

1507 - 21st Street, Suite 330  
Sacramento, California 95814  
Telephone: (916) 445-1888

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of )  
WEST COVINA MITSUBISHI, ) Protest No. PR-839-86  
Protestant, )  
vs. )  
MITSUBISHI MOTOR SALES OF )  
AMERICA, INC., )  
Respondent. )

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DECISION

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

This Decision shall become effective forthwith.

IT IS SO ORDERED this 30<sup>th</sup> day of April, 1987.

  
FLORENCE S. POST  
President  
New Motor Vehicle Board

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WEST COVINA MITSUBISHI,	)	
	)	Protest No. PR-839-86
Protestant,	)	
	)	<u>PROPOSED DECISION</u>
vs.	)	
	)	
MITSUBISHI MOTOR SALES	)	
of AMERICA, INC.,	)	
	)	
Respondent.	)	

Procedural Background

1. By letter dated July 31, 1986, Mitsubishi Motor Sales of America, Inc. ("MMSA"), 10540 Talbert Avenue, Fountain Valley, California, gave notice pursuant to California Vehicle Code section 3062<sup>1/</sup> to West Covina Mitsubishi ("WCM"), 2000 South Garvey Avenue, West Covina, California, of MMSA's intention to establish an additional dealership at 1001 Central Avenue, Duarte, California. Notice was received by the New Motor Vehicle Board ("Board") on August 12, 1986.

<sup>1/</sup> Unless otherwise indicated, all references are to the California Vehicle Code.

2. A protest was filed with the Board in behalf of WCM on August 19, 1986.

3. The hearing was originally scheduled to commence on October 27, 1986. At the request of MMSA, and with the stipulated concurrence of WCM, the hearing was rescheduled for November 10, 1986. By stipulation of counsel for the parties, the hearing was continued to December 3, 1986 and again, by stipulation, it was continued to December 8, 1986.

4. The hearing was held before George R. Coan, Administrative Law Judge of the Board on December 8, 9, 10, 11, 12, and 13, 1986.

5. WCM was represented by Steven P. Rice of Kindel & Anderson, 555 South Flower Street, Twenty-sixth Floor, Los Angeles, California.

6. MMSA was represented by Elizabeth A. Grimes and Ginger G. Bauer of Gibson, Dunn & Crutcher, 333 South Grand Avenue, Los Angeles, California.

#### Issues Presented

7. WCM contends that there is good cause for not allowing the establishment of the dealership in Duarte for the following reasons:<sup>2/</sup>

a. WCM's investments are permanent and will be adversely affected by the establishment of the additional dealership [section 3063(a)];

<sup>2/</sup>Section 3066 provides that WCM has the burden of proving good cause not to allow the establishment of the additional dealership.

b. There will be an adverse effect on the retail motor vehicle business and the consuming public in the relevant market area [section 3063(b)];

c. Establishment of the additional dealership will be injurious to the public welfare [section 3063(c)];

d. The existing MMSA dealers in the relevant market area are providing adequate competition in the market area, including adequate motor vehicle sales and service facilities, equipment, supply of vehicle parts and qualified service personnel [section 3063(d)]; and

e. The establishment of the additional dealership would not increase competition and therefore would not be in the public interest [section 3063(e)].

Facts Relating to Permanency of Investment  
[section 3063(a)]

8. West Covina Mitsubishi is the trade name under which Hassen Imports, a limited partnership, does business. The partnership is comprised of two corporations; Dighton Inc., incorporated in the Netherlands Antilles, and Hassen Imports, Inc., a California corporation.

9. Dighton Inc. has a 55% share in the partnership. No evidence as to the ownership of Dighton Inc. was introduced at the hearing. Ziad Alhassen is the managing director of Dighton Inc., having complete authority to speak for and bind Dighton Inc.

10. Hassen Imports, Inc., has a 45% ownership interest in the Hassen Imports limited partnership. Ziad Alhassen, Tarek

Alhassen, and Tarif Alhassen each owns one-third of Hassen Imports, Inc. Tarek Alhassen is the general manager of WCM.

11. Ziad Alhassen first applied for a MMSA franchise in West Covina in 1982. MMSA rejected the application because of a lack of automotive experience and because a dealership in the West Covina area was not part of MMSA's plans.

