

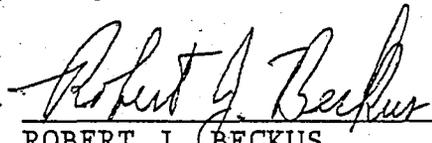


of Respondent's Regional Management, Petitioner would have been awarded the compensatory damages proved. Furthermore, the fact that the misrepresentations were made by Respondent's Regional Management as opposed to Respondent's National Management would in no way limit or absolve Respondent of liability in this regard.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 2nd day of July, 1991.

By

  
ROBERT J. BECKUS  
Board Member  
New Motor Vehicle Board

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

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Petition of	)	
VOLKSWAGEN SANTA MONICA, INC.	)	Petition Number P-199-90
dba HYUNDAI SANTA MONICA,	)	
	)	
Petitioner,	)	
	)	
vs.	)	<u>PROPOSED DECISION</u>
	)	
HYUNDAI MOTOR AMERICA,	)	
	)	
Respondent.	)	

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PROCEDURAL BACKGROUND

1. This petition was filed with the New Motor Vehicle Board ("Board") on February 5, 1990 pursuant to the provisions of Vehicle Code Section 3050(c). Petitioner, Volkswagen Santa Monica, Inc., which had been doing business as Hyundai Santa Monica ("Petitioner"), is a licensed new motor vehicle dealer located at 2440 Santa Monica Boulevard, Santa Monica, California. Respondent, Hyundai Motor America ("Hyundai Motor"), is a licensed distributor with a mailing address of P.O. Box 20850, Fountain Valley, California, 92728-0850.

2. After consideration of the allegations of the petition, the Board referred the matter to an administrative law judge for a hearing on the issues raised in the petition.

3. Counsel for the parties originally stipulated to a hearing commencing on August 27, 1990 but subsequently stipulated to continuances of the hearing to October 8, 1990, December 3, 1990 and eventually February 4, 1991.

4. The hearing was held before George R. Coan, Administrative Law Judge for the Board, on February 4, 5 and 6, 1991 in Sacramento, California.

5. Petitioner was represented by Gregg A. Eichler of Masty & Vititoe, 11827 Ventura Boulevard, Studio City, California.

6. Hyundai Motor was represented by Eric J. Emanuel of Quinn, Emanuel & Urquhart, 655 South Hope Street, Los Angeles, California, and by Maurice Sanchez of Hyundai Motor, 10550 Talbert Avenue, Fountain Valley, California.

#### ISSUES PRESENTED

7. The issues raised in the petition, as narrowed at the hearing, are as follows:

- (a) Did Hyundai Motor's conduct in dealing with the proposal by Petitioner to relocate its Hyundai showroom to dual with its Volkswagen facility constitute intentional or negligent misrepresentation?
- (b) Did Hyundai Motor's approval and subsequent revocation of permission for Petitioner to relocate and to dual constitute a breach of contract?
- (c) Did Petitioner sustain damages as a result of Hyundai Motor's actions?
- (d) Does the Board possess the authority to award compensatory damages?

## FINDINGS OF FACT

### A. General Findings of Fact.

8. In 1986, Petitioner became a Hyundai Dealer in Santa Monica, California. At the time, Petitioner had a Volkswagen dealership located on an adjoining parcel of property on Santa Monica Boulevard. The terms of the Hyundai franchise required Petitioner to provide a separate, stand-alone facility for the sale of Hyundai automobiles. Petitioner built such a facility separate from its Volkswagen dealership.

9. In 1986 and 1987, Petitioner sold an average of 115 to 120 Hyundai vehicles per month. In 1988, sales of Hyundai vehicles both nationally and in California declined dramatically. During 1988, Petitioner lost approximately \$171,000. From January to June of 1989, sales continued to decline and Petitioner lost an additional \$216,804 during this period.

10. In 1988, Petitioner sought to become the Lexus dealer in Santa Monica. Lexus also requires that its dealers provide a separate showroom devoted exclusively to the sale of Lexus automobiles. The only separate facility available to Petitioner to devote to Lexus was the existing Hyundai building.

11. Hyundai Motor has had a long-standing policy against allowing its dealers to dual with other line-makes. Petitioner has been aware of this policy since the time that it acquired the Hyundai franchise in 1986.

