NEW MOTOR VEHICLE BOARD
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STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest and Petition of: AUTO TRENDS, INC., Protestant/Petitioner, vs. JAGUAR CARS, INC., et al., Respondents.	Protest No. PR-712-84 Petition No. P-145-87

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 29th day of March, 1991.

By Liucija Mazeika
LIUCIJA MAZEIKA
Board Member
New Motor Vehicle Board

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In the Matter of the Protest and Petition of: AUTO TRENDS, INC., Protestant/Petitioner vs. JAGUAR CARS, INC., et al., Respondents.	Protest Number PR-712-84 Petition Number P-145-87 **PROPOSED DECISION**

PROCEDURAL BACKGROUND

1. By letter dated September 28, 1984, Respondent, Jaguar Cars, Inc. ("Jaguar"[1/]) a licensed distributor, located at 600 Willow Tree Road, Leonia, New Jersey, gave notice of it's intent not to renew the franchise of Protestant/ Petitioner, Auto Trends, Inc., ("Auto Trends"), a licensed automobile dealership, located at 4110 Lankershim Boulevard, North Hollywood, California. Jaguar subsequently sent Auto

1/ Jaguar refers to the United States corporation distributing Jaguar vehicles in the U.S., and manufactured by the United Kingdom parent corporation, Jaguar United Kingdom ("Jaguar U.K.").

Trends a "Supplementary Notification" dated October 15, 1984, and an "Amended Notice of Non-Renewal" dated November 29, 1984.

2. On October 26, 1984, Auto Trends filed a protest with the New Motor Vehicle Board ("Board") pursuant to Vehicle Code section 3060.[2/]

3. On May 22, 1987, Auto Trends filed a petition with the Board pursuant to section 3050(c) naming Jaguar as the Respondent. The petition alleged that Jaguar had breached the implied covenant of good faith and fair dealing by violating sections 11713.2(e) (unlawful termination), and section 11713.3(p) (discrimination of warranty service authorization) and intentionally failed and refused to increase Auto Trends' allocation of Jaguar automobiles. The petition also alleged eight "acts and omissions" [3/] subject to review under

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2/ All statutory references are to the California Vehicle Code unless otherwise indicated.

3/ The eight "acts and omissions" alleged are that Jaguar: (1) developed an unlawful and arbitrary "rationalization program" in 1982 to terminate certain dealers; (2) allocated and "diverted" automobiles to "favored", retained dealers (from 1982 to the present) to give them unfair marketplace advantage; (3) attempted to coerce and intimidate Auto Trends into terminating; (4) diverted additional automobiles available after the closure of three dealerships to favored dealers; (5) directed business (warranty claims) to certain dealers but not Auto Trends (at various times including July, 1986); (6) referred inquiries from potential Jaguar customers to other dealers (from 1984 to the date of filing); (7) "timed" automobile deliveries (from 1984 to the date of filing) to give a false impression of Auto Trends' sales ability; (8) conspired with "favored" dealers (from 1985 to the present) to restrain trade in sale of Jaguar products in California and Los Angeles County, specifically through assessment of a "secret" $600 surcharge on retained dealers but not Auto Trends and other non-retained dealers.

section 3050 and conspiracy in restraint of trade or commerce under the Cartwright Act, California Business and Professions Code Section 16700 et seq., and the Sherman Act, 15 United States Code 1.

4. On August 12, 1987, the Board consolidated Auto Trends' protest and petition for purposes of hearing before the Board.

5. The parties stipulated that the issue of damages as claimed by Auto Trends was to be stayed pending a determination of the preliminary issue of whether Jaguar acted improperly in its relationship with Auto Trends.

6. On September 25, 1989, the hearing on the protest and petition of Auto Trends and the protest and petitions of Ray Fladeboe Lincoln-Mercury, Inc., dba Ray Fladeboe British Motor Cars vs. Jaguar Cars, Inc., et al. ("Fladeboe") protest number PR-713-84 and petition numbers P-147-87 and P-166-88 through P-173-88, were partially consolidated for the purpose of presenting evidence as the overall subject of the origin, methodology and implementation of Jaguar's Dealer Rationalization Program nationwide and in Los Angeles/Orange County.

7. A consolidated hearing was held before George R. Coan, Administrative Law Judge of the Board, on January 9-12, 16-19, February 1-2, and 5, 1990 at Los Angeles, California.

8. The specific hearing on the remainder of the allegations of Auto Trends was held before Judge Coan on February 6, 7 and 8 and May 21, 22, 23, 24, 25, 29, 30 and 31 and June 1, 1990 at Los Angeles, California.

9. Auto Trends was represented by Stanton Lee Phillips, Esq. of Levinson, Rowen, Miller & Jacobs, Two Century Plaza, Suite 4010, 2049 Century Park East, Los Angeles, California.

10. Jaguar was represented by Carl J. Chiappa, Esq., Matthew C. Mason, Esq., and Andrew D. Goldsmith, Esq., of Townley & Updike, Chrysler Building, 405 Lexington Avenue, New York, New York.

ISSUES PRESENTED

A. Auto Trends' Protest Claim.

11. Auto Trends alleges that good cause does not exist to permit Jaguar to refuse to continue the Auto Trends franchise in consideration of the following factors:

a. Amount of business transacted by the franchisee, as compared to the business available to the franchisee {section 3061(a)};

b. Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise {section 3061(b)};

c. Permanency of the investment {section 3061(c)};

d. Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted {section 3061(d)};

e. Whether the franchisee has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified personnel to reasonably provide for the needs of the consumers for the motor vehicles handled by the franchisee and has been and is rendering adequate service to the public {section 3061(e)};

f. Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee {section 3061(f)};

g. Extent of franchisee's failure to comply with the terms of the franchise {section 3061(g)}.