12. About a year later Ziad Alhassen was offered the opportunity to establish a MMSA dealership in Puente Hills but was unable to obtain suitable property in Puente Hills. The Alhassens have many developments in West Covina, all undertaken through the West Covina Redevelopment Agency. The Alhassens were able to obtain approval of the Redevelopment Agency to use part of the West Covina land for automobile dealerships and convinced MMSA to allow them to establish the dealership in West Covina rather than in Puente Hills as desired by MMSA.

13. The Alhassens rejected the design for the WCM facilities suggested by MMSA's consultant and designed and built their own facilities, which are at least double the size suggested by MMSA.

14. WCM opened for business on November 15, 1983, using a trailer for a sales office. Construction was started in August, 1983, but the facilities were not completed until March, 1985.

15. WCM is situated on 3.7 acres of land fronting the I-10 Freeway at its junction with the Azusa Freeway. One of the 3.7 acres is a vacant lot.

16. The cost of the facilities was \$2.25 million of which 25% was the cost of the land. As of April 29, 1986, the property had an appraised value of \$4.5 million.

17. On February 15, 1983, prior to the franchise being granted and prior to the start of construction in August, 1983, Ziad Alhassen signed a letter regarding the marketing plans of MMSA for the Los Angeles Metropolitan Area. Ziad Alhassen expressly acknowledged that MMSA's representatives "outlined MMSA's marketing plans and explained to (the Alhassens) that MMSA anticipates eventually placing at least 30 dealers in the greater Los Angeles area." The letter further acknowledged that, "as a result of (their) meeting with MMSA's representatives, (WCM) was entering into (its) MMSA Dealer Sales and Service Agreement with the knowledge that (the) dealership will be one of at least 30 in the greater Los Angeles Metropolitan Area."

18. The initial working capital invested in the dealership was to be \$100,000.

19. The dealership acquired Mercedes-Benz automobiles in Europe for the purpose of resale through the WCM dealership. These vehicles, commonly known as "grey market vehicles" and sold by WCM in competition with the franchised Mercedes-Benz dealer "just down the street", required modification to conform to federal and state standards. The exact amount of original working capital invested was not established.

20. In April, 1985, Dighton Inc. transferred three million dollars into WCM. Of this sum, however, \$1,343,541 was used for WCM's grey market business (Mercedes-Benz along with other high demand European cars). MMSA required only \$296,620 in net working capital.

21. The Alhassens, as of the date of the hearing, had personally guaranteed the debts of the dealership in the amount of \$5.8 million, of which \$3.0 million is for inventory financing. The additional \$2.8 million is owed to Mitsubishi Bank for facility construction and land acquisition. The Alhassens anticipated becoming personally obligated for another \$2 million within 30 days of the hearing.

22. Title to the land and buildings is held in the name of Hassen Imports, a partnership doing business as West Covina Mitsubishi. There are two deeds of trust on the property. The first is in favor of Mitsubishi Bank and secures the \$2.8 million land acquisition and construction indebtedness, payable at \$25,000 per month for 10 years. The second deed of trust is in favor of the West Covina Redevelopment Agency and secures a five year note in the amount of \$525,000 which will become due in two more years. There was no interest due on the second deed of trust for the first three years. During the fourth and fifth years interest accrues at the rate of 10% per year with the total interest and principal payable on the due date of the note.

23. WCM plans to spend an additional \$3 million to enlarge the service area and build vertical storage for new vehicles within a few months of the hearing.

24. The principal for the proposed dealership is George H. Williams ("Williams"). Williams has been in the automobile business since 1953; first as a salesman, then as a large volume used car wholesaler, and for many years as a new car dealer. Williams presently owns or has an interest in two Chevrolet

dealerships, three Nissan dealerships, one Dodge dealership, and one Mitsubishi dealership.

25. The proposed dealership location is in a shopping center adjacent to the 210 Freeway on redevelopment land in the City of Duarte.

26. Williams acquired approximately 4.8 acres of redevelopment land from the City of Duarte for a price of \$1.1 million. By the terms of the purchase agreement with the City of Duarte, Williams is required to establish two dealerships on the land. Williams has already constructed a Toyota dealership on three acres of the property. The remaining acreage is to be used for the MMSA dealership.

