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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of)
PERSON OLDSMOBILE,) Protest No. PR-1158-90
Protestant,)
vs.)
OLDSMOBILE MOTOR DIVISION,)
GENERAL MOTORS CORPORATION,)
Respondent.)

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 21st day of September, 1990.


MANNING J. POST
Vice-President
New Motor Vehicle Board

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PERSON OLDSMOBILE,) Protest No. PR-1158-90
Protestant,)
vs.) PROPOSED DECISION
OLDSMOBILE MOTOR DIVISION,)
GENERAL MOTORS CORPORATION,)
Respondent.)

PROCEDURAL BACKGROUND

1. By separate letters dated March 9, 1990, Oldsmobile Motor Division, General Motors Corporation ("Oldsmobile"), 515 Marin Street, Suite 224, Post Office Box 5070, Thousand Oaks, California, gave notice pursuant to California Vehicle Code section 3062^{1/} to Crown Oldsmobile, Inc., 1253 E. Colorado, Pasadena, California and Person Oldsmobile, 2525 E. Workman Ave., West Covina, California ("Person Oldsmobile"), of Oldsmobile's intention to establish Oldsmobile representation

1/ All statutory references at to the California Vehicle Code unless otherwise indicated.

on a dual basis with Chevrolet at 805 Central, Monrovia, California. The notices were received by the New Motor Vehicle Board ("Board") on March 12, 1990.

2. On March 23, 1990, Person Oldsmobile filed a protest. On May 21, 1990, Person filed a petition against Oldsmobile, pursuant to the provisions of section 3050(c), alleging inter alia, fraud in the inducement to enter into the franchise which exists between Oldsmobile and Person Oldsmobile. The Petition and Protest were not consolidated.

3. The hearing was held before Michael M. Sieving, Administrative Law Judge and Assistant Executive Secretary of the Board, on May 30 and 31, and June 1, 5 and 6, 1990, at Sacramento, California.

4. Oldsmobile was represented by Wallace M. Allan, Esq., O'Melveny & Meyers, 400 South Hope Street, Los Angeles, California, 90071-2899 and L. Joseph Lines, III, Esq., General Motors Corporate Staff, New Center One Building, 3031 West Grand Boulevard, P.O. Box 33122, Detroit, Michigan, 48232.

5. Person Oldsmobile was represented by Michael Miller, Esq., Pilot, Spar & Siegler, Suite 1120, 1801 Avenue of the Stars, Los Angeles, California 90067.

ISSUES PRESENTED

6. Person Oldsmobile alleges that good cause exists for not permitting the establishment of the proposed dealership in Monrovia, California for the following reasons. 2/

a. Protestant's investments are permanent, and will be adversely affected. {Section 3063(a)};

b. Such establishment will have an adverse effect on the retail motor vehicle business and the consuming public in the relevant market area ("RMA"). 3/ {Section 3063(b)};

c. Such establishment will be injurious to the public welfare. {Section 3063(c)};

d. The current Oldsmobile franchisees in the relevant market area are providing adequate competition and convenient consumer care for the owners of Oldsmobile vehicles in the market area, including adequate motor vehicle parts, and qualified service personnel. {Section 3063(d)}; and

e. Such establishment will not increase competition and therefore will not be in the public interest. {Section 3063(e)}

2/ Section 3066 provides that Protestant has the burden of proving that there is good cause not to enter a franchise establishing an additional dealership.

3/ Section 507 defines "relevant market area" as an area within a radius of 10 miles from the site of a potential new dealership.

FINDINGS OF FACT

Facts Relating To the Permanency Of The Investment

{Section 3063(a)}

7. On February 27, 1989, Warren Person purchased the stock of the dealership for \$704,102 from Mandy Williams and his wife, Lee. In addition, Mr. Person paid \$441,823 for a covenant not to compete and entered into a consultation agreement with Mandy Williams for \$5,000 per month for 60 months and agreed to provide Mr. Williams with a demonstrator vehicle. Mr. Person's living trust is the present and 100% shareholder of Person Oldsmobile. Warren Person was appointed the dealer principal on May 10, 1989. Mr. Person has operated another business know as Person Ford since 1981.

