center was established at the initiation of Mr. Fladeboe and Mr. Bert Boeckmann, a Ford dealer.

19. Mr. Fladeboe owns the land and buildings upon which his Irvine dealerships are located. The property consists of 5.5 acres (956 feet long by 300 feet deep) adjoining the I-5 Freeway between Los Angeles and San Diego.

20. Mr. Fladeboe began construction of his dealership facilities in Irvine in 1977, and completed construction of those facilities in March of 1978. When the dealership opened for business it included Lincoln-Mercury, Honda and British Motor Cars franchises.

21. On October 21, 1980 Isuzu issued a letter of intent to Fladeboe. Isuzu agreed to provide Fladeboe with a perpetual dealership agreement provided Fladeboe met certain conditions and operated the dealership satisfactorily during a trial period of approximately two years. The letter of intent required that Fladeboe provide a new car sales showroom solely for Isuzu products and that Fladeboe maintain working capital of \$54,000 in excess of the combined amount net working capital of Fladeboe's other franchises.

22. In June, 1981 construction of the separate showroom of 2500 to 3000 square feet was completed at a cost of approximately \$200,000. Upon completion of the showroom Fladeboe provided a separate sales force, sales manager and support personnel for the Isuzu franchise. Fladeboe also met all of the following Isuzu requirements: installation of Isuzu signs for sales, parts and services; attendance of sales and management personnel at Isuzu sponsored product training sessions; attendance of service management and technicians at Isuzu sponsored training programs; and the purchase of the required service tools, service equipment, service and parts manuals and initial vehicle stock.

23. Fladeboe devoted approximately 1.25 acres to his Isuzu franchise. This area was used by the Isuzu franchise for the display of vehicles, and for service, parts, body shop, vehicle leasing, customer parking, vehicle storage, used car sales

arising out of transactions involving the Isuzu franchise, and driveways and land areas around the showroom building for ingress and egress.

24. A body shop on the Fladeboe property is utilized for Isuzu customers. This body shop is equipped with four (4) stalls and a front-end rack, not including the exclusive Isuzu service stall.

25. After the two year trial period, Isuzu and Fladeboe signed a formal dealership agreement in March, 1983.

26. Fladeboe maintained the new showroom exclusively for Isuzu until approximately November 15, 1983 at which time he moved the Isuzu products into the Lincoln-Mercury-Jaguar showroom building.

27. In the 2 1/2 years that Fladeboe operated the Isuzu franchise out of the separate showroom, Fladeboe's financial statements reflected a loss of \$265,000 as follows:

	<u>Loss</u>
a) Last six months of 1981	\$ 28,000
b) Calendar year 1982	163,000
c) Calendar year 1983	<u>74,000</u>

Total Loss            \$265.000

28. Fladeboe routinely submitted its financial reports to Isuzu. Mr. Fladeboe and his son also had meetings with Isuzu personnel, including Isuzu's Senior Vice President and General Manager, during which Mr. Fladeboe expressed his concern about the inability of Isuzu sales to support the investment in the separate showroom. None of the Isuzu personnel questioned the accuracy of the Fladeboe financial statements or the lack of return on investment until the proceedings before the Board.

29. With the exception of the cost of the showroom, Isuzu presented no evidence pertaining to the cost of any of the expenditures or obligations incurred by Fladeboe in performing its part of the franchise.

C. FACTS RELATING TO THE PERMANENCY OF INVESTMENT (3061(c)).

30. The cost of the property, upon which Fladeboe's dealerships operate, represents part of Fladeboe's investment. Isuzu presented no evidence pertaining to the cost of Fladeboe's property or buildings, with the exception of the building previously occupied by Isuzu which cost \$200,000.

31. There are four (4) buildings on the property. These include the Isuzu-Jaguar-Lincoln-Mercury showroom, a service building, a Honda showroom building, and the Volkswagen

showroom building (previously Isuzu). All three of Fladeboe's showrooms directly face the I-5 Freeway in a straight line along the 956 foot edge of the property.

