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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protests of)
BRIAN CHUCHUA'S JEEP, INC.,; and) Protest Nos. PR-129-77
COPELAND MOTORS, INC.,) PR-133-77
Protestants,)
vs.) FILED: September 15, 1977
AMERICAN MOTORS SALES CORPORATION,)
Franchisor.)

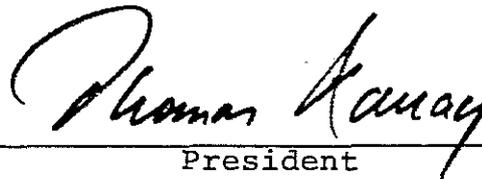
DECISION

The attached Proposed Decision of the Hearing Officer 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

9 / 14 / 77



President

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F I L E D

New Motor Vehicle Board

Date *Sept 12, 1977*

By *Reginald Powell*

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

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COPELAND MOTORS, INC.,)	PR-133-77
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Protestants,)	
)	
v.)	
)	
AMERICAN MOTORS SALES CORPORATION,)	
)	
Franchisor.)	
)	

PROPOSED DECISION

Procedural Background

1. On December 23, 1976 Respondent, American Motors Sales Corporation ("AMC") gave notice pursuant to Section 3062 of the Vehicle Code, ^{1/} of its intention to establish an additional Jeep franchise in Garden Grove at County-Wide AMC, 2222 Garden Grove Boulevard, Garden Grove ("Proposed Franchisee").

2. On January 5, 1977 protests to the proposed establishment were filed with the New Motor Vehicle Board ("Board") by Brian Chuchua's Jeep, Inc. located at 777 West Orangethorpe Avenue, Placentia, California and Copeland Motors, Inc. located at

1/ All references are to the Vehicle Code.

2001 East First Street, Santa Ana, California.

3. The protests of Brian Chuchua's Jeep, Inc. and Copeland Motors, Inc. were consolidated for a hearing held pursuant to Section 3066 before Anthony M. Skrocki, Hearing Officer of the New Motor Vehicle Board, in Sacramento commencing on Monday, August 8, 1977. Protestants were represented by Barnard F. Klein, Esq., of the law corporation of Baltaxe, Rutkin, Kaplan & Klein. The Respondent was represented by Joseph M. Malkin, Esq., of the law firm of O'Melveny & Myers.

Issues Presented

4. Protestants contend that good cause exists for not establishing the proposed Jeep franchise in Garden Grove for the following reasons:

(a) That the additional franchise will jeopardize the permanent investments of Protestants. (§ 3063(1).)

(b) That the additional franchise will adversely affect the Jeep business and the Jeep consuming public in the relevant market area. (§ 3063(2).)

(c) That the additional franchise will be injurious to the welfare of the Jeep consuming public. (§ 3063(3).)

(d) Protestants and other Jeep dealers in the relevant market area are providing adequate competition and convenient customer care for Jeep owners and buyers. (§ 3063(4).)

(e) That the additional franchise will not increase competition and therefore will not be in the public interest.

(f) Establishment of an additional franchise would unfairly affect Protestants by reducing their allocations of new Jeep vehicles.

Facts Relating to Permanency of Investment (§ 3063(1).)

Brian Chuchua's Jeep, Inc.:

5. Brian Chuchua's Jeep, Inc. deals exclusively in the sale of Jeep vehicles and the manufacture of accessories for Jeep vehicles. It is located on 3.6 fenced acres facing Orange-thorpe and Placentia Avenues, Placentia, California.

6. Brian Chuchua's facility was built in 1973 with the location and design approved by AMC.

7. Brian Chuchua's facilities include: a vehicle showroom; a parts showroom larger than the vehicle showroom; a separate two-level parts department consisting of an area of 7000 sq. ft. on each level; a fully air-conditioned service shop with 14 stalls; a body shop with 5 stalls and a paint booth; and a salvage yard.

8. The excellence of Brian Chuchua's facilities is recognized by AMC's use thereof to make commercials for AMC passenger cars and as a model for new dealership facilities.

9. The parts inventory at Brian Chuchua's Jeep, Inc. as of January 2, 1977 consisted of various quantities of 10,625 different parts for Jeep models going back to 1941. The acquisition cost of these parts was \$25,679 and the replacement cost is \$259,534.48. The salvage yard is used to dismantle Jeeps for parts or to rebuild wrecked Jeeps.

10. The real property and structures of Brian Chuchua's Jeep, Inc. are owned by Brian Chuchua as an individual. Brian Chuchua's Jeep, Inc. pays rent of \$6,000 per month to Brian Chuchua. Prior to moving to these facilities in 1973-74 rent was \$600 per month.