8. Person Oldsmobile has total assets of \$2,156,916. Of this, \$1,977,916 consists of liquid assets. The remainder, \$179,000, of the total assets, are less liquid. Person Oldsmobile has total liabilities of \$1,571,972. Of that amount, \$1,324,287 are notes payable on new and demonstrator vehicles. Thus, if Person Oldsmobile were liquidated, the Person Trust could expect to receive a net surplus of assets of over \$400,000.

9. Long-term liabilities of Person Oldsmobile currently total \$272,861. The long-term debt figure, however, represents primarily a promissory note between Mandy Williams Oldsmobile (now Person Oldsmobile) and Person Ford for the loan used to pay Mandy Williams for the covenant not to compete. At the time of the purchase by Person Oldsmobile,

the net assets, which consisted primarily of the inventory of new vehicles held by Mandy Williams Oldsmobile, were substantially understated due to Mr. Williams' LIFO (Last in First Out) accounting method. Mr. Person paid Mr. Williams \$441,823 in the form of a covenant not to compete, which was intended to compensate Mr. Williams for the difference between the true value of those new vehicles and the stated value. Of the amount borrowed by Person Oldsmobile from Person Ford to pay Mr. Williams, approximately \$190,000 has been repaid.

10. The permanent investment by Mr. Person in Person Oldsmobile is approximately \$179,000, or 8.3% of the total assets of the dealership.

11. The proposed dealership site is being purchased from the City of Monrovia Community Redevelopment Agency, the developer of the Monrovia Automobile Mall.

12. It is proposed that the new dealership be a dual Chevrolet/Oldsmobile dealership to be owned by Price Gledhill ("Gleadhill") and Charles Tachdjian ("Tachdjian"). In 1989, Gledhill expressed an interest in dualing with Oldsmobile and moving his store to the 210 Freeway. Oldsmobile originally was interested in relocating Crown Oldsmobile from Pasadena to Monrovia, but subsequently decided that it should support a store in both Pasadena and Monrovia. In August 1989, Gledhill and Tachdjian agreed to the dual dealership that is the subject of this protest.

13. Gledhill is the operator of Price Chevrolet. Gledhill plans to dual with Oldsmobile at the proposed site.

Tachdjian is the operator of Crown Oldsmobile in Pasadena. Tachdjian plans to dual the proposed dealership with Chevrolet. Gledhill and Tachdjian plan to develop the dual dealership at the Monrovia site, building a new facility with 44 service bays. The proposed dual facility will have separate showrooms, sales, and management staffs for Chevrolet and Oldsmobile, but will have joint service and parts departments. The proposed facility will have visibility from the 210 freeway.

Facts Pertaining To The Effect
On the Retail Motor Vehicle
Business and The Consuming Public
In The Relevant Market Area
{Section 3063(b)}

14. As is customary with all General Motors' divisions, Oldsmobile has divided the Los Angeles/Pasadena/Ontario Number 5 Multiple Dealer Area ("MDA") into Areas of Geographic Sales and Service Advantage ("AGSSA"). An AGSSA is made up of a number of census tracts or geographic areas which are closer and more convenient to the dealer in that AGSSA than other dealers of the same line-make. Each dealer or proposed dealer point in the MDA is assigned its own AGSSA. Person Oldsmobile is in the West Covina AGSSA number 7. Crown Oldsmobile is in the Pasadena AGSSA, and is the only other dealer in the RMA. The proposed dealership would be assigned the Monrovia AGSSA Number 17. The Monrovia AGSSA would be carved out of the Pasadena AGSSA and West Covina AGSSA and a small part of the Alhambra open point AGSSA.

15. Person Oldsmobile is losing money monthly, even though Person Oldsmobile has increased its rank in Oldsmobile's top 21 volume dealers' list in the Los Angeles Zone from a position somewhere below 21 to number 11. Mandy Williams' sales effectiveness had evidently steadily declined for several years prior to its sale. Mandy Williams had been number 18 on the list at the time of sale of the dealership to Mr. Person. The first month Mr. Person operated the dealership, Person Oldsmobile had dropped off the list altogether. Mr. Person concedes that Oldsmobile is losing money generally in the MDA as well as in the Los Angeles Zone. Person attributes this to a depressed market and the large number of imports being marketed in the area.