12. In December of 1988, Petitioner began to negotiate with Hyundai Motor for permission to dual with Volkswagen in order to free space for the proposed Lexus point. These negotiations

were conducted irrespective of Petitioner's knowledge of Hyundai Motor's policy against dualing.

13. Part of these negotiations involved the preparation and submission by Petitioner of detailed architectural plans for the joint Hyundai/Volkswagen facility. Preparation of these plans was conducted with the assistance of the regional managers of Hyundai Motor's who made suggestions as to how to convince the corporate officers of Hyundai Motor to change its policy concerning dualing. The plan were eventually submitted to the National Management of Hyundai Motor for approval.

14. On May 9, 1989, the Regional Management of Hyundai Motor mistakenly informed Petitioner that National Management had approved the proposal for dualing subject to specified conditions. This approval was conditioned upon the construction of a wall between the Volkswagen and Hyundai showrooms, as well as the execution by Petitioner of a new Hyundai franchise in which the parties stipulate that Petitioner's Hyundai and Volkswagen operations would be dualled for a period which did not exceed two (2) years.

15. Petitioner immediately began construction work on the dual Hyundai/Volkswagen facility in accordance with the plans submitted to Hyundai Motor. Petitioner also began renovation work, in accordance with specifications of Lexus, on the showroom which had until that time been used exclusively for the sale of Hyundai vehicles.

16. On May 31, 1989, Hyundai Motor notified Petitioner that its regional office had been in error and that permission to dual was denied.

17. Faced with the urgent need to move Hyundai out of its separate showroom so that Lexus could move in, Petitioner continued to complete the Hyundai/Volkswagen dual facility. Upon its completion, all Hyundai sales operations were moved into the Volkswagen facility. Hyundai Motor was aware of this relocation to the dual facility, but continued to deliver vehicles and parts to Petitioner.

18. Petitioner continued in its efforts to convince Hyundai Motor to approve their dualing. When these efforts proved to be of no avail, Petitioner demanded that Hyundai Motor compensate it for damages incurred during the five-month period of negotiations. Petitioner also requested that Hyundai Motor compensate it for certain costs it had incurred in the renovation of the Hyundai facility for use as a Lexus dealership.

19. By letter dated September 21, 1989, Hyundai Motor agreed to enter into a new franchise with Petitioner which provided for permission for the dual facility on the condition that the parties sign mutual releases absolving each other of liability for any damages which had been incurred as a result of the negotiations between the parties concerning this issue.

20. On October 9, 1989 Petitioner voluntarily terminated its Hyundai franchise. Thereafter, Petitioner re-converted the dual facility to an exclusive showroom devoted to the sale of Volkswagen vehicles. This resulted in a showroom which is approximately twice the size of the original Volkswagen stand-alone showroom. Volkswagen of America, Inc. paid Petitioner \$70,000 for this conversion. In return, Petitioner

agreed not to dual at the Volkswagen site for for a minimum period of two years.

21. On February 5, 1990, the instant petition was filed with the Board. By this action, Petitioner seeks to recover from Hyundai Motor its net operating loss of \$216,804 which it incurred during the period from January through June of 1989. Petitioner contents that is in entitled to recover these damages on the theory that Petitioner would have voluntarily terminated its Hyundai operations in January of 1989 if it had not relied upon Hyundai Motor's assertions that the dualing proposal would be accepted. Petitioner also seeks damages in the amount of \$103,862.78 which was allegedly spent to create a dual facility in alleged reliance on Hyundai Motor's misrepresentation regarding approval for such facility.

B. Findings of Fact Pertaining to Issue of Intentional or Negligent Misrepresentation.

For period January 1989 through June 1989.

22. Petitioner claims that it would have voluntarily terminated its Hyundai franchise in January of 1989 but for Hyundai Motor's "bad faith" vacillation of Petitioner's request to to approve the dual situation. However, it was not until May 9, 1989 that the Regional Management of Hyundai Motor mistakenly communicated the approval of National Management to Petitioner. There was no evidence submitted which would support a determination that anything was said or done by Hyundai Motor prior to May 9, 1989 which would have caused Petitioner to

reasonably assume that the requisite permission for the dual situation had been granted.

