



# NEW MOTOR VEHICLE BOARD

## CATEGORIES OF DISPUTE RESOLUTION

TYPE OF CASE FILED	EXAMPLES
<p><b><u>PROTEST</u></b>            A new motor vehicle dealer (includes motorcycle and recreational vehicle) can protest an action by a vehicle manufacturer related to:</p>	
<p><b>1. Franchise termination;</b>            (Vehicle Code §§ 3060 and 3070)</p> <p><b>2. Franchise modification;</b>            (Vehicle Code §§ 3060 and 3070)</p> <p><b>3. Establishment</b> of a new dealership, or <b>relocation</b> of an existing dealership, where there is already an existing dealership of the same line-make within the “relevant market area” (that area within a radius of 10 miles of the proposed location); (Vehicle Code §§ 3062 and 3072)</p> <p><b>4. Establishment or relocation of a satellite warranty facility</b> (no vehicle sales) within 2 miles of any dealership of the same line-make (not applicable to recreational vehicles); (Vehicle Code § 3062)</p> <p><b>5. Delivery and preparation</b> obligations and compensation; (Vehicle Code §§ 3064 and 3074)</p> <p><b>6. Warranty Reimbursement,</b> Reimbursement for warranty work performed by the dealer; (Vehicle Code §§ 3065 and 3075) and,</p> <p><b>7. Franchisor Incentive Program,</b> Reimbursement for franchisor incentive programs, i.e., dealer incentives. (Vehicle Code §§ 3065.1 and 3076)</p>	<p><b>1. Franchise Termination</b>            Franchisee protests a franchisor’s attempt to terminate its franchise agreement for alleged violations of the agreement. Examples include: failure to conduct its customary sales and service operations during its customary hours of business for seven (7) consecutive business days; failure to maintain adequate wholesale flooring (credit); inability to consistently meet sales performance and/or customer satisfaction objectives; relocating to another facility without permission; or adding another line-make of motor vehicle without factory permission.</p> <p><b>2. Franchise Modification</b>            Franchisee protests a franchisor’s attempt to modify or replace its franchise agreement. The dealer must show that the modification or replacement would substantially affect the dealer’s sales or service obligations or investment.</p> <p><b>3. Establishment or Relocation</b>            Franchisee may protest an attempt to add a new dealership or relocate an existing dealer, if franchisee is a dealer of the same line-make and is located within the relevant market area</p> <p><b>4. Establishment or Relocation of a Satellite Warranty Facility</b>            Franchisee protests a franchisor’s attempt to add a new satellite warranty facility or relocate an existing satellite warranty facility within 2 miles of any dealership of the same line-make.</p> <p><b>5. Delivery and Preparation Obligations</b>            Franchisee protests the reasonableness of a franchisor’s delivery and preparation obligations.</p> <p><b>6. Warranty Reimbursement</b>            Franchisee protests the reasonableness of a franchisor’s warranty reimbursement schedule or formula or that resulting chargebacks from a factory conducted warranty audit were not justified.</p> <p><b>7. Franchisor Incentive Program</b>            Franchisee protests the franchisor’s disapproval of claims under a franchisor incentive program; dealer contends that resulting chargebacks from a factory conducted audit were not justified.</p>

TYPE OF CASE FILED	EXAMPLES
<p><b><u>PETITION</u></b>  Any person including a consumer, dealer, manufacturer, or distributor may petition the Board to consider the activities or practices of any person licensed as a new motor vehicle dealer, manufacturer, or distributor.</p>	<p>Historically, a petition was filed by a dealer against a manufacturer or distributor seeking relief under Vehicle Code section 3050(c)(2) for alleged violations listed in Vehicle Code section 11713.3. The matter was first considered by the Board, and if accepted for purposes of jurisdiction, was assigned to an administrative law judge for hearing.</p> <p>Typical allegations included a manufacturer's or distributor's unreasonable refusal to consent to a proposed buy-sell (transfer of ownership) of a dealer's franchise, a manufacturer or distributor competing with an independent dealer of the same line-make within the relevant market area, and discrimination in allocation of products.</p> <p>The decision in <i>Mazda Motor of America, Inc. v. California New Motor Vehicle Board; David J. Phillips Buick-Pontiac, Inc., Real Party in Interest</i> (2003) 110 Cal.App.4<sup>th</sup> 1451 held that the Board lacks jurisdiction in all licensee (dealer, manufacturer, or distributor) versus licensee (dealer, manufacturer, or distributor) petitions in which the petitioner seeks relief under Vehicle Code section 3050, subdivision (c)(2), i.e. adjudication.</p> <p>The Board's jurisdiction for licensee versus licensee petitions is limited to the relief sought under Vehicle Code section 3050, subdivision (c)(1) or (3). Subdivision (c)(1) allows the Board to direct the Department of Motor Vehicles to conduct an investigation of matters that the Board deems reasonable. Subdivision (c)(3) permits the Board to order the Department of Motor Vehicles to "exercise any and all authority or power that the department may have with respect to the issuance, renewal, refusal to renew, suspension, or revocation" of the occupational license of a manufacturer or distributor.</p>
<p><b><u>APPEAL</u></b>  A new motor vehicle dealer, manufacturer, or distributor can file an appeal with the Board after any final decision of the Director of the Department of Motor Vehicles ("DMV") that adversely affects the occupational license of the appellant, such as the suspension or revocation of the license.</p>	<p>Allegations of wrongdoing on the part of a dealer, manufacturer, or distributor may result in an investigation by DMV. If warranted, an Accusation is then filed against the licensee. The Office of Administrative Hearings ("OAH") then presides over a quasi-judicial hearing and renders a proposed decision. The proposed decision is then considered by the DMV Director who ultimately issues a final decision. Once the final decision is issued, the licensee can appeal that decision to the Board.</p>