16. There are four major automobile shopping area in the RMA -- Alhambra, Pasadena, Monrovia and Covina/West Covina. There are also three minor shopping area in the RMA -- El Monte, Glendora and La Puente. Currently, without the proposed new dealer, Oldsmobile is represented in only two of these distinct shopping area, specifically the Pasadena and Covina/West Covina areas.

17. The site of the proposed dealership is an automobile mall in Monrovia. Person is located in the Covina/West Covina automobile shopping area. Currently there are 12 automobile makes which are located in both the West Covina/Covina area and in the Monrovia automobile mall, including Ford, Buick, Acura, Chevrolet, Honda, Pontiac, Lincoln, Mercury, Hyundai, Toyota, Mitsubishi and Mazda.

18. In 1989, Oldsmobile's nationwide penetration for new vehicle sales was 6.36%. In the Monrovia area, Oldsmobile sold 2.22% (or 22 per thousand) of the new vehicles sold in 1989. In AGSSA 17, the area where Oldsmobile proposes to add a dealership, Oldsmobile's penetration was only 1.78%.

19. Some automobile markets are different from the national market in that consumers in a local market may prefer vehicles of a different size, price or type than consumers on national average. To assess accurately the adequacy of a dealer network in a local market, it is necessary to establish a reasonable standard for retail penetration against which to measure the area in question.

20. To determine a reasonable standard to measure the performance of a particular line-make's dealer network in a given market, it is appropriate to analyze that market by product group or segment. The five standard categories which may be used for this evaluation are sub-compact cars, compact cars, mid-size cars, regular and high group cars.

21. When performing a segmentation analysis, it is necessary to adjust the expected penetration of the subject area to account for the unique consumer preferences present in the area. When this analysis is performed based on 1989 data for the RMA and AGSSA 17, the expected penetration is adjusted to 4.91% for the RMA and to 4.73% for AGSSA 17. Oldsmobile's national average penetration is 6.36%. In 1989, the actual penetration achieved by Oldsmobile in the RMA was 2.22%.

During the same year, Oldsmobile penetration in AGSSA 17 was 1.78%.

22. Expected penetration as calculated by Oldsmobile for AGSSA and the RMA are approximately 74.5% and 77.2% respectively of Oldsmobile's national penetration. The national average includes all of the adequately represented markets as well as the inadequately represented markets. If markets known to be inadequately represented were excluded, the standard of national average would be higher.

23. Both the RMA and AGSSA 17 are achieving penetration levels for Oldsmobile far below the California state average. In 1989, the California average penetration for Oldsmobile was 3.1%, whereas penetration was 2.2% for the RMA and 1.78% for AGSSA 17 during the same year. Thus, the AGSSA 17 penetration rate was only 58% of the California average for 1989. Accordingly, even if judged solely against the California average, Oldsmobile penetration levels and representation in AGSSA 17 are inadequate.

24. Oldsmobile's penetration in AGSSA 17 is not only significantly worse than both the MDA and RMA averages, it is worse than all but two of Oldsmobile's 110 California market areas.

25. Oldsmobile's penetration in AGSSA 17 is the worst of all of the AGSSAs which make up the Pasadena-Ontario MDA. Oldsmobile's penetration in AGSSA 17 is only 72% of the MDA average without AGSSA 17, even considering the fact that the MDA average is extremely poor. Furthermore, Oldsmobile's

actual penetration in AGSSA 17 has lagged behind expected penetration for AGSSA 17 since at least 1986. It is also significant to note that actual penetration, as a percent of expected penetration, has decreased substantially since 1986.

26. Oldsmobile's sales performance in AGSSA 17 is below the Oldsmobile national average, the expected penetration yielded by segmentation analysis, the California average, the MDA average and the RMA average. Accordingly, based on any of these standards, AGSSA 17 is receiving inadequate representation for the Oldsmobile brand.

27. Oldsmobile's poor performance in AGSSA 17 is not due to age or income factors, but rather is due to the absence of a dealer.