12. Jaguar contends that good cause exists to not to renew the franchise of Auto Trends considering the factors set forth in section 3061, which allows the Board to consider Jaguar's exercise of its good faith business judgment in implementing its Dealer Rationalization Program. Jaguar also contends that serious operational deficiencies at Auto Trends further support Jaguar's decision not to renew the franchise.

B. <u>Auto Trends' Petition Claims</u>.

13. Auto Trends alleges that:

a. Jaguar has unlawfully terminated Auto Trends' franchise without good cause and in violation of section 3060;

b. Jaguar breached the covenant of good faith and fair dealing implied in the franchise agreement through unlawful termination (section 11713.2(e)) and discriminatory warranty service authorization (section 11713.3(p));

c. Jaguar engaged in discriminatory vehicle allocation practices and failed to increase Auto Trends' allocation as demonstrated in a series of acts and omissions from 1982 to the present; and

d. Jaguar conspired in restraint of trade or commerce under the Cartwright Act (Business and Professions code section 16700 et seq.) and the Sherman Act, 15 United States Code 1.

14. Pursuant to section 3066, Jaguar has the burden to establish good cause not to renew the franchise of Auto Trends. Auto Trends bears the burden of proof for its petition allegations.

FINDINGS OF FACT

I. Facts Relating To Auto Trends' Protest Claims.

A. Jaguar's Dealer Rationalization Program

15. From 1968 to 1980, approximately 95% of the vehicles imported and sold by Jaguar[4/] were low and medium priced MG and Triumph sports cars. In the mid-1970's, sales of these cars were approximately 60,000 units per year. In contrast, sales of the high priced Jaguar luxury vehicles peaked at 7,000 units per year, constituting only a minor portion of Jaguar's and its dealers' business.

16. Jaguar's parent company in the United Kingdom ("Jaguar U.K.") was losing thousands of pounds on every MG it built. Facing these financial losses, Jaguar U.K. decided to cease production of the MG in 1979 and the Triumph in 1980.

17. In 1980, Jaguar was in substantial financial difficulty. Jaguar was losing about $800,000 a week in the United States. Jaguar U.K. was losing about $1.5 million a week[5/].

4/ In 1968, a merger took place between Triumph, MG, Austin and Jaguar which was known as British Leyland Motors, Inc. ("British Leyland"). After several corporate reorganizations and name changes, Jaguar Cars, Inc. emerged as the United States distributor.

5/ Jaguar U.K. was owned and operated at that time by the British Government, and Prime Minister Margaret Thatcher warned that Jaguar U.K. would be shut down if it could not begin to quickly turn a profit.

18. Jaguar also faced significant nonfinancial difficulties. During the 1970's, in spite of pressure from Jaguar on Jaguar U.K. to improve the Jaguar model line and the quality, very little improvement resulted. By 1980, Jaguar U.K. had earned a reputation for making an unreliable vehicle of very poor quality. Sales of Jaguar vehicles in the U.S. dropped to 3000 units in 1980, an average of 11 units per dealer.

19. Facing both these financial and nonfinancial obstacles, Jaguar attempted to stave off bankruptcy. By 1982, Jaguar had consolidated its operations and decreased its work force by 55%. In Jaguar's Western Zone, many employees, including the zone sales manager, the zone distribution manager and the training manager, were terminated, and their responsibilities were turned over to the remaining employees. Jaguar also reorganized itself at the wholesale level, taking over the operations of independent distributors such as British Motor Car Distributors[6/] ("BMCD"). In addition, new management in the United Kingdom had begun to implement changes in production resulting in improved product quality.

6/ Auto Trends was appointed as a Jaguar dealer by BMCD, which was, at the time, the independent distributor for Triumph, MG and Jaguar vehicles in Southern California, which had complete authority to appoint dealers in its territory.

20. Jaguar realized that it's dealer network was not conducive to selling high priced Jaguar luxury vehicles. Its retail dealer network had been developed to sell and service high volume, low priced MG and Triumph sports cars.[7/]

21. Jaguar decided that in order to be competitive with other luxury car distributors it had to improve customer satisfaction at the dealer level. To achieve that objective, Jaguar had to ensure that its dealers had the opportunity to make a profit sufficient to justify the type of investment in facilities, management, training and personnel to approximate the level of customer satisfaction achieved by the dealer body of Mercedes-Benz ("Mercedes"), its principal competitor.

22. Jaguar dealers' potential for investment in their dealerships was at a disadvantage based on average Jaguar versus Mercedes sales per dealer. In 1982, Jaguar's 205 United States dealers sold 10,349 vehicles, or an average of 49 units per dealer.[8/] The 413 U. S. Mercedes dealers sold 65,963 vehicles, or an average of 161 units per dealer.

7/ In many instances, Jaguar had no direct involvement in the appointment of dealers in areas served by independent distributors. In the early 1970's, when distribution of all the British lines was consolidated, BMCD, then an independent distributor, took over the southern part of California. Jaguar was responsible for distribution into the northern part of California. BMCD's position was that it would give Triumph, MG and Jaguar franchises to all the dealers under their control.