11. Brian Chuchua is the sole stockholder of Brian Chuchua's Jeep, Inc. and has been a Jeep dealer since April 1963.

Copeland Motors, Inc.:

12. Copeland deals exclusively in Jeep vehicles, and has been owned by the Copelands since 1950.

13. Copeland Motors, Inc. has been located in Orange County since 1954 and at its present location for 23 months.

14. Copeland Motors is located on 1.3 acres, with 9,000 square feet of buildings. The facilities consist of a 3 car showroom, 8 service stalls, and offices. The main lot is located in front of the showroom facting First Street.

15. Copeland Motors' parts department covers an area of 2400 square feet with a 600 square foot second deck.

16. Parts are available at Copeland Motors for Jeeps dating back to 1942. The acquisition cost of the parts inventory was \$90,000.

17. Prior to the 1975 move to its present location, the site of Copeland Motors was primarily owned by James Copeland and the rent was \$1300 per month. Copeland Motors' present location is leased from an individual named Bob Longpre at \$4600 per month.

Facts Relating to Effect on the Consuming Public (§ 3063(2).)

18. There is additional demand for Jeep vehicles in the areas served by Brian Chuchua's Jeep, Inc. and Copeland Motors, Inc. so that both dealers could sell more Jeeps if they were available from the factory.

19. Brian Chuchua's Jeep, Inc. is approximately 6-1/2 miles away from County-Wide AMC, site of the proposed additional Jeep franchise. Copeland Motors, Inc. is approximately 5-1/2 miles away from County-Wide AMC.

20. There is no Jeep dealer in the Garden Grove area but there are Chevrolet, Ford, Dodge, Plymouth, Subaru and Toyota, all of which sell 4-wheel drive vehicles.

21. In comparable areas, the location of an additional Jeep franchise generally resulted in increased sales for those Jeep dealers within the relevant market area, even though Jeep sales were declining on a nationwide basis.

Facts Relating to the Public Welfare (§ 3063(3).)

22. The proposed dealer is presently in operation as an AMC dealer and has been in operation at the same location since August 1965. Its present owner has worked there as manager since 1965 and has been the owner since 1975.

23. There were no facts found that would indicate that the proposed franchisee could not adequately function as a Jeep dealer.

24. The net worth of County-Wide AMC is \$250,000.

Facts Relating to Adequate Competition and Customer Care
(§ 3063(4).)

25. There are presently four retail Jeep outlets in the relevant market area. This includes the two protestants, who are exclusively Jeep dealers, an AMC/Jeep store (owned by AMC) in Huntington Beach and an AMC/Jeep dealer in Costa Mesa.

26. There were no facts to indicate that any of the Jeep outlets were deficient in respect to facilities or qualifications of personnel working there.

27. There has been and is now a scarcity of Jeep qualified mechanics because the low volume in Jeep repairs requires that

each mechanic be fully qualified on all repair functions. This shortage of mechanics sometimes causes customers to wait 3-4 weeks for service appointments.

28. The proposed additional Jeep dealer has at this time one mechanic certified by AMC to work on 4-wheel drive vehicles as a heavy duty line mechanic.

29. The difficulty in cross-referencing Jeep part numbers caused by the change of corporate ownership from Kaiser to AMC requires the services of an experienced Jeep parts manager to serve the dealership and consumer.

30. The proposed franchisee's parts manager was previously a Jeep parts manager.

31. There is additional demand for Jeep vehicles, parts and service in the relevant market area.

32. AMC has increased Jeep production in the last several months from 500 per day to 630 per day as of July 1, 1977.

33. The following chart indicates the market control of protestants as relevant to the Garden Grove area, their own location and each dealers second highest area of penetration:

	<u>Brian ChuChua's</u>		<u>Copeland's</u>	
	1975	1976	1975	1976
Total # of Sales	124	204	72	137
# Sales/% Total Sales				
Garden Grove	5/4.0%	17/8.3%	8/11.1%	10/7.3%
Fullerton	28/22.6%	59/28.9%	--	--

	Brian Chuchua's		Copeland's	
	1975	1976	1975	1976
Total # of Sales	124	204	72	137
# Sales /% Total Sales				
Santa Ana	11/8.9%	17/8.3%	24/33.3%	29/21.1%
Mission Viejo	--	--	3/4.2%	29/21.2%

Facts Relating to the Public Interest in Increased Competition
(Section 3063(5).)

34. There is increased demand for Jeep parts since Jeep owners tend to keep their vehicles operating much longer than ordinary passenger cars but there are now fewer outlets selling Jeep parts.

35. Experienced Jeep personnel are essential to the maintenance of a competitive dealership. It is possible to train people to be Jeep knowledgeable whether it be in sales, service or parts.

36. The proposed franchisee's parts manager has prior Jeep experience and its service manager has experience with the present Jeep automatic transmission which is used on Jeep 4-wheel drive vehicles. Additionally the proposed franchisee has one mechanic certified by AMC to work on 4-wheel drive vehicles.