28. One method of determining customer convenience for a particular line-make is to consider the average distance to the nearest dealer of that line-make. Using this method of determining customer convenience, and considering the fact that Oldsmobile currently is not represented in AGSSA 17, it is found that twenty-three (23) automobile brands offer greater customer convenience than Oldsmobile to customers in AGSSA 17. Currently, the average distance for customers to travel to an Oldsmobile dealer is 6.0 miles. With the proposed dealer, the average distance for Oldsmobile will improve to 3.3 miles, approximately a 50% improvement in customer convenience.

29. Population is generally distributed in a high and uniformly dense pattern throughout most of the RMA and

principally around the existing and proposed dealers. Population growth in the RMA, measured in terms of both households and total population, has been substantial between 1970 and 1989 and is projected to increase further:

<u>Year</u>	<u>Households</u>	<u>Total Population</u>	<u>Population 16 and Over</u>
1970	329,145	1,033,920	709,625
1980	374,547	1,110,051	824,621
1989	443,545	1,328,631	993,544
1994	480,574	1,456,001	1,097,953

(Projected)

30. Population growth in AGSSA 17 has been equally strong.

<u>Year</u>	<u>Households</u>	<u>Total Population</u>	<u>Population 16 and Over</u>
1970	74,220	234,918	159,559
1980	80,483	246,074	177,386
1989	97,667	302,685	215,337
1994	106,916	335,502	239,889

(Projected)

31. Average household income in the RMA and in AGSSA 17 is high, and is well-suited to Oldsmobile.

32. Protestant contends that AGSSA 17 is an inappropriate place to sell Oldsmobiles because the per capita average income figures for AGSSA 17 are too low to support an Oldsmobile dealership. This contention is refuted by the substantial number of households in AGSSA 17 whose average household income exceeds \$40,000.00. Moreover, a number of

high-end makes, such as BMW, Acura, Buick and Lincoln-Mercury, are located in Monrovia.

33. The growth in employment in Los Angeles County has increased from 3,794,000 in 1980 to 4,173,100 in 1989.

34. The number of total industry retail registrations in the RMA has grown from 31,430 in 1982 to 42,648 in 1989. The area simply has grown too large for a two-dealer network to serve.

35. Between 1982 and 1989, new car registrations in AGSSA 17 and the RMA grew by an average annual rate of 5.7% and 4.5% respectively, greatly exceeding the national average growth rate of approximately 1%.

36. Oldsmobile has only .06% of its national dealer network in the RMA. This percentage is smaller than 26 other line-makes. Moreover, no line-make has a smaller percentage of its national dealer network in the RMA than does Oldsmobile.

37. Population, households, and retail registrations in the RMA all constitute approximately .5% of the national totals, as do the number of import dealers in the RMA. Yet Oldsmobile dealers in the RMA constitute only .06% of the national total.

38. The absence of an Oldsmobile dealer in AGSSA 17 is an important reason why Oldsmobile's market penetration in that AGSSA is well below the other AGSSAs in the Pasadena/Ontario MDA. Because of the size of the market and the tremendous growth experienced over the past two decades, the market has grown to a point where two dealers are no

longer adequate to serve the area. Protestant is too far from AGSSA 17 to service it adequately.

39. The addition of the proposed dealer is likely to stimulate the market for Oldsmobiles in the Los Angeles/Pasadena/Ontario MDA. Of Oldsmobile buyers, 65.7% have shopped at other dealerships for other brands prior to purchasing an Oldsmobile. The location of the proposed dealer will make comparison shopping convenient and will stimulate competition for sales from other nearby dealers of competitive makes. In addition, the proposed dealer is likely to increase sales for all Oldsmobile dealers. Of Oldsmobile buyers, 58% have shopped at more than one Oldsmobile dealer prior to purchasing an Oldsmobile. Oldsmobile buyers may gain their first exposure to Oldsmobile at the proposed dealer, yet may make their actual purchase at Protestant's dealerships. So long as Person Oldsmobile remains a quality dealer offering competitive prices and service, it will have the opportunity of maintaining or increasing sales after the proposed dealer opens for business.