32. Fladeboe has provided buildings, tools, equipment, machinery, signage and paved parking and storage areas for his Isuzu franchise. Isuzu presented no evidence pertaining to the cost of any or all of these items.

33. Although Fladeboe has diverted the initial investment in the Isuzu showroom to the Volkswagen franchise, Fladeboe's records reflected a loss of \$265,000 during the two and a half years of its use as an Isuzu showroom. In addition Fladeboe continues to devote a significant portion of the property and facilities to the Isuzu franchise as indicated in paragraph 23 above.

D. FACTS RELATING TO WHETHER IT IS INJURIOUS OR BENEFICIAL TO THE PUBLIC WELFARE FOR FLADEBOE'S ISUZU FRANCHISE TO BE TERMINATED AND THE BUSINESS OF THE FRANCHISEE DISRUPTED [3061(d)].

34. Fladeboe is located on the Irvine Auto Center which is on the east side of the San Diego Freeway, just south of the merger of the Santa Ana and the San Diego Freeways.

35. Isuzu conceded that Fladeboe enjoys one of the finest locations in Southern California for a dealership.

36. Consumers have access via a nearby off ramp from the freeway to a variety of makes represented in the Auto Center, including Isuzu.

37. Isuzu knows of no existing facilities in the Irvine Auto Center in which it could establish an Isuzu franchise in the event that Fladeboe's franchise were terminated.

38. Isuzu presented no evidence as to the number of Isuzu owners dependent upon Fladeboe for service and parts.

39. The following indicates the approximate distances between Fladeboe and the other Isuzu dealers in the area.

<u>Isuzu Dealer Location</u>	<u>Distance From Fladeboe</u>	<u>Direction From Fladeboe</u>
Costa Mesa	12 - 14 miles	Southwest
*City of Orange	18 miles	North
Garden Grove	25 miles	Northwest
Carlsbad	42 - 43 miles	South

\*The Isuzu dealer in the City of Orange notified Isuzu in February, 1984 that he was surrendering his franchise due to a lack of Isuzu cars to sell.

40. Isuzu has no applicant for replacing the dealer in the City of Orange or for replacing Fladeboe.

E. FACTS RELATING TO WHETHER FLADEBOE HAS ADEQUATE SALES AND SERVICE FACILITIES, EQUIPMENT, PARTS, AND QUALIFIED SERVICE PERSONNEL TO REASONABLY PROVIDE FOR THE NEEDS OF THE CONSUMERS FOR ISUZU MOTOR VEHICLES, AND HAS BEEN RENDERING ADEQUATE SERVICES TO THE PUBLIC [3061(e)].

41. At present, five (5) line makes are represented by Fladeboe in the Irvine Auto Center. These line makes are: Isuzu, Lincoln-Mercury, Jaguar, Honda and Volkswagen.

42. Fladeboe's Isuzu-Jaguar-Lincoln-Mercury showroom is 8,000 square feet in area. The Honda showroom is 4,800 square feet, and the Volkswagen showroom (previously occupied by the Isuzu franchise) is approximately 3,000 square feet in area. ( ) The approximate square footage devoted to the display of Isuzu vehicles in the showroom in which they are presently being displayed is between 3,000 and 3,500 square feet.

43. Viewed from the freeway, the Isuzu vehicles are displayed on the left half of the largest showroom. The showroom is divided by planter boxes, over five (5) feet in height, extending from the center of the freeway side to a point just short of a large rock wall waterfall structure which extends from floor to ceiling.

44. As many as six (6) Isuzu vehicles are on display in this large showroom at one time. At all times, at least four (4) Isuzu vehicles are on display, unless there are no vehicles available to the dealership. The Isuzu vehicles are displayed exclusively on the left-hand side of the showroom, as the showroom is viewed from the freeway.