27. In addition to the cost of the land, Williams has spent \$1.8 million for the development of the land of which \$100,000 has specifically been for the portion to be used for MMSA. An additional \$850,000 will be needed for buildings and equipment for the proposed dealership. The plans for the MMSA franchise include the construction of a two story, 16,000 square foot building. At the time of the hearing, the proposed dealership location was paved, gutters and lights were already installed and the landscaping completed.

Facts Relating to the Effect on the  
Retail Motor Vehicle Business and the  
Consuming Public in the Relevant Market Area  
[section 3063(b)]

28. MMSA has assigned to each of its dealers what MMSA calls a Primary Market Area ("PMA"). There is also a PMA for

points that do not have a dealer but where MMSA intends to establish one. Such points are called "open points".

29. WCM and the proposed location are within what MMSA has designated as the Los Angeles metropolitan market area and both are in the San Gabriel Valley. The following indicates the present number of Japanese import dealerships by line-make in the Los Angeles Metropolitan Area and the San Gabriel Valley:<sup>3/</sup>

	Number of Dealerships in Los Angeles Metropolitan Area	Number of Dealerships in San Gabriel Valley
Toyota	57	11
Nissan	54	10
Honda	45	8
Mazda	36	8
Isuzu	25	7
Subaru	32	5
Mitsubishi	14	3
(without proposed dealership)		
Mitsubishi	15	4
(with proposed dealership)		

<sup>3/</sup>Almost all of the evidence presented focused either on the San Gabriel Valley area or the area within 10 miles of WCM to determine the impact on the consumers in that market area and upon WCM.

30. The following indicates the number and make of Japanese/Korean import dealerships within 10 miles of WCM:

Line-Make	Number of Dealerships
Toyota	7
Nissan	5
Honda	5
Mazda	4
Isuzu	3
Hyundai	1
Subaru	2
Mitsubishi	1 (Represents WCM)

31. The proposed dealership, if established, will be the only Mitsubishi dealership within 10 miles of WCM.

32. The Alhassens are interested in acquiring additional MMSA dealerships at locations within 10 miles of existing MMSA dealers. Specifically, they desired to establish dealerships in Huntington Beach, Garden Grove and El Monte. The proposed Huntington Beach location would be less than 10 miles from existing MMSA dealerships in Costa Mesa, Long Beach and Cerritos. The El Monte dealership proposed by the Alhassens would be approximately 8 miles from WCM and less than 6 miles from the MMSA dealership in Alhambra. The inquiry as to a Garden Grove dealership was made in July, 1986, and the site proposed is within 10 miles of existing MMSA dealerships in Cerritos, Anaheim and Costa Mesa.

Facts Pertaining To Whether It Would Be  
Injurious To The Public Welfare For The  
Additional Franchise to Be Established  
[section 3063(c)]

33. No evidence was presented by WCM which would show that establishment of the additional dealership would be injurious to the public welfare.

34. The City of Duarte has expended between \$1.25 million and \$1.3 million dollars in improvements for the area in which the proposed dealership is to be located. These consist of the replacement of overhead electrical wires with underground cable, extension of streets, and the installation of sewers and storm drains. An additional sum of \$300,000 was spent modifying a freeway off-ramp so that it would lead directly into the proposed dealership location.

35. The proposed dealership site is intended as an integral part, or "anchor" for the developing auto mall in Duarte. The proposed dealership, if established, will provide a new automotive shopping alternative for the public with access from the 210 Freeway. It would also provide increased awareness of the MMSA product to enable MMSA to compete with the five other import line-makers already represented in the Duarte Auto Mall.

36. The proposed dealership in Duarte would generate between \$200,000 to \$300,000 per year in sales tax revenue. The City of Duarte receives less in sales tax revenue than do most other cities in the San Gabriel Valley.

37. Williams and his co-owners are well respected in the community of Duarte and the surrounding communities where he owns other dealerships. His partner has already involved himself in various aspects of community service. Williams also has a well established record of successful dealerships. His other dealerships have received favorable recognition from their franchisors for sales, service, parts and customer relations.<sup>4/</sup>

38. The land intended to be used for the proposed dealership is too small to meet the requirements of most other manufacturers or distributors. Use of the property for other than a car dealership will generate significantly less tax revenue for the City of Duarte.