40. The optimal location for an Oldsmobile dealership in the RMA, in terms of maximizing customer convenience for all customers in the RMA, is located in AGSSA 17 at a point near the proposed location. Moreover, other factors such as availability of land, freeway accessibility, proximity to competitors, and presence within an auto mall favor the proposed location as an optimal point.

41. In those portions of the RMA where Oldsmobile failed in 1989 to achieve an expected market penetration of 4.91%, a total of 1,159 lost Oldsmobile sales resulted. This represents lost opportunity available to all Pasadena/Ontario Oldsmobile dealers as well as the to Oldsmobile brand.

42. In 1989, 372 Oldsmobiles were sold in the RMA by dealers outside the 10-mile area. Thus, the total lost opportunity for the RMA dealers is 1,159 lost sales plus the "insell" registrations of 372, or 1,531 total Oldsmobile sales.

43. If the proposed dealer achieves market penetration at the level achieved by the average dealer, its retail sales would be 221. Since the total lost opportunity for the existing dealers is 1,531 sales, there would still be lost opportunity of 1,310 sales. Thus, there will be more than ample opportunity for the two Oldsmobile dealers currently in the RMA, including Person Oldsmobile, to increase their sales even if the proposed dealer were established, if they choose to compete for that business.

44. The average gross profit enjoyed by Person Oldsmobile per new unit sold is substantially above the national average. Because one of the most important reasons that customers choose not to buy at a particular dealership is high price, Person Oldsmobile has the opportunity to attract additional sales by offering more competitive prices.

Facts Pertaining To The Injury To Public Welfare
{Section 3063(c)}

45. The establishment of the proposed dealer will give Oldsmobile representation in the Monrovia auto mall where numerous other brands presently have representation. This will enhance customer convenience by facilitating comparison shopping in a centralized area.

46. Person Oldsmobile is located approximately 7.8 miles from the proposed new dealership, although traffic conditions and street layout make actual driving distance much further. The two most convenient and direct routes between Person Oldsmobile and the proposed dealership are 12.7 and 9.1 miles by car. By either route, travel time between the two points exceeds 15 minutes in each direction.

47. The proposed dealers, Gledhill and Tachdjian, have past and present customer satisfaction index ("CSI") ratings which are satisfactory to Oldsmobile. Tachdjian's Oldsmobile dealership in Pasadena achieved 224% sales effectiveness in 1989 and his current CSI is 79. The below-average CSI is a result of his poor facility in Pasadena, which is in the process of being relocated to a better facility. Gledhill's Chevrolet dealership has a sales effectiveness for 1989 of 80%, which will be positively affected by the new location and facility.

48. The dealership planned by the proposed dealer is a modern facility on 4.5 acres with space and facilities meeting

General Motors' facilities guidelines. There will be 44 service bays to serve the dealership's customers.

49. The proposed dealership facility will not only have separate sales facilities for each of the General Motors' product lines, but will also have separate sales and management staffs.

50. Oldsmobile will substantially overhaul its product line over the next few years. Additional advertising and merchandising programs are forthcoming as well. New product has been recently introduced and will continue to be introduced through 1994.

51. There was no evidence presented to support a determination that establishment of the proposed dealership will be injurious to the public welfare.

Facts Relating to Whether the Franchisees of the
Same Line-Make in That Relevant Market Area Are
Providing Adequate Competition and Convenient
Consumer Care for the Motor Vehicles of the Line-Make
in the Market Area Which Shall Include the Adequacy
of Motor Vehicle Sales and Service Facilities,
Equipment, Supply of Vehicle Parts,
and Qualified Service Personnel
{Section 3063(d)}

52. There presently are two Oldsmobile dealerships in the RMA, specifically Crown Oldsmobile in Pasadena and Person Oldsmobile in West Covina.

53. Person Oldsmobile received an "effective" sales performance rating in 1989. However, despite Person Oldsmobile's best efforts, it is not adequately serving AGSSA 17. This is demonstrated by Oldsmobile's failure over a

period of years to achieve in that AGSSA the expected level of market penetration, or even penetration as good as Oldsmobile achieves in the rest of the RMA.