8/ The increase in Jaguar sales between 1980 and 1982, was primarily the result of an improved product and the efforts of approximately 40-50 dealers who aggressively marketed Jaguar's products.

23. The disparity in sales between Jaguar and Mercedes dealers in the L.A./Orange County market was even greater than the national average. In 1982, in the L.A./Orange County market, Jaguar and Mercedes both had 17 dealers, but Jaguar dealers sold an average of 73 vehicles per dealer while Mercedes dealers sold an average of 523. This pattern was repeated in most of the major cities in the United States.

24. The superiority in average sales per dealer allowed Mercedes to offer the kinds of facilities, locations, management, personnel and after-sales service necessary for the successful marketing of luxury vehicles.[9/] In contrast, Jaguar dealers were not capable of committing comparable resources to their dealerships with average sales being significantly less than those of Mercedes dealers.

25. Jaguar's ability to improve its competitive situation was constrained by its limited product range and its restricted manufacturing capacity.[10/]

26. Jaguar determined that it could only achieve competitive levels of customer satisfaction with a substantially reduced dealer body, while providing sufficient vehicles to the retained dealers to enable them to commit the

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9/ In 1982, '83 and '84, Mercedes was number one in J.D. Powers' Annual Customer Satisfaction Survey.

10/ Jaguar's product range consisted of two models. In addition, the productive capacity of Jaguar U.K. was 50,000 to 60,000 units per year, and the United States took approximately one-half of the cars produced.

necessary resources for the successful marketing of Jaguar vehicles. To achieve these objectives, Jaguar developed the Dealer Rationalization Program.

27. In October 1982, Jaguar informed its dealers that it was evaluating the dealers' competitive situation. Jaguar also advised its dealers not to make any significant new investments in their Jaguar franchise without first consulting Jaguar.

28. Over a two-year period, Jaguar engaged in a dealer-by-dealer analysis, utilizing information compiled by both Jaguar personnel and outside consultants.11/

29. The dealer surveys and studies were analyzed by Jaguar zone managers, who then formulated recommendations to senior management for reorganizing Jaguar's retail dealer network. Jaguar's senior management then determined for each market how many dealers to retain, where they should be located and the identity of the dealers to be retained.

30. Using Mercedes as a model, Jaguar developed a formula to be used as a guide to determine how many dealers could be

11/ Surveys of Jaguars dealers were compiled by Jaguar District Sales and Service Managers, in consultation with the dealer principals, to evaluate the sales, service and parts operation of each dealership. Jaguar also commission studies by J.D. Power & Associates to compare customer satisfaction levels of Jaguar's versus Mercedes' dealer body, as well as the relative performance of its dealers in L.A./Orange County and in other major markets. Jaguar utilized Mercedes as a basis of comparison because: 1) Mercedes was Jaguar's chief competitor; 2) the demographics of their customer bases were virtually identical; and 3) Mercedes' dealer body was the leader in customer satisfaction. Jaguar also hired Urban Science Applications, Inc. ("Urban Science") to determine the geographic optimal locations for Jaguar dealerships in major metropolitan markets.

supported by each market. The intention was to give each retained dealer a sales volume which would support the type of facilities and operation required for the sale of luxury vehicles. Mercedes and Jaguar new car registrations were compiled for each market for the years 1981, 1982, and through June of 1983 (the latest available data at that time). These market registrations were then expressed as a percentage of national registrations for both Mercedes and Jaguar in each of the appropriate years. The highest percentage derived was then applied against Jaguar's 1985 planned retail sales volume of 20,000 units nationally to deduce each market's 1985 planning volume. The then current average registrations per Mercedes dealer were divided into the 1985 Jaguar market planning volume to determine the approximate number of Jaguar dealers the the market could support.

31. In the L.A./Orange County market, the formula yielded a calculation of 6.3 dealers; however, Jaguar also utilized its local knowledge of the market and evaluated the analysis done by Urban Science showing optimal dealer locations with six, seven, or eight dealers. Jaguar concluded that the L.A./Orange County market would support and be better served with seven dealers.

32. After Jaguar determined that the L.A./Orange County market could support seven dealers, Jaguar utilized the optimal location analysis undertaken by Urban Science to decide where

to locate those dealers.[12/] Allowing for cost and availability of land, zoning requirements, natural boundaries, etc., Jaguar attempted to locate its dealers as close as practicable to Urban Science's "optimal locations".

33. After Jaguar determined approximately where its seven dealers should be located in the L.A./Orange County market, Jaguar decided which dealers would be asked to upgrade and which would not be renewed. If Jaguar had an existing dealership within reasonable proximity to an "optimal location" and that dealership had the kind of management, financial resources and track record necessary to potentially become a competitive Jaguar dealership, that dealership, provided it agreed to upgrade its existing facilities and operations, was renewed. If no Jaguar dealership existed at an "optimal location", Jaguar then selected from among all non-optimally located dealers in the L.A./Orange County market, the dealers who possessed the most potential to become the kind of dealers Jaguar wished to have. Such dealers, provided they agreed to relocate their existing facilities and upgrade their operations, were renewed.

34. In the L.A./Orange County market, the five existing Jaguar dealerships located at or close to an "optimal location" and also had the potential to become competitive Jaguar

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12/ With the use of computers, Urban Science plots the locations of actual and potential customers and calculates the optimal geographic locations of a given number of dealerships in order to minimize the distance between the dealer and plotted customer locations.

dealerships were Southland; Terry York; Hornburg; Newport Imports; and Whittlesey.