37. The proposed franchisee has or will have adequate facilities and staff to accommodate the Jeep franchise and is committed to improving its facilities, including purchase of

additional land, installing one additional hoist (which will give it 4), making use of 8 of its unused service stalls, purchasing an initial inventory of "pure" Jeep parts at a cost of \$5,000 (many of its AMC parts are interchangeable with Jeep), and whatever tools AMC dictates as being required for Jeep.

38. The proposed franchisees service department is open all day Saturday and offers 21 free loan cars to its customers.

Facts Relating to the Allocation of New Jeep Vehicles

39. Brian Chuchua's Jeep, Inc. main concern is that the reduction of his assigned planning potential from 207 units yearly to 127 units yearly will result in decreased availability of Jeep vehicles.

40. Copeland Motors, Inc. prime concern is loss of sales due to either increased competition or decreased availability of vehicles.

41. Copeland Motors, Inc. planning potential has been increased from 68 about a year ago to 90 and it has again been raised to 109.

42. The allocation of new Jeep vehicles to existing dealers from the factory is based on a system which considers production, inventory and sales.

Sales planning potential is used for allocations to new dealers but is not used in determining the allocation for existing dealers.

43. At the time Brian Chuchua's Jeep, Inc. moved into its new facilities, it was estimated that there would be a need to sell 350 units per year to show a profit but the dealership is now operating profitably at about 200 sales per year as a higher profit per unit is being made than was anticipated. At one time the average gross profit per unit was \$300 but now it is over \$900 per unit.

44. Brian Chuchua's Jeep, Inc. at time of hearing had 45 vehicles which constituted a 90-day supply at its current sales rate.

45. Copeland Motors, Inc. is presently having its best sales year ever. At the time of hearing, however, Copeland Motors, Inc. had only 22-25 vehicles in inventory and believes it needs 45 vehicles to have an adequate inventory.

46. Protestants both received and sold more vehicles than were indicated on their planning potential.

45.⁷ Protestants admit there is an unmet demand for Jeep vehicles and sales could be increased if more vehicles were available.

48. Jeep production has been increased within the last several months from 500 per day to 630 per day as of July 1, 1977.

49. The initial Jeep allocation planned for the proposed franchisee is 9 vehicles per year.

50. Jeep production has increased from approximately 13,000 in 1970 to 109,000 in 1977 and is predicted to be 132,000 in 1978. The total number of Jeep dealers in the United States has fluctuated between 1612 in 1970 and approximately 1683 as of June 1, 1977.

51. The AMC closed planning potential for 1978 Jeep sales has been increased to 120,000 from 80,000 in 1977.

DETERMINATION OF ISSUES

1. Protestants have failed to establish that good cause exists for not establishing the proposed franchise for the following reasons:
 - (a) The establishment of the additional franchise will not jeopardize the permanent investments of Protestants since there is an unmet demand for Jeep vehicles in the market area and an increase in the supply of Jeep vehicles as AMC increases production. (Paragraph 4(a)); and
 - (b) Establishment of the additional franchise will not adversely affect the Jeep business and the Jeep consuming public in the relevant market area since the facilities of the proposed dealer are adequate to serve the consumer, and there is no indication

that the protestants will be unable to compete for the unfilled demand for Jeep vehicles. (Paragraph 4(b)); and

(c) The proposed franchisee was not shown to be inadequate to function as a Jeep dealer. (Paragraph 4(c)); and

(d) The establishment of the additional franchise will give AMC an outlet in Garden Grove to enable AMC to compete with other 4-wheel drive manufacturers who already have an established dealer there. This should result in additional sales, service and parts convenience to Jeep owners and buyers in Garden Grove. (Paragraph 4(d)); and

(e) The additional franchise will result in another source of Jeeps, Jeep service and Jeep parts. Jeep service and parts are difficult to obtain since qualified personnel are scarce. The proposed franchisee has some experienced Jeep personnel already and the potential for training more. The proposed franchisee will add Jeep parts to its existing common AMC/Jeep parts inventory and increase its inventory as the years progress. (Paragraph 4(e)); and

(f) There is an unmet demand for 4-wheel drive vehicles in the relevant market area and both Protestants could increase their sales above their present

profitable level if they had more vehicles in their inventory. Jeep production has been increased so that additional vehicles should be available to Jeep dealers, based upon increased availability and the dealers' inventory and sales rate. (Paragraph 4(f).)

* * * * *

The following Proposed Decision is respectfully submitted:

The protests are overruled. The Respondent is entitled to establish the additional Jeep dealership at County-Wide AMC.

I hereby submit the foregoing which constitutes my proposed decision in the above entitled matters, as a result of a hearing had before me on the above dates at Sacramento, California, and recommend its adoption as the decision of the New Motor Vehicle Board.

Anthony M. Skrocki
ANTHONY M. SKROCKI
Hearing Officer
New Motor Vehicle Board

DATED: September 8, 1977