45. The showroom in which the Isuzu vehicles are displayed is superior in general appearance and decor to the other showrooms on the Fladeboe dealership property, and nicer than any other showroom in the Irvine Auto Center. Whether viewed during the day with water flowing down the waterfall structure in the center of the showroom, or viewed in the evening, with over 250 lights illuminating the room, it was undisputed that the showroom in which Fladeboe presently displays Isuzu vehicles is impressive.

46. As conceded by Isuzu, the Irvine Auto Center is "an excellent, outstanding, best location in the world" and Fladeboe's location within the Auto Center is the "best possible location from every conceivable point of view."

47. Each of Fladeboe's showrooms may be viewed with equal prominence by customers traveling south on the freeway, except that the showroom in which the Isuzus are presently displayed is much larger and more well lit in the evening, and probably

stands out more than the others. Traveling north on the freeway, a motorist can read the lighted signs on the outside of the showroom within which Isuzus are presently displayed, before arriving at the Lake Forest overpass. When the motorist passes through the Lake Forest overpass, the signs illuminating this showroom, including the Isuzu sign, are immediately seen. This showroom is the most outstanding building of Fladeboe's dealerships.

48. Fladeboe's service department contains sixty-six (66) service stalls and between 40 and 50 lifts. The service department is open five (5) days a week from 7:00 a.m. to 6:00 p.m.

49. Fladeboe's service department is fully equipped with modern tools and equipment. Isuzu was aware of no deficiency with respect to Fladeboe's obligations to provide tools and equipment for its service customers.

50. Isuzu was not aware of any deficiency on the part of Fladeboe with respect to its obligations to provide qualified service technicians, or to look after Isuzu's service customers. Qualified service technicians are employed for each of Fladeboe's line makes, including Isuzu, and these technicians attend all factory service schools.

51. Isuzu presented no evidence to establish that Fladeboe was not rendering adequate services to the public.

F. FACTS RELATING TO WHETHER FLADEBOE FAILED TO FULFILL ISUZU'S WARRANTY OBLIGATIONS [3061(f)].

52. As of November 21, 1983, the date upon which the Notice of Termination was written, Isuzu was not aware of any deficiency on the part of Fladeboe with respect to its obligations to fulfill the terms of the warranty agreement for Isuzu.

53. Isuzu presented no evidence to indicate that Fladeboe failed to fulfill Isuzu's warranty obligations.

G. FACTS RELATING TO THE EXTENT OF FLADEBOE'S FAILURE, IF ANY, TO COMPLY WITH THE TERMS OF THE FRANCHISE [(3061(g))].

a) Whether Fladeboe breached the terms of the franchise in moving the Isuzu products from 20 Auto Center Drive to 16 Auto Center Drive.

54. In order to be issued a letter of intent Isuzu required Fladeboe to provide a separate showroom for Isuzu products. The letter of intent issued on October 21, 1980 specifically required Fladeboe to provide a new car sales showroom solely for the display of Isuzu vehicles.

55. Fladeboe finished construction of the showroom in June, 1981 and devoted it exclusively to Isuzu products until November 15, 1983 at which time Isuzu products were moved out of the exclusive showroom and in with the Lincoln-Mercury and Jaguar products. Fladeboe did not obtain permission of Isuzu to do so and was aware Isuzu representatives would not have approved the move.

56. The franchise sought to be terminated is what Isuzu refers to as a "perpetual agreement" and was entered into by Isuzu and Fladeboe on March 21, 1983. It is entitled "Isuzu Dealer Sales and Service Agreement" and consists of two documents, both of which are incorporated into the agreement and made a part thereof.

57. Section 6 of the first portion of the franchise agreement is entitled "Entire Agreement" and reads as follows:

Unless expressly referred to and incorporated herein, this Agreement cancels, supersedes and annuls all prior agreements, contracts and understandings between Distributor and Dealer, and there are no representations, promises, agreements or understandings except as described herein, all negotiations, representations and understandings being merged herein.