35. With respect to the two "optimal locations" where no Jaguar dealer existed, Pasadena and Anaheim, Jaguar determined that of the twelve remaining dealers in the L.A./Orange County market, Rusnak and Bauer possessed the most potential to become competitive Jaguar dealers. Therefore, Rusnak and Bauer were renewed on condition that they agreed to relocate their existing facilities to Pasadena and Anaheim, respectively, and to upgrade their operations in conformance with Jaguar's standards. Jaguar then informed the ten remaining dealers that their franchises would not be renewed when they expired on December 31, 1984. Eight of those are no longer Jaguar dealers. The two remaining are Auto Trends and Fladeboe.

36. The seven renewed dealers in the L.A./Orange County market have spent or committed tens of millions of dollars in upgrades of their facilities, sales, service and parts operations. In major metropolitan areas nationwide, approximately eighty dealers have completed upgrades of their facilities and operations at a cost of approximately $200 million.

37. Under the Dealer Rationalization program, Jaguar has eight fewer <u>authorized</u> dealers in the L.A./Orange county market than it did in 1984, but the number of service stalls has more than doubled and there has been an overall increase in the number of mechanics and service advisors. In addition, service training has increased to 7000 student days from 300 student days in the early 1980's. The increased average size

in Jaguar's dealerships also allows them to stock larger parts inventories so that repairs can be completed more quickly.

B. Good Cause Factors.

a. Facts Relating To The Amount Of Business Transacted By Franchisee, As Compared To The Business Available To The Franchisee.

{Section 3061(a)}

38. Auto Trends is located between the Hollywood and Ventura Freeways in a rapidly developing area of the San Fernando Valley where the entertainment industry maintains many major offices and attractions. Three motion picture studios, Universal, Columbia, and Burbank Studios, are located within a few miles of Auto Trends. Entertainment industry personnel comprise a significant portion of the dealership's customers. Numerous other automobile line-makes are represented within a two-and-a-half mile distance of Auto Trends.

39. In Jaguar's Western Zone, from 1980 through 1983 there was little demand for Jaguars, although each year from 1980 to 1983 demand increased slightly. In late 1983, with the introduction of the 1984 model year, demand for Jaguars increased dramatically and continued strong until 1987. In the latter part of 1987 demand softened again, falling off in 1988 and 1989.

40. Auto Trends' retail sales performance improved slightly from 1980 to 1983. However, other San Fernando Valley Jaguar dealers, including nonrenewed dealers Reseda and Burbank, had higher sales increases and grew faster than Auto Trends. After 1985, Auto Trends showed no significant improvement in sales.

41. In March of 1983, Jaguar completed its dealer survey which included a sales field survey analyzing the ten Los Angeles County dealers' sales performance for the years 1981 to 1982. In those years, when there was an adequate supply of cars, Auto Trends increased its sales from 39 to 49 cars, which was an increase of approximately 25%. This was the lowest increase experienced by any dealer. The average increase percentage- wise in Los Angeles County was 88%, in the Western Zone 62%, and nationwide 120%.

42. Auto Trends declined to purchase from Jaguar a total of seven vehicles in 1982 at a time when cars were readily available. This served to depress Auto Trends' allocation percentage and thereby reduce its future vehicle allocations and sales.

43. Auto Trends did not transact all of the service business available to it. In Los Angeles County, an average of 72.2% of Jaguar customers had their cars serviced at the same dealership from whom the vehicles were purchased. However, only about 48% of Auto Trends' sales customers had their cars serviced at Auto Trends, which was the lowest percentage among all of the Los Angeles/Orange County dealers operating in 1984. The loss of potential service business also had a negative effect on Auto Trends' parts business.

b. <u>Facts Relating To The Investment Necessarily Made And Obligations Incurred By The Franchisee To Perform Its Part Of The Franchise</u>.

{Section 3061(b)}

44. Auto Trends was first opened in 1964 by Bernard Miller, the current dealer-principal, as a Corvette and

performance business on Van Nuys Boulevard in Los Angeles. Mr. Miller received his first franchise from Peugeot in 1967 or 1968 at the Van Nuys location. He later acquired Saab and Subaru franchises at the same location.

45. In 1970 or 1971, the dealership moved to its current location at 4110 Lankershim Boulevard, North Hollywood and Mr. Miller acquired Triumph and Renault franchises. In 1974, Auto Trends was appointed by BMCD, the then Southern California distributor of Jaguars, to Jaguar, MG and Austin franchises. In 1979 and 1980, the Austin, MG and Triumph lines were discontinued. Currently, Mr. Miller retains only the nonrenewed Jaguar and the Peugeot franchises. 13/ He has been the President and sole shareholder of Auto Trends since its incorporation in 1972. Mr. Miller's son, Robert William Miller, has been employed at the dealership since 1979 and is currently a salesperson.

46. Mr. Miller purchased two parcels of land in the mid 1970s to satisfy BMCD square footage requirements when he became a full line British dealer at the North Hollywood location. In 1974, he paid $160,000 for the first parcel, which included the garage and showroom buildings. In 1975, Mr. Miller purchased a second parcel of land for $130,000. This property has a small office building on it and serves as a used car lot and vehicle storage area.

13/ Mr. Miller also owns a small auto accessories business which is managed by someone else.

47. In 1982, Mr. Miller purchased a third parcel for $180,000, but currently uses only a small portion of that property for the dealership. Mr. Miller had planned to use the third parcel for a general expansion of the dealership but did not do the expansion as planned due to the loss of the MG/Triumph franchises and lack of finances.