Facts Pertaining To Whether The Current MMSA  
Franchisees In The Relevant Market Area Are Providing  
Adequate Competition and Convenient Consumer Care For  
The Owners Of Mitsubishi Vehicles In The Market Area,  
Including Adequate Motor Vehicle Sales And  
Service Facilities, Equipment, Supply Of Vehicles  
Parts And Qualified Service Personnel.  
[section 3063(d)]

39. Currently, MMSA has two dealers, WCM and Alhambra, in the relevant market area.<sup>5/</sup>

<sup>4/</sup>Included in the awards received have been Chevrolet's "Only the Best Club" (service) and Nissan's "Merit Masters' Club" (sales, service, parts and customer relations.)

<sup>5/</sup>Relevant market area is defined in section 507 as, "any area within a radius of ten miles from the site of a potential new dealership."

40. MMSA's Japanese import competition in the San Gabriel Valley is as follows:

Line-Make	Number of Dealerships
Toyota	11
Nissan	10
Honda	8
Mazda	8
Isuzu	7
Subaru	5

MMSA has three dealers in the San Gabriel Valley.

41. The straight-line distance from WCM to the proposed dealership location is 6.3 miles. The drive time from WCM to the proposed dealership location is 16.5 minutes (9 miles) by one route, and 14.0 minutes (13 miles) via an alternate route. As previously indicated, there are no existing MMSA dealerships within ten miles of WCM.

42. The following charts outline the penetration by MMSA of the Japanese/Korean import car and truck markets. Both charts indicate that MMSA has not penetrated the Duarte Open Point PMA to a level commensurate with MMSA's national and regional penetration levels.

Penetration by MMSA of the Japanese/Korean Import Car Market

Area	1985	January 1, 1986 thru June 1986
National	3.50%	3.07%
Western Region	3.33%	2.68%
L. A. Metro	3.28%	3.08%
San Gabriel Valley Area*	3.67%	2.91%
Duarte Open Point PMA	1.81%	1.67%

\*This area consists of the PMA's for WCM, Alhambra Mitsubishi, Glendale Mitsubishi and the Duarte Open Point.

Penetration of MMSA of the Japanese Import Truck Market

	1985	June 1986 CYTD
National	6.62%	7.45%
Western Region	5.40%	5.91%
L. A. Metro	4.93%	6.52%
San Gabriel Valley Area*	5.37%	7.19%
Duarte Open Point PMA	3.04%	5.11%

\*This area consists of the PMAs for WCM, Alhambra Mitsubishi, Glendale Mitsubishi, and the Duarte Open Point

43. The following chart shows the registration by PMA of WCM's retail sales from January 1, 1986 through June, 1986.

Percentage of Retail Car & Truck Sales of WCM	PMA Where Registered
45.0%	WCM (San Gabriel Valley)
13.9%	Upland (L. A. Metro)
8.6%	Duarte Open Point (San Gabriel Valley)
7.3%	Alhambra (San Gabriel Valley)
3.5%	Cerritos (L. A. Metro)
3.0%	Glendale (San Gabriel Valley)
1.8%	Anaheim Open Point (L.A. Metro)

44. A significantly higher percentage of WCM's retail car and truck sales are registered in the Upland PMA where there is an existing MMSA dealership than in the Duarte Open Point PMA where there is no MMSA dealership. The Upland dealership is not in the San Gabriel Valley and is farther from WCM than the proposed dealership in Duarte in the San Gabriel Valley.

45. WCM's service facility is approximately 4,840 square feet in size and has 16 service stalls. The stalls are used for both MMSA products and WCM's grey market conversion operations.

46. WCM presented no facts as to the adequacy of equipment, supply of parts or qualified service personnel.

Facts Pertaining to Whether the Establishment  
of the Additional Franchise Would Increase  
Competition and Therefore Be In the Public Interest  
[section 3063(e)]

47. The following is a comparison of the number of households in the PMAs indicated and the projected growth. The figures indicate not only continued growth in both the PMA of WCM and the proposed dealership, but also that the rate of growth is greater than the growth of the Los Angeles Metropolitan Area as a whole.

