



New Motor Vehicle Board

In-Site

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MAY 26, 2011

GENERAL BOARD MEETING

The New Motor Vehicle Board (“Board”) held a General meeting on May 26, 2011, in Los Angeles, California. At that meeting, the members considered several case management matters as well as several administrative matters.

Case Management

Shayco, Inc., dba Ontario Volkswagen v. Volkswagen of America, Inc., Protest No. PR-2265-10

Volkswagen sought to establish a new Volkswagen franchise in Montclair, California. Protestant is the only Volkswagen franchise located within the relevant market area of the proposed new dealer. A merits hearing was held before Administrative Law Judge (“ALJ”) Marybelle D. Archibald January 10 through January 14, 2011, and January 18 through January 20, 2011. The Proposed Decision would overrule the protest and allow the establishment. The Public Members remanded the matter by a three-to-one vote to ALJ Archibald to either take additional evidence or briefing on the good cause factor at Vehicle Code section 3063(b), which is the effect on the retail motor vehicle business and the consuming public in the relevant market area; specifically, the 19.4% of sales that Ontario Volkswagen is making in the Montclair RMA. The Proposed Decision after Remand will be considered at the September Board Meeting.

Hanlees Hilltop Nissan v. Nissan North America, Inc., Protest No. PR-2291-11

Protestant filed a Vehicle Code section 3065.1 protest seeking reimbursement for franchisor incentive program claims that were charged back as the result of an audit. Respondent filed a motion to dismiss the protest as untimely. A telephonic hearing was held on April 27, 2011, before Administrative Law Judge Diana Woodward Hagle. By a unanimous vote, the Public Members adopted the Proposed Order which dismissed the protest as untimely.

California New Car Dealers Association v. Chrysler Group, a limited liability company, Petition No. P-458-11

On March 21, 2011, the California New Car Dealers Association (“CNCDA”) filed a Vehicle Code section 3050(c) petition with the Board against Chrysler Group. The CNCDA contends that since May 2008 Chrysler Group has violated Vehicle Code section 11713.3(o), which prohibits a manufacturer from competing with a dealer of the same line-make of vehicle in the relevant market area (10-mile radius) unless certain limited exceptions apply. There are three independently-owned Chrysler dealers that are impacted by Chrysler Group’s operation of La Brea Avenue Motors, Inc., dba Motor Village L.A.

CNCDA contends that Chrysler Group’s violations of Section 11713.3(o) constitute separate grounds for suspension or revocation of its manufacturer license. Each violation is a criminal misdemeanor (VC § 40000.11(a)). Chrysler filed its answer on April 25, 2011. Chrysler denies that it violated the Vehicle Code sections as alleged by the CNCDA.

Petitioner requests that the Board direct DMV to conduct an investigation pursuant to Section 3050(c)(1). Petitioner also requests that the Board order DMV to exercise its authority and power to initiate disciplinary proceedings against the motor vehicle manufacturer license of Chrysler Group, LLC pursuant to Section 3050(c)(3).

Since this petition does not involve a franchisee and franchisor, the Public and Dealer Members considered the relief requested. After lengthy presentations by counsel along with comments from area Chrysler dealers and Chrysler employees, the Board granted the relief requested and referred this matter to the DMV pursuant to Section 3050(c)(1) and (c)(3). The Board requested that the DMV investigation and report be completed in time for its September 27, 2011, General Meeting in Los Angeles. A formal request was sent to DMV on May 31, 2011.

(See May 26, General Meeting, page 2)

Administrative Matters

- The annual review of the Board’s compliance with the 1996 Performance Audit conducted by Business, Transportation & Housing Agency and the resultant Corrective Action Plan along with the consideration of the Board’s delegations were made exception reports. The staff will continue to perform an annual review but only report to the Board if there are changes.

- In light of the Governor’s Executive Order limiting travel, the Board decided not to attend the Recreation Vehicle Industry Association convention in Kentucky, as it is not mission critical. The Board approved travel to the National Association of Motor Vehicle Boards and Commissions Fall Meeting in Reno, Nevada for two Public Members, the Executive Director and the Chief of Staff.

- Although the Board cannot “advertise” its Consumer Mediation Program, it plans to be more proactive with the different agencies it interacts with within State government. Agencies such as the Department of Consumer Affairs, the Department of Motor Vehicles, the California Highway Patrol, and the Arbitration Certification Program, will be requested to have a link to the Board on their websites.