48. Expenditures for capital improvements and repairs at the dealership from 1981 through 1987 were modest. Improvements completed in response to BMCD requirements included separating the garages for Peugeot and Jaguar, separating and expanding the Jaguar parts department, installing an identification sign, and re-stuccoing the main building. Bathrooms were installed in the main building, which previously had none, in 1982-1983. The costs for 1985 through 1987 were primarily labor costs. After 1987, expenditures for capital improvements and repairs declined. The following chart sets forth the capital expenditures Auto Trends made from 1981 to 1987:

Year	Expenditures
1981	$7,412.79
1982	$3,045.73
1983	$15,769.65
1984	$18,216.96
1985	$24,478.55
1986	$20,625.24
1987	$12,159.75

Total Expenditures = $101,708.67

Needed repairs were done over a period of years because of Auto Trends' limited financial resources.

49. In October 1982, Jaguar informed its dealers that it was evaluating its dealers' competitive situation. Jaguar also advised its dealers not to make any "major changes in . . . operations, whether by additional investment in facilities and equipment, or changes in staff, location or ownership" without first consulting Jaguar. Auto Trends followed those guidelines and did not even purchase replacement tools at that time.

50. Mr. Miller maintained an open flooring plan with his bank throughout the 1980s. The flooring plan had limits of $800,000 and "close to a million" at various times during this period.

c. <u>Facts Relating To The Permanency of The Investment</u>.

{Section 3061(c)}

51. When Auto Trends first moved to the North Hollywood location in 1970 or 1971, Mr. Miller leased the property. He purchased the original site and two contiguous properties in 1974, 1975 and 1982 and Auto Trends now occupies approximately one and one quarter acres.

52. Mr. Miller evaluated the land and buildings which Auto Trends now occupies as having a current fair market value of approximately $4 million.

d. <u>Facts Relating To Whether It Is Injurious Or Beneficial To The Public Welfare For The Franchise To Be Modified Or Replaced Or The Business of The Franchisee Disrupted</u>.

{Section 3061(d)}

53. Before non-renewal by Jaguar, there were four dealerships (i.e. Burbank Imports, Hollywood Sports Cars, Inc.,

Hornberg, and Terry York) within 10 miles of Auto Trends and two additional Jaguar dealerships (i.e. Reseda Imports and Pasadena) located approximately 12 miles from Auto Trends.

54. The Urban Science "optimal location" analysis established that in Los Angeles/Orange County as a whole, reducing the dealer count from 17 to 7 and placing the remaining dealers in the seven "optimal locations" would increase the average distance for actual/potential customers to the remaining dealers by 1.03 miles.

55. If the Jaguar franchise of Auto Trends is not renewed, the next nearest Jaguar dealer to the north will be about 110 miles away in Bakersfield. The only dealer remaining in the San Fernando Valley, where Auto Trends is located, will be Terry York. Hornburg, although only 4 air miles away, is effectively in a different marketing area about 11-12 driving miles away from Auto Trends across the Hollywood Hills. In 1983 and 1984, a survey of Jaguar owners revealed that the most important dealer attribute was standard of workmanship. Convenience of location was rated at the least important factor in choosing a servicing dealer.

56. Auto Trends' complaint-to-sales ratio 14/ in 1982 was 14.3%. This was the second highest complaint ratio of any Los Angeles/Orange County Jaguar dealer. The complaint-to-sales ratios of Burbank and Hollywood, two other nonrenewed

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14/ The complaint-to-sales ratio did not include repair orders. The percentage reflected only the number of complaints charged against the dealer (not the product) in relation to the dealer's number of new car sales.

dealers in the San Fernando Valley, were each 3.4%, about one-third that of Auto Trends. Terry York, the only dealer renewed in the San Fernando Valley, had a 5.5% complaint-to-sales ratio. In 1985, shortly before Jaguar discontinued this method of evaluating dealer performance, Auto Trends' complaint-to-sales ratio worsened, going up to 20%.

57. Auto Trends was rated by consumers to be one of the three worst Jaguar dealers in Los Angeles/Orange County in the early 1980s. In Los Angeles County alone, Auto Trends received the worst consumer ratings in the J.D. Power Dealer Satisfaction Survey for sales, service and parts department performance.

e. <u>Facts Relating To Whether The Franchisee Has Adequate Motor Vehicle Sales And Service Facilities, Equipment, Vehicle Parts, And Qualified Service Personnel To Reasonably Provide For The Needs Of The Consumers For The Motor Vehicles Handled By The Franchisee And Has Been And Is Rendering Adequate Services To The Public</u>.

{Section 3061(e)}

58. Auto Trends was not in one of the seven "optimal locations" for the sale of Jaguars in Los Angeles County as determined by the Urban Science analysis. Jaguar also did not offer Auto Trends the opportunity to relocate to either of the two "optimal locations" where there was no dealership because Auto Trends did not meet the Jaguar standards to be a relocated dealer.

59. At the time of the dealer survey by Jaguar in early 1983, Auto Trends' sales facility for Jaguar was dualed with Peugeot. The showroom exterior was described as poor, needing

paint and with old graphics on the showroom window. Paneling, floor covering, the ceiling and lighting fixtures were all described as in fair or poor condition.