Number of Households

Primary Market Area	1980	1985 (Estimated)	1990 (Projected)
West Covina	150,895	177,680	203,882
% Change		+17.75%	+14.75%
Duarte	152,980	172,350	190,983
% Change		+12.66%	+10.81%
L. A. Metro	4,044,533	4,512,036	4,962,633
% Change		+11.56%	+9.99%

48. WCM spends approximately \$44,000 a month on advertising. In the first 10 months of 1986 WCM spent a total of \$439,529 on advertising for new vehicles. During the same time period WCM spent \$75,316 on advertisements for its used vehicles. These expenditures enable WCM to advertise well beyond its primary market area. WCM has a billboard near Duarte (on the 605 Freeway), one in Ontario (on the 10 Freeway), and one near Riverside (on the 60 Freeway). WCM advertises on the radio and in the Los Angeles Times, San Gabriel Valley Tribune, as well as ethnic oriented newspapers such as La Opinion (Spanish) and The Center News (Chinese). WCM also runs ads on a local television station and publishes in the advertising circulars, The Greensheet and The Pennysaver. Throw-away papers, known as "Easy Ads" are posted at local supermarkets advertising WCM as well.

49. WCM currently holds the title of being the number one dealer in the United States for MMSA sales. The following chart lists MMSA's national dealer rankings as of November 3, 1986 and the regional dealer rankings for the same period.

**National Dealer Ranking**  
1/1/86 thru 11/3/86

Rank	Dealer	Cars	Trucks	Total
1)	WCM	718	1,323	2,041
2)	Cerritos (L.A. Metro)	1,026	606	1,632
3)	North Plainfield N.J.	1,341	289	1,630
4)	Wantagh N. J.	1,134	220	1,354
13)	Torrance (Owned by Williams)	673	315	988

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**Regional Dealer Ranking**  
1/1/86 thru 11/3/86

Rank	Dealer	Cars	Trucks	Total
1)	WCM	718	1,323	2,041
2)	Cerritos (L.A. Metro)	1,026	606	1,632
3)	Calabasas	506	493	999
4)	Torrance	673	315	988

50. In 1985, MMSA projected a figure of 30,000 new cars available for distribution in the United States. Early in that year (1985), MMSA learned that the number of new vehicles available for distribution would increase from the projected figure of 30,000 to 55,000 vehicles.

51. In March of 1987, MMSA will begin to import and distribute cars manufactured by Hyundai<sup>6/</sup>. As a result, an additional 30,000 new cars will be available for distribution to MMSA dealers.

52. In addition to the availability of the Hyundai manufactured cars, MMSA is continuing to increase the availability of its own product to MMSA dealers. In April of 1985, Mitsubishi Motor Corporation of Japan and the Chrysler Corporation agreed to operate jointly an automobile factory in the United States under the name of "Diamond Star". By the terms of the agreement, the factory would build vehicles for the United States market to be distributed by both companies.

53. The "Diamond Star" facility, located in Bloomington, Illinois, is expected to produce 180,000 automobiles in 1988, its first year of operation. MMSA will receive 90,000 of these new vehicles for its own distribution. In the factory's second year of production, 1989, 240,000 cars will be produced, of which MMSA will receive 120,000.

<sup>6/</sup>Hyundai vehicles are manufactured in the Republic of South Korea and therefore are not subject to the Japanese voluntary trade restrictions.

### Determination of Issues

The Protestant has failed to prove that there is good cause for not establishing the additional franchise in Duarte in that:

a. The Protestant has proved that its investment is permanent, but has failed to prove that its investment will be adversely affected by the establishment of the proposed dealership [section 3063(a)];

b. The Protestant has failed to prove that the establishment will have an adverse effect on the retail motor vehicle business and the consuming public in the relevant market area [section 3063(b)];

c. The Protestant has failed to prove that the establishment will be injurious to the public welfare [section 3063(c)];

d. The Protestant has failed to prove that there is adequate competition and convenient consumer care for owners of Mitsubishi vehicles in the relevant market area, including adequate motor vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel [section 3063(d)];

e. The Protestant has failed to prove that the establishment would not increase competition, and failed to prove that the establishment would not be in the public interest [section 3063(e)]; and

f. The City of Duarte will benefit from the establishment of the proposed dealership.

The following decision is respectfully submitted:

The protest is overruled. MMSA is permitted to establish the additional dealership in Duarte.

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

Dated: March 20, 1987

  
GEORGE R. COAN  
Administrative Law Judge  
New Motor Vehicle Board