- The Solon C. Soteras Employee Recognition Award was unanimously awarded to Robin Parker, Senior Staff Counsel (see article on page 3).

- The semi-annual discussion of the methods for determining Board fees has been made an annual report. It has been determined that the fees are not a tax.

- Through the third quarter of fiscal year 2010-2011,

the Board expended 54% of its appropriated budget and expended only 34% of its budget for operating expenses.

- The Board’s budget of \$1.645 million for fiscal year 2011-2012 was adopted.

- After the March 30, 2011, Industry Roundtable, the questionnaires were reviewed and a number of good topics were suggested for next year. The negative comments dealt with the room and that the PowerPoint presentations were difficult to read.

- Bill Brennan, Executive Director, reported that that he is involved in identifying and recruiting additional administrative law judges in light of ALJ Archibald’s resignation. He also commented on the success of the recent ALJ Roundtable (see following article).

The following meetings were tentatively scheduled for the second half of 2011: September 29, 2011, General Meeting, in Los Angeles (this date was subsequently changed to September 27); and December 7, 2011, General Meeting, Sacramento.

**ADMINISTRATIVE LAW JUDGE
ROUNDTABLE**

The Board held a half-day Administrative Law Judge (ALJ) Roundtable on May 4, 2011. Robin Parker, Senior Staff Counsel, lead the discussion, as follows:

The assignment of Board ALJs to settlement conferences and merits hearings along with law and motion assignments in the event ALJ Skrocki is unavailable;

(See ALJ Roundtable, page 3)



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(ALJ Roundtable, cont'd from page 2)

Whether to make corrections to court reporter transcripts for law and motion hearings or merits hearings;

The steps taken to ensure ALJs are consulted when counsel request continuances after the order of time and place of hearing is issued; and

Overview of the recently promulgated regulatory amendments that provide clarity and consistency in addition to filling a number of case management gaps in the Board's procedures.

After a short lunch break, Robin discussed the nuts and bolts of Board hearing practice on the following topics:

Courtroom basics - exhibits, witnesses, and court reporters;

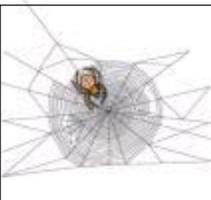
Do's and don'ts during a merits hearing and drafting a proposed decision;

Application of the Administrative Procedure Act - limited use of hearsay, scope of cross-examination and redirect, foundation, official notice, expert qualification and testimony;

Who is a "franchisee", a "dealer principal" and a "dealer"? What is the significance of the differences? and,

Time period to use for the "good cause factors" - when the notice was issued or when the matter was heard?

The Roundtable was well-received by the ALJs.



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EMPLOYEE RECOGNITION AWARD

Each year, the Board recognizes a member of the staff for his or her outstanding performance with the Sol Soteras Employee Recognition Award. At its May 26, 2011, General meeting, the Board considered and unanimously approved the Development Committee's recommendation that Robin Parker receive the award.

Robin is recognized for her exceptional legal knowledge related to Board operations, her effectiveness in answering questions regarding the civil and vehicle code, her ability to manage and complete projects effectively, her meticulous work habits, and her positive attitude in working with and helping her co-workers.

In addition to the above, Robin recently assisted with the 2011 Industry/Attorney Roundtable that was held at the Secretary of State Office in Sacramento. This event is held to educate the members of the Board on industry-related issues and to provide them with an opportunity to interface with dealer and factory personnel; to educate attorneys that regularly appear before the Board or who would like to appear before the Board on procedures and laws relating to the Board; and to educate manufacturer and distributor counsel or employees who appear before the board or prepare statutorily required notices sent to the Board and the impacted dealers. Several topics of interest were presented, and were well received by all attendees. In summary, her outstanding performance has contributed greatly to the Board's operations.

Robin has also done an exceptional job in quickly cross-training the Board's new Staff Counsel, Dana Winterrowd, and is bringing him up to speed on all aspects of the Board's Legal Program.

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UPCOMING NAMVBC EVENT

NATIONAL ASSOCIATION OF MOTOR VEHICLE BOARDS AND COMMISSIONS

Fall Workshop October 12-16, 2011

Eldorado Hotel Casino

Reno, NV

For more information, please contact
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