60. In the 1984 J.D. Power survey of Jaguar customer satisfaction, over 75% of those surveyed rated Auto Trends "poor" or "fair" with respect to exterior appearance, showroom appearance and vehicle display. This was the worst rating of any Los Angeles County Jaguar dealer. Auto Trends received no "excellent" ratings in those categories and an average of 18% in the "good" category. Other nonrenewed dealers within 10 miles of Auto Trends received significantly better ratings in the same categories.

61. Auto Trends' customers responding to the J.D. Power survey rated Auto Trends last among Los Angeles County Jaguar dealers on eight of ten questions relating to the customers experience with the sales staff of the dealership. On the two remaining questions regarding sales staff knowledge of the product and quality of pre-delivery inspection, Auto Trends received the second worst customer rating among Jaguar dealers in Los Angeles County. Jaguar received numerous complaints from prospective purchasers from 1982 through 1989. These complaints were of serious nature about sales practices (allegations of misquotation of vehicle prices and of failure to consummate sales transactions), and service and warranty problems.

62. The Dealer Service Department survey completed by Jaguar in 1983 concluded that the facility was "average/well worn", not "well laid out" and lacking in a formal customer

reception area. At the time of the survey, the dealership also lacked certain required special tools, as well as shop and equipment manuals.

63. At the time of the service department survey in 1983, Jaguar concluded that although the Auto Trends' service manager (who handled both Jaguar and Peugeot service requests) was generally cooperative, the service department was not "well organized or smoothly run". Auto Trends' service advisor lacked technical skills and background, had not attended training in his area offered by Jaguar, and was not fully conversant with company policies and procedures.

64. In 1983, Auto Trends had two service technicians who worked on Jaguars, MGs and Triumphs. During 1982, neither of these technicians attended Jaguar technical service training. Jaguar repeatedly urged Auto Trends to send its mechanics to the Jaguar mechanics school, but Auto Trends chose not to do so. Furthermore, audio visual service training programs, which are available available on site at the dealership, were not used by Auto Trends.

65. Auto Trends received the worst overall service rating among Los Angeles County Jaguar dealers in the 1984 J.D. Power survey of customer satisfaction. 94% of Auto Trends' customers surveyed reported that they had to return their cars to the dealer due to unsatisfactory service. This was the highest percentage of any Jaguar dealer in Los Angeles/Orange County.

66. In its March 1983 dealer survey, Jaguar found the Auto Trends' parts department to be dirty, cluttered and

disorganized. Auto Trends' parts department received the lowest rating among Los Angeles Jaguar dealers in the 1984 J.D. Power customer satisfaction survey.

67. In 1981, Jaguar advised Auto Trends that it needed an inventory control system. However, it was not until early 1983 that Auto Trends implemented such a system. The lack of inventory control during this period hindered Auto Trends' ability to make decisions regarding stocking quantities, order amounts and parts obsolescence. It also prevented Auto Trends from properly substantiating its warranty claim submissions.

f. <u>Facts Relating To Whether The Franchisee Fails To Fulfill The Warranty Obligations Of The Franchisor To Be Performed By The Franchisee</u>.

{Section 3061(f)}

68. Auto Trends' failure to comply with Jaguar's record-keeping requirements and Auto Trends' lack of an inventory control system from 1981-1983 prevented the dealership from satisfying Jaguar's warranty claim submission requirements.

69. In 1983, Auto Trends' warranty claims had an average edit percentage of 75%. Jaguar rejected 25% of the dealerships' warranty submissions during that year.

g. <u>Facts Relating To The Extent Of Franchisee's Failure To Comply With The Terms Of The Franchise</u>.

{Section 3061(g)}

70. Jaguar presented no evidence to establish that Auto Trends failed to comply with the terms of the franchise.

II. Facts Relating To Auto Trends' Petition Claims.

71. Jaguar adopted its current vehicle allocation system in 1979. The system is based upon the calculation of "allocation percentages" for each of Jaguar's authorized dealers. These allocation percentages are derived by dividing each dealer's rolling 12-month retail sales by the total of all reported retail sales in the dealers' zone during that period.

72. Allocation percentages are recalculated at the beginning of each month based on the most recent rolling 12-month retail sales figures.15/ The resulting allocation percentages are applied to determine the next allocation of vehicles to dealers by multiplying the number of vehicles available for allocation in the zone by each dealer's allocation percentage. The actual vehicle allocations are made when the new Jaguars arrive into Southern California by ship, which occurs approximately eighteen to twenty times a year.

73. Several factors influence the number of vehicles available for allocation by Jaguar. The principle factor is the number of vehicles manufactured by Jaguar U.K. and the percentage of such vehicles allocated and shipped to the United States.

74. Certain vehicles on each ship are vehicles to which the dealers' allocation percentages are not applied. These vehicles are not available for dealer allocation because they

15/ In the early 1980's, the allocation percentage was recalculated each quarter. In late 1984 or early 1985, Jaguar changed to calculating the allocation percentage every month.

may be reserved for use by Jaguar employees, used as a replacement or promotional vehicle, or set aside for Jaguar's ongoing market programs.

75. Jaguar generally distributes "company cars" to dealers after they have been in use by Jaguar personnel for approximately 6000 miles. Jaguar gives the dealer immediate retail credit in its allocation system as if the dealer has already sold the vehicle. As such, Jaguar does not include the vehicle in the dealer's current inventory. In 1985, Auto Trends did receive such a company car.

