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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protests of )  
WALKER BROS., INC.; ) Protest Nos. PR-130-77  
CON-FERR, INC.; and ) PR-131-77  
MILNE BROS. AUTOMOBILE CENTER, ) PR-132-77  
INC., )  
Protestants, ) FILED: September 15, 1977  
v. )  
AMERICAN MOTORS SALES CORPORATION, )  
Franchisor. )

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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.

The Board views with disfavor the filing of protests with palpably insufficient evidentiary support.

This decision shall become effective forthwith.

IT IS SO ORDERED

9/14/77

*Thomas Kayay*  
\_\_\_\_\_  
President

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F I L E D

New Motor Vehicle Board

Date Sept 12, 1977

By Jacqueline A. Powell

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protests of )  
WALKER BROS., INC.; )  
CON-FERR, INC.; and )  
MILNE BROS. AUTOMOBILE CENTER, )  
INC., )  
Protestants, )  
v. )  
AMERICAN MOTORS SALES CORPORATION, )  
Franchisor. )

Protest Nos. PR-130-77  
PR-131-77  
PR-132-77

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 <sup>1/</sup> of its intention to establish an additional Jeep franchise in the Los Angeles-Glendale area.

2. On January 5, 1977, protests to the proposed establishment were filed with the New Motor Vehicle Board ("Board")

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<sup>1/</sup> All references are to the Vehicle Code.

by Con-Ferr, Inc. ("Con-Ferr") located at 300 N. Victory Boulevard, Burbank, CA, Walker Bros., Inc. located at 3260 West Olympic Boulevard, Los Angeles, CA and Milne Bros. Automobile Center, Inc. located at 1951 East Colorado Boulevard, Pasadena, CA.

3. The protests were consolidated for a hearing held pursuant to Section 3066 before Anthony M. Skrocki, Hearing Officer of the New Motor Vehicle Board, in Sacramento, California, on Wednesday, August 10, 1977. Protestants were represented by Barnard F. Klein, Esq., of the Law Corporation of Baltaxe, Rutkin, Kaplan and Klein. The respondent was represented by Joseph M. Malkin, Esq., of the law firm of O'Melveny and Myers.

#### Issues Presented

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

(a) That the additional franchise will jeopardize the permanent investment 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. (§ 3063(5).)

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

Facts Relating to Con-Ferr, Inc.

Facts Relating to Permanency of Investments. (Section 3063(1).)

5. Con-Ferr is owned by Peter J. Condos and sells Jeep vehicles exclusively. The Jeep franchise has been held since 1968. Con-Ferr is also engaged in the manufacture of 4-wheel drive accessories.

6. The Con-Ferr facility consists of real property 110 feet deep with 188 feet frontage on Victory Boulevard. The buildings contain a 3,000 sq. ft. showroom, a warehouse and service facility with business offices and parts department totaling another 3,000 sq. ft. and another warehouse of 1,000 sq. ft. at the rear of the lot.

7. The Con-Ferr service facility includes 10 stalls for vehicles.

8. Protestant's Jeep parts inventory is valued at \$85,000 to \$95,000 and parts for other 4-wheel drive vehicles and accessories stored on the premises are valued at approximately \$15,000 to \$20,000. The parts inventory includes parts for

Jeeps dating back to 1942.

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

9. In other 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 as a percentage of market nationwide were declining.

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

10. There were no facts presented that would indicate the proposed dealership could not adequately function as a Jeep dealer.

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

11. There are presently five retail Jeep outlets in the relevant market area. This includes the three protestants (Con-Ferr, Milne Bros. and Walker Bros.) and Valley AMC/Jeep and Uzeta AMC/Jeep.

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

13. Since Jeep vehicles are more difficult to work on than standard passenger cars with the abuse an offroad vehicle

takes, Jeep dealers have difficulty finding parts, personnel and mechanics experienced in or willing to work with Jeeps.

14. The parts manager at the proposed additional franchise was formerly the parts manager at Con-Ferr.

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

15. Mr. Condos, the owner of Con-Ferr, Inc., "tries" to be on the premises of his Jeep sales facility once or twice a day. The time spent per day at the Jeep sales facility varies from 10-15 minutes to one or two hours. Mr. Condos main office is at his manufacturing facility where he spends 80 - 85% of his time.

16. Other than Mr. Condos' own sales efforts, which are minimal, there is only one other salesman, Roy Little, at the dealership.

17. Con-Ferr's service department and parts department were sublet in 1974 to Roy Little who, in return for acting as General Manager, receives all the profits from the service department and parts sales. The capital account for service and parts is solely in Little's name.

18. Con-Ferr also employes either directly or through Roy Little the following people: a phone girl; an accountant; assistant parts man; 3 full time mechanics; and 2 parts chasers (unskilled mechanics).

19. Con-Ferr's profit from Jeep sales amounted to approximately \$16,000 last year. However, if it were not for the income from the sale of accessories and service, there would probably have been no profit.

Facts Relating to Allocation of New Jeep Vehicles

20. Con-Ferr's present sales planning potential is 42 vehicles per year. In 1976 it was 44 vehicles per year. The actual number of Jeep sales in 1976 was between 25 and 30. This year to date sales of Jeep vehicles total approximately 19 which would yield a year-end rate of 27 vehicles sold.

21. Con-Ferr normally has a more than adequate inventory of Jeeps. Con-Ferr's poor sales record has nothing to do with the allocation of Jeeps.

22. Although Mr. Condos is concerned with possible loss of sales in the Glendale area his prime concern is that AMC keep a promise allegedly made in 1972 to Mr. Condos by Mr. Bob Brost, Zone Manager for AMC, that Glendale was a closed point for Jeep and that AMC would not establish a Jeep dealer there.

Facts Relating to Milne Bros., Inc. & Walker Bros., Inc.

23. Insufficient testimony was presented in support of the protest of Milne Brothers, Inc. and Walker Brothers, Inc. to make any findings of fact pertaining to their allegations.

DETERMINATION OF ISSUES

Protestants have failed to establish that good cause exists for not establishing the proposed franchise for the following reason:

As reflected in the findings of fact there has been a complete failure of proof by protestants on each and all allegations set forth in paragraph 4 of this proposed decision.

\* \* \* \* \*

THE FOLLOWING PROPOSED DECISION is respectfully submitted:

The protests are overruled. The Respondent is entitled to establish the additional Jeep dealership in the Los Angeles-Glendale area.

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 12, 1977