58. By letter dated November 21, 1983, Isuzu notified Fladeboe of its intention to terminate Fladeboe's Isuzu franchise. The letter stated that the notice was being given "pursuant to Sections V, A, 2(e) and (i) of the Isuzu Dealer

Sales and Service Agreement," and set forth the specific grounds for the proposed termination as (1) a failure to "maintain the authorized facility for the sale of Isuzu products open for business" and (2) an attempt "to conduct your dealership operations from a facility other than the one authorized by the Isuzu Dealer Sales and Service Agreement."

(Exhibit F1; emphasis added)

59. Section V, A, 2(e) of the franchise (cited in the Notice of Termination) describes one of the "acts or events" which, according to the agreement, warrants the termination of a franchise. This Section provides:

(e) Any attempt by Dealer to conduct, either directly or indirectly, any of the dealership operations contemplated by this Agreement at any facilities other than the Dealership Facilities. (Exhibit T, Section V A, 2(e), P. 17; emphasis added.)

60. The term "Dealership Facilities" is defined in Article I, entitled "Definitions" at paragraph N as follows:

"Dealership Facilities" shall mean the land and areas at the Dealership Location and the buildings and improvements erected thereon. (Exhibit T, Article I, para. N, p.2; emphasis added.)

61. The term "Dealership Location" is defined in paragraph M of the Definition section of the Agreement as follows:

"Dealership Location" shall mean the business location of Dealer described in the initial paragraph of this Agreement. (Exhibit T, Article I, para. M, p.2; emphasis added.)

62. The "business location of Dealer" set forth in the initial paragraph of the franchise executed by Fladeboe and Isuzu is "16-20 Auto Center Drive, Irvine, CA 92714."

63. The address at which Fladeboe presently operates its Isuzu franchise is 16-20 Auto Center Drive, Irvine, CA. In this address, "16-20" means "16-18-20." The addresses of the showrooms on the property are presently as follows:

Lincoln-Mercury-Jaguar-Isuzu	16 Auto Center Drive
Honda	18 Auto Center Drive
Volkswagen (formerly Isuzu)	20 Auto Center Drive

64. Section V, A, 2(i) (cited in the Notice of Termination) sets forth an additional "act or event" which, according to the agreement, warrants the termination of a franchise. This section provides that:

(i) Failure of Dealer to maintain the Dealership Facilities open for business as required under the provisions of this Agreement, for seven (7) consecutive business days. (Exhibit T, Section V, A, 2(i), p.18)

65. Isuzu presented no evidence regarding the alleged failure of Fladeboe to remain open for business.

66. Although Isuzu contends that an exclusive showroom is very significant to Isuzu and that every other Isuzu dealer has a separate showroom there is no reference to exclusivity with respect to a showroom anywhere in the express language of the franchise. Although the letter of intent required a separate showroom, the language of the Sales and Service Agreement expressly states that it "cancels, supercedes and annuls all prior agreements, contracts and understandings between distributor and dealer, and that there are no representations, promises, agreements or understandings except as described herein, all negotiations, representations and understandings being merged herein." Given the purported importance of the separate showroom to Isuzu it would certainly have been the type of agreement that would have been included in the Sales and Service Agreement had Isuzu so desired.

67. Although the "Dealership Facilities" and "Dealership Location" as used in the Sales and Service Agreement might have been reasonably interpreted to mean the showroom at 20 Auto Center Drive, the Sales and Service Agreement expressly defines "Dealership Facilities" and "Dealership Location" which read together lead to no other interpretation than expressly stated in the Agreement i.e., "16-20 Auto Center Drive."

68. Because there is no requirement in the franchise for an exclusive showroom Fladeboe is not in breach of the franchise for having moved the Isuzu products into the showroom at 16 Auto Center Drive.

69. Because 16 Auto Center Drive is within the description of "Dealership Facilities" as defined in the Sales and Service Agreement Fladeboe did not move the dealership to "a facility other than the one authorized by the Isuzu Dealer Sales and Service Agreement," as alleged in the Notice of Termination. There is therefore no breach of the franchise in this regard.

b) Assuming that the terms of the franchise require Fladeboe to provide an exclusive showroom at 20 Auto Center Drive, does the failure to do so justify termination of the franchise?