76. Each year, Jaguar distributes a certain number of vehicles to replace those previously sold to unsatisfied customers. Through the end of 1987, in the Western Zone, Jaguar credited the dealer for both the original sale and the "replacement sale". The number of vehicles designated as "replacement vehicles" directly impacts those which are available for dealer allocation. As of the time of the hearing, Auto Trends had not been required to replace any vehicles which it had previously sold.

77. Jaguar reserves the right to utilize up to approximately 5% of its United States allocation of vehicles for marketing programs. Three categories of dealers received vehicles for these marketing programs, which include dealers who received an additional allocation after completing an upgrade, nonrenewed dealers who received increased allocations as part of agreements to surrender their franchises, and nonrenewed dealers upon whom a "vehicle surcharge" (as discussed infra) was imposed.

78. Jaguar distributed vehicles to renewed dealers who had completed upgrades of their facilities and operations. In these situations, the calculation of the dealer's allocation percentage was not based on the analysis of that dealer's rolling 12-month sales. Instead, the dealer was assigned a planning volume. The planning volume was used in lieu of that dealer's rolling 12-month sales for all or part of the dealer's first year of operation. Thereafter, the dealer is allocated vehicles based on its actual rolling 12-month sales. The purpose behind the planning volume is to provide the dealer with a 12-month opportunity to increase its retail sales, so as to offset the higher overhead resulting from the upgrade. Auto Trends did not fall within this category of dealers and therefore was not entitled to receive its allocation based upon planning volume.

79. Jaguar distributed an increased allocation of vehicles to dealers in Los Angeles and Orange County who had agreed to close their operations. Auto Trends did not fall within this category of dealers and therefore did not receive and of these "settlement vehicles".

80. Jaguar distributed the surcharge vehicles to the seven renewed dealers in Los Angeles and Orange Counties in order to compensate them for paying a $600 surcharge for each

car they received for a period of over a year.[16/] Jaguar used this surcharge to fund settlement payments Jaguar agreed to make to the Los Angeles/Orange County dealers who protested their termination. Auto Trends did not fall within this category of renewed dealers and therefore received no surcharge vehicles from Jaguar.

81. Jaguar increased the number of cars allocated to the Western Zone by 10% to offset the surcharge vehicles that were being allocated to the renewed dealers. These vehicles were taken from the national allocation. This had the effect of increasing shipments to the Western Zone by over 650 vehicles during the period of the surcharge. However, only approximately 510 additional vehicles were distributed as a result of the surcharge system. The net result was that approximately 160 additional vehicles were brought into the Western Zone for distribution to all of Jaguar's dealers, including Auto Trends.

16/ Jaguar U.K.'s Board of Directors approved ten million dollars to be used to fund buy-outs or settlements with nonrenewed dealers. (Con. Vol. 2 RT 90-95) This money proved to be insufficient to resolve all of the disputes which had arisen. Jaguar could not go back to the Board of Director's for more money, and the only other viable source for the funds was the renewed dealers in the United States.

82. Jaguar's allocation system is summarized by the following mathematical formula:

$$N = (V-P) \times D/Z$$

N = the number of cars allocated to a specific dealer.

V = the number of vehicles arriving on a specific ship.

P = the number of cars designated for company use, marketing programs, etc.

D = the specific dealer's rolling 12-month retail sales.

Z = the zone's rolling 12-month sales.

100 D/Z = the specific dealer's allocation percentage

83. Each Jaguar dealer in a zone competes against every other dealer in that zone for a limited supply of Jaguar vehicles. The effectiveness of that competition is measured by how quickly any given dealer can sell, and report the sale of, the vehicles allotted to it on any given allocation as compared to how quickly all the other dealers sell, and report the sale of, the vehicles they receive. Therefore, the system works to decrease allocations to dealers who either fail to sell vehicles or are slow to report sales.

84. Jaguar's allocation system provides credit only for retail sales. Therefore, dealers who purchase vehicles from other dealers and thereafter sell those vehicles at retail increase their allocation percentages and future allocation entitlements. The same is true for those dealers who purchase, and then sell at retail, those vehicles declined for purchase by other dealers. In contrast, dealers who wholesale their vehicles to other dealers or decline vehicles allocated to

them, decrease their allocation percentages and future allocation entitlements.

85. From 1980 through 1983, the supply for Jaguars exceeded demand. In 1982, Auto Trends declined to purchase seven cars that Jaguar had allocated to it. This resulted in a re-allocation of those vehicles to other dealers and an overall reduction in Auto Trends' allocation that year. There were also several occasions where Auto Trends would purchase vehicles from other dealers and thereafter sell them at retail. On several occasions, Auto Trends did not receive credit for these sales because the Retail Delivery Report ("RDR") cards would be submitted to Jaguar by the dealer to whom the cars were originally allocated.

86. Auto Trends' sluggish sales performance from 1980 to 1983 was compounded by the dealership's delays in reporting those sales to Jaguar in a timely fashion. Delay in the submission of the RDR card of even a month (e.g. a sale in January is not reported until February) can have a negative effect on future allocations by creating lag time in the accrual of credit that dealer receives for the sale relative to competing dealers. Jaguar advised Auto Trends of the delay in the submission of its RDR cards.

87. During the high demand period after late 1983, Auto Trends' sales performance did not greatly improve. In the spring of 1985, Auto Trends retained cars in inventory for significant periods of time, sometimes for as long as two months.