54. As noted earlier, Person Oldsmobile is located approximately 7.8 miles from the proposed new dealership, and the two most convenient and direct routes between Person Oldsmobile and the proposed dealership are 12.7 and 9.1 driving miles. Of the 24 manufacturers and distributors represented in the RMA, Oldsmobile, with its current number of dealers, is rated the lowest in terms of customer convenience, as measured in terms of average distance to the nearest dealership.

Facts Pertaining To Whether The Establishment
Of An Additional Franchise Would Increase
Competition And Therefore Be In
The Public Interest
{Section 3063(e)}

55. In the RMA, there are four major automobile shopping areas or concentrations of dealerships: (1) Monrovia (the site of the proposed dealer), (2) Covina/West Covina (the site of Person Oldsmobile, (3) Pasadena (the site of Crown Oldsmobile), and (4) Alhambra. The following is a list of the makes represented in each of these shopping areas:

A. Monrovia: Buick, Ford Acura, Chevrolet, Pontiac, Honda, Lincoln/Mercury, Daihatsu, BMW, Subaru, Hundai, Mazda, Toyota, Mitsubishi.

B. Covina/West Covina: Dodge, Honda, Buick, Oldsmobile, Chrysler/Plymouth, Hyundai, Toyota, Ford, Chevrolet, Nissan, Volkswagen, Mitsubishi, Mercedes Benz, SAAB, Maserati, Jaguar, Cadillac, Lincoln/Mercury, Acura, Volvo.

C. Pasadena: Porsche/Audi, Nissan Jaguar, Sterling, Oldsmobile, Mazda, Lincoln/Mercury, Toyota, Acura, Ford, Honda, Toyota, Jeep/Eagle, Mercedes Benz, Volvo, Volkswagen, Buick, Cadillac, Chevrolet, Chrysler/Plymouth, Daihatsu.

D. Alhambra: Toyota, Mazda, Hyundai, Jeep/Eagle, Subaru, Pontiac, BMW, Acura, Daihatsu, Honda, Mitsubishi, Ford, Nissan, Lincoln/Mercury, SAAB, Ford, Chevrolet, Buick, Cadillac, Mercedes Benz, Dodge.

56. The following chart indicates the number of dealerships located in the RMA by make:

<u>Brand</u>	<u>Total in RMA</u>
Oldsmobile	2
Ford	8
Chevrolet	7
Toyota	6
Volkswagen	3
Nissan	4
Honda	5
Daihatsu	3
Subaru	3
Jeep/Eagle	3
Hyundai	3
Mazda	4
Chrysler/Plymouth	3
Lincoln/Mercury	4
Jaguar	2
Cadillac	3
Pontiac	3
Buick	4
Volvo	2
Mitsubishi	3
Isuzu	1
Dodge	3
SAAB	2
Porsche/Audi	1
BMW	1
Mercedes Benz	3
Acura	4

57. With the addition of the new dealer, if Person Oldsmobile competes in a positive way, customers in the RMA and AGSSA 17 will enjoy more convenience, availability of more

comparison shopping, more alternative choices, and greater competition, all of which are in the public interest.

DETERMINATION OF THE ISSUES

Protestant Person Oldsmobile has failed to prove there is good cause for not establishing the additional dealership in that:

1. Protestant established that its investment is permanent but failed to establish that its investment would be adversely affected {Section 3063(a)};

2. Protestant failed to prove that the establishment would have an adverse effect on the retail motor vehicle business and the consuming public in the relevant market area {Section 3063(b)};

3. Protestant failed to prove that the establishment would be injurious to the public welfare {Section 3063(c)};

4. Protestant failed to prove that there is adequate sales and service facilities, equipment, supply of vehicle parts and qualified service personnel {Section 3063(d)};

5. Protestant failed to prove that the establishment would not increase competition, and, therefore, would not be in the public interest {Section 3063(e)}.

PROPOSED DECISION

The following proposed decision is respectfully submitted:

The protest is overruled. Oldsmobile shall be permitted to establish the proposed dealership at 805 Central Avenue in Monrovia, California.

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

Dated: September 4, 1990



MICHAEL M. SIEVING
Administrative Law Judge/
Assistant Executive Secretary
New Motor Vehicle Board