70. Isuzu contends that an exclusive showroom is essential to its successful penetration of the United States market. Unfortunately for Isuzu and Fladeboe the ability to market Isuzu products is severely hampered by the Japanese export restrictions which were announced in April 1981. This was only five months into the first year of operation of Isuzu, six months after Fladeboe received his franchise, and only two months before Fladeboe completed construction of the showroom.

71. The possibility of some limitation on the importation of Japanese vehicles was a matter of public discussion in early

1980. Fladeboe as a condition to receipt of the franchise in October 1980 agreed to build the exclusive showroom. In April 1981 the export restrictions were announced.

72. At the time Isuzu imposed the requirement for the exclusive showroom upon Fladeboe and at the time Fladeboe committed to provide it, no one knew for certain whether quotas would in fact be imposed or if they were what the figures would be, or how long the restrictions would last.

73. Isuzu contends that Fladeboe assumed the risk of possible restrictions on availability of Isuzu products and must perform regardless of the hardship upon Fladeboe. Isuzu's position could be meritorious if Isuzu could demonstrate a material loss of the benefit of the bargain. Isuzu has failed to do so in that the harm to Isuzu is not sufficient to justify termination of the franchise.

74. Isuzu contends that placing Isuzus in a non-exclusive showroom could result in a loss of sales because a prospective buyer could be diverted to a competitor's product. With respect to passenger cars, Isuzu's sales are limited by the number of vehicles available, not by the number of customers. With respect to trucks, under the facts of this case, Isuzu's fears are not well founded in that neither Lincoln-Mercury or Jaguar offers a truck of any kind to compete with Isuzu.

75. When Isuzu products become more readily available, Isuzu may have good cause to require that Fladeboe again provide an exclusive showroom for Isuzu products.

76. Although it is true that under Isuzu's present allocation system Fladeboe could have increased its allocation of passenger cars by increasing its truck sales, any additional cars received by Fladeboe would only have decreased the number of cars available to the other Isuzu dealers. Many of these dealers have not realized a sufficient return on their investments in Isuzu during the period of time that the export restrictions have been in effect. Fladeboe found himself in a position that allowed him to restructure his operations rather than surrender his franchise.

#### Determination of Issues

Isuzu failed to establish good cause to terminate Fladeboe's Isuzu franchise, in that:

a) Isuzu did not establish that the amount of business transacted by Fladeboe was inadequate as compared to the business available to it [3061(a)];

b) Isuzu did not establish that Fladeboe did not have a material investment, and Isuzu did not establish

that Fladeboe had not incurred material obligations in the performance of its part of the franchise [3061(b)];

c) Isuzu failed to establish that the investment of Fladeboe was not permanent [3061(c)];

d) Isuzu did not establish that it would be beneficial and/or not injurious to the public welfare for the Fladeboe franchise to be terminated and its business disrupted [3062(d)];

e) Isuzu failed to establish that Fladeboe does not have adequate sales and service facilities, equipment, parts, and qualified service personnel to provide reasonably for the needs of the consumers of Isuzu motor vehicles, or that Fladeboe had not been rendering adequate services to the public [3061(e)];

f) Isuzu did not establish that Fladeboe failed to fulfill the warranty obligations of Isuzu [3061(f)]; and

g) Isuzu did not establish that Fladeboe failed to comply with the terms of the franchise [3061(g)].

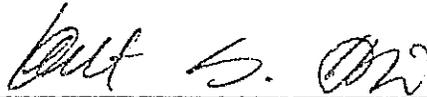
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The following proposed decision is respectfully submitted:

The Protest is sustained. Isuzu has not established good cause to terminate Fladeboe's Isuzu 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: September 5, 1984



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KENT S. HORII  
Administrative Law Judge  
New Motor Vehicle Board