88. Future allocations are not affected by the point in time during the month a car is retailed by the dealer. Furthermore, Jaguar does not attempt to allocate cars at any particular time of the month but seeks to maintain a continuous flow of allocations. From 1981 to 1988, Auto Trends received 24% of its cars from Jaguar in the first third of the month, 41% in the second third of the month, and 35% in the last third of the month.

89. During the entire period of his franchise relationship with Jaguar, Auto Trends was offered one company car from the 5% set aside. Mr. Miller declined this car because he believed it would not prove a profitable transaction and that Auto Trends would not get retail credit for the subsequent sale. Contrary to Mr. Miller's belief, Jaguar's policy was to give retail sales credit to the dealer who purchased and later sold a company car.

90. Jaguar never "froze" Auto Trends' allocations. Auto Trends' actual allocations from 1981 through 1988 rose to about 50 to 60 cars per year and remained fairly stable from 1984 to the present.

Year	Total cars received
1981	3 (full year not avail.)
1982	35
1983	50
1984	56
1985	62
1986	60
1987	63
1988	16 (full year not avail.)

91. After 1985, several protesting dealers in the Los Angeles/Orange County area who settled with Jaguar went out of business. After those dealerships ceased doing business, vehicles previously allocated to them went back to Zone for allocation to every other dealer in the Zone.

92. On July 28, 1986, Jaguar sent a letter to Jaguar owners in Southern California advising them that Hollywood Sports Cars was going out of business. The letter directed customers to other Los Angeles/Orange County dealers for warranty and service work, including two nonrenewed dealers, Reseda and Burbank, but failed to list Auto Trends.

93. Among the 17 Jaguar dealers in the Los Angeles/Orange County area, Auto Trends was the only dealership with a strongly negative attitude toward Jaguar. This attitude was first noted by Jaguar personnel in 1982.

DETERMINATION OF ISSUES

1. General Determinations.

In consideration of the foregoing, it is hereby determined that:

a. The scope of the Board's inquiry in determining whether good cause has been established for permitting Jaguar to not renew the franchise of Auto Trends is not limited to the seven enumerated factors in section 3061. By its express terms, section 3061 requires the Board to "take into consideration the existing circumstances, including but not limited to . . ." those factors which are set forth thereafter.

b. "Good cause" under section 3061 may include a reduction in the number of dealers if such reduction was undertaken in good faith for legitimate and sound business reasons and was implemented in a fair and non-discriminatory manner.

c. Jaguar's Dealer Rationalization Program constituted "good cause" because it was implemented under severe economic circumstances which threatened its future competitive survival.

d. The evidence established that the Dealer Rationalization Program was undertaken in good faith for legitimate business reasons and was implemented in a fair and non-discriminatory manner.

2. Determination of Protest Issues.

It is further determined that:

a. Jaguar has established that Auto Trends does not transact an adequate amount of business compared to the business available to it. (section 3061(a))

b. Jaguar has established that Auto Trends has not incurred the necessary investment and obligations to perform its part of the franchise. (section 3061(b))

c. Jaguar failed to established that Auto Trends has no permanency of investment. (section 3061(c))

d. Jaguar has established that it would not be injurious or that it would be beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted. (section 3061(d))

e. Jaguar has established that Auto Trends does not have adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles handled by Auto Trends, and that Auto Trends has not been and is not rendering adequate services to the public. (section 3061(e))

f. Jaguar established that Auto Trends has failed to fulfill the warranty obligations of Jaguar. (section 3061(f))

g. Jaguar has not established that Auto Trends has failed to comply with the terms of the franchise. (section 3061(g))

2. Determination of Issues Pertaining to Petition Allegations.

Auto Trends failed to establish that:

a. Jaguar violated Vehicle Code section 11713.2(e) or 11713.3(p);

b. Jaguar breached the covenant to good faith and fair dealings implied in the franchise agreement through unlawful termination and discriminatory warranty service authorizations:

c. Jaguar intentionally failed and refused to increase Auto Trends' allocation of Jaguar automobiles.

d. Jaguar allocated and diverted automobiles to favored, retained dealers to give them unfair marketplace advantage;

e. Jaguar attempted to coerce and intimidate Auto Trends into a termination of its franchise;

f. Jaguar diverted additional automobiles available after the closure of three dealerships to favored dealers;

g. Jaguar directed business (warranty claims) to certain dealers but not to Auto Trends;

h. Jaguar referred inquiries from potential Jaguar customers to other dealers;

i. Jaguar "timed" auto deliveries to give a false impression of Auto Trends' sales ability;

j. Jaguar conspired with favored dealers to restrain trade in sale of Jaguar products in California and Los Angeles County through the assessment of a "secret" $600 surcharge on retained dealers by not Auto Trends and other nonrenewed dealers;

k. Jaguar has unlawfully terminated Auto Trends' franchise without good cause and in violation of Vehicle Code section 3060;

l. Jaguar has conspired in restraint of trade or commerce under the Cartwright Act (Business and Professions Code section 16700 et seq.) and the Sherman Act, 15 United States Code section 1.

PROPOSED DECISION

THEREFORE, the following proposed decision is respectfully submitted:

1. The protest is overruled. Jaguar shall be permitted not to renew the franchise of Auto Trends.

2. The relief sought by the petition is denied.

I hereby submit the foregoing which constitutes my proposed decision in the above-entitled matter, as a result of a hearing held before me on the above date and recommend adoption of this proposed decision as the decision of the New Motor Vehicle Board.

Dated: March 22, 1991

George R. Coan

GEORGE R. COAN
Administrative Law Judge
New Motor Vehicle Board