23. The evidence established that Petitioner knew since it acquired the franchise in 1986 that Hyundai Motor's policy was not to permit dualing. Petitioner made a decision to keep the franchise while it tried to convince Hyundai Motor to approve its request to dual with Volkswagen. During the period of negotiations, Petitioner knew that such a change in policy had to be made by Hyundai Motor's National Management.

24. Petitioner made a business judgement to retain the franchise despite the financial losses incurred while they attempted to convince Hyundai Motor to change its policy on dualing. There was no evidence presented to support a determination that anything was said or done by representatives of Hyundai Motor which affected that decision.

For period after receiving approval to dual on May 9, 1989.

25. Because of time pressures to move Lexus into the Hyundai facility, Petitioner started renovation work on both facilities immediately after receiving the mistaken approval from Hyundai Motor on May 9, 1989.

26. On May 31, 1989, twenty-two days later, Petitioner was notified that dual situation had not been approved. Irrespective of the May 31 notification, Petitioner decided to complete the dual facility rather than to stop construction. After construction of the dual facility had been completed, Petitioner proceeded to relocate the Hyundai sales operations

into the dual facility and continue to operate as a Hyundai dealer for several additional months.

27. On September 21, 1989 Hyundai Motor offered to enter into a new franchise with Petitioner which permitted Petitioner to dual its Hyundai and Volkswagen operations subject to certain specified conditions. However, on October 9, 1989, Petitioner notified Hyundai Motor of its decision to voluntarily terminate its Hyundai franchise, which constituted a business decision made solely by Petitioner. Any loss incurred by Petitioner was a result of its own business judgment.

28. There was no evidence presented which would support a determination that Hyundai Motor's Regional Management made intentional misrepresentations to Petitioner to induce Petitioner to act to its detriment.

C. Findings of Fact Pertaining to Issue of Breach of Contract.

29. Petitioner has alleged that Hyundai Motor's mistaken approval of the proposed dualing situation constituted a contract. It is Petitioner's further contention that the subsequent revocation of permission for Petitioner to relocate constitutes a breach of this contract for which Hyundai Motor should be held liable. As discussed herein under the issue of damages, it is unnecessary to address either of these issues in this decision.

D. Findings of Fact Pertaining to Issue of Damages.

30. The record of the instant proceedings is devoid of an accurate accounting of damages allegedly incurred by Petitioner.

Except for the cost of obtaining a building permit, (\$560.00), the evidence as to the amount of damages claimed by Petitioner is so unreliable and confused that the costs incurred building the dual facility cannot be determined with certainty. Furthermore, with respect to the cost of obtaining the building permit, Petitioner utilized this permit for the construction and subsequent use of the facility as a Hyundai/Volkswagen showroom, and subsequently a Volkswagen exclusive showroom. As such, Petitioner received the benefit of the bargain and did not sustain any damage accordingly.

31. The confusion over the damages allegedly sustained by Petitioner was created by Petitioner's own books and records, which Petitioner was unable to clarify at the hearing.

32. Lacking a determination of a sum certain, no damages are properly awardable, even if a finding of liability on the part of Hyundai Motor could be supported.

E. Findings of Fact Pertaining to Issue the Board's Authority to Award Compensatory Damages.

33. In light of the foregoing findings of fact with respect to the issue of damages, it is unnecessary to address the issue of the Board's authority to award compensatory damages.

DETERMINATION OF ISSUES

1. Petitioner has failed to establish that Hyundai Motor's conduct constituted an intentional or negligent misrepresentation.

2. It is unnecessary to address the issue of whether Hyundai Motors is liable to Petitioner under a theory of breach of contract.

3. Petitioner has failed to establish that it suffered any injury or damages by reason of any acts or omission of Hyundai Motors.

4. It is unnecessary to address the issue of the Board's authority to award compensatory damages.

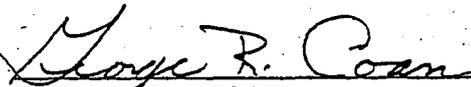
PROPOSED DECISION

THEREFORE, the proposed decision is respectfully submitted:

1. 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: June 10, 1991



GEORGE R. COAN  
Administrative Law Judge  
New Motor Vehicle Board