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STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

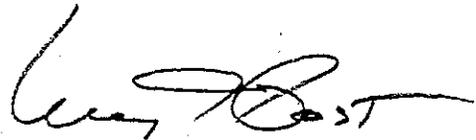
In the Matter of the Protest of )  
 )  
DON LUCAS INTERNATIONAL, INC., dba) Protest No. PR-1421-94  
STEVENS CREEK BMW MOTORSPORT, )  
 )  
Protestant, )  
 )  
vs. )  
 )  
BMW OF NORTH AMERICA, INC., )  
 )  
Respondent. )  
\_\_\_\_\_ )

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 25th day of January 1995:



MANNING J. POST  
President  
New Motor Vehicle Board



Allison Bavarian Inc., dba Allison BMW ("Allison"), from its current location in Sunnyvale to Mountain View, California.

2. Stevens Creek is a licensed new motor vehicle dealer enfranchised to sell BMW vehicles. Stevens Creek is located at 3737 Stevens Creek Boulevard, Santa Clara, California.

3. BMWNA is a distributor of new motor vehicles in California.

4. Allison is a licensed new motor vehicle dealer enfranchised to sell BMW vehicles. Allison is currently located at 750 East El Camino Real, Sunnyvale, California which is 3.73 miles from Stevens Creek. Allison seeks relocation to 150 El Camino Real, Mountain View, California which is 6.30 miles from Stevens Creek.

5. On June 9, 1994, Stevens Creek filed a protest to said proposed relocation.

6. Pursuant to Section 3066, a hearing was held before Douglas H. Drake, Administrative Law Judge, on September 1, 1994, at Sacramento, California.

7. Protestant was represented by Gary S. Vandeweghe of Rankin, Luckhardt, Vandeweghe, Landsness & Lahde, 152 North Third Street, Suite 400, San Jose, California.

8. Respondent was represented by Roy M. Brisbois of Lewis, D'Amato, Brisbois & Bisgaard, 221 North Figueroa Street, Suite 1200, Los Angeles, California.

9. Interested Party was represented by A. Albert Spar and Nowland Hong of Parker, Milliken, Clark, O'Hara & Samuelian, 333 South Hope Street, 27th Floor, Los Angeles, California.

ISSUES PRESENTED

10. Is there good cause for not allowing the relocation of Allison based upon the following considerations:

- a. Permanency of the investment.
- b. Effect on the retail motor vehicle business and the consuming public in the relevant market area.
- c. Whether it is injurious to the public welfare for an additional franchise to be established.
- d. 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.
- e. Whether the relocation of the franchise would increase competition and therefore be in the public interest.

FINDINGS OF FACTS

A. Findings of Facts Relating to the Permanency of Investment.

(Section 3063(a))

11. Donald Lucas, Stevens Creek's dealer principal, put on no evidence of permanency of his investment except that he has

completed 70% of a 1.2 million dollar refurbishing of his dealership.

12. Allison has invested \$2.1 million in purchasing the land for the relocated store and has plans for spending another \$2.9 million to construct a facility and remodel the existing Oshman's sporting goods store, install new shop equipment, computers, furniture, and fixtures.

13. BMWNA has invested \$788,535.52 for the purchase of Stanford BMW for the purpose of closing it down and \$564,240.01 for the purchase of Santa Cruz BMW which it has closed down.

14. Peter Pan Motors in San Mateo has obligated itself to a substantial upgrade of their facilities if Stanford BMW is taken out.

15. All of the improvements to the facilities listed above, will be paid for by land mortgages funded by BMWNA at a rate 2% below prime, an "astonishingly" good deal for the principals, at a cost to BMWNA.

16. Stevens Creek has been a profitable dealership for the past 20 years.

17. BMWNA has established a plan to close down dealerships in the San Francisco Bay area so as to spread out current customers among the remaining dealers. Presently, there are the following BMW dealerships in the Bay area: (1) German Motors in San Francisco; (2) Peter Pan Motors in San Mateo; (3) Stanford BMW in

Palo Alto; (4) Allison Bavarian in Sunnyvale; (5) Stevens Creek BMW in Santa Clara; (6) Claridge BMW in Fremont; (7) Monterey BMW in Monterey; and until very recently, Santa Cruz BMW in Santa Cruz.

18. BMWNA has purchased the assets of Santa Cruz BMW and has closed down that facility. BMWNA has also purchased the assets of Stanford BMW and plans to close down that facility once Allison is at its new facility in its relocated site.

19. This plan was approved by all the parties at a meeting which was held in May of 1992. Shortly thereafter, on June 5, 1992, Stevens Creek sent BMWNA a letter indicating that Stevens Creek ". . . does not and will not protest or object to the relocation of the dealership [Allison Bavarian]."

20. On June 19, 1992, Stevens Creek unilaterally modified its "no-protest" letter of June 5, 1992, and imposed a one-year time limitation to commence from the date the letter was signed.

21. The dealer principal of Allison, Wayne Allison, owns 100% of the dealership. Allison has operated from its facilities in Sunnyvale since 1975.

22. Although the current Allison facility has been maintained, it is rundown. The area surrounding the facility is deteriorating and lacks freeway accessibility. The site is leased and characterized by Stevens Creek as "admittedly inadequate." The site has only 12 stalls, showroom capability for only 3 cars,

woefully and embarrassingly inadequate customer facilities, inadequate repair facilities, such that repairs and service are being done under a tent in the backyard.

23. Allison committed itself to the purchase of the land for the new facility on June 8, 1993, just 4 days after the expiration of the "no-protest" letter, but believing it was within the one-year time limit.

24. The total relocation costs to Allison are estimated to be approximately \$5 million.

B. Findings of Facts Relating to the Effect on the Retail Motor Vehicle Business and Consuming Public in the Relevant Market Area.

(Section 3063(b))

25. BMWNA has divided the San Francisco Bay Area into Primary Market Areas (PMA). A PMA is a geographic area based on postal locations, the center of which is the shortest distance to a specific dealer, where generally that dealer maintains a competitive advantage over all other BMW dealers based solely upon geographic proximity to customers. Within the area surrounding Stevens Creek there will be six dealers each with its own PMA.

26. BMWNA allocates new cars to its dealers based on a combination of the number of potential customers in the PMA and the number of sales the previous year.

C. Findings of Facts Relating to the whether it is injurious to the public welfare for the franchise to be relocated  
(Section 3063(c))

27. Stevens Creek produced but one item of evidence that the relocation would be injurious to the public welfare. Namely, that current customers outside the RMA would have to drive into the RMA for the purpose of purchasing and servicing a BMW at either Allison or Stevens Creek.

28. Allison, at it's proposed new location, and Stevens Creek would both be near freeway off-ramps. The inconvenience on the consuming public would be minimal.

29. The elimination of Stanford BMW and Santa Cruz BMW would benefit not only BMWNA, but also Allison, Peter Pan, and Stevens Creek, as well as all consumers in the Bay area.

30. The relocation of Allison with the subsequent remodelling of Peter Pan and closing of Stanford, itself an outdated facility, will give the public in the San Francisco Peninsula three remodelled, modern, and high quality BMW facilities to choose from when servicing or purchasing BMW products.

D. Findings of Facts Relating to Adequacy of Competition and Consumer Care Facilities and Personnel.

(Section 3063(d))

31. With the remodelling of Stevens Creek, they will have a large, newly remodelled facility at a freeway accessible location.

32. With their new facility, Allison will have 22 service stalls, and a state of the art showroom at a freeway accessible location.

33. With the remodelling of Peter Pan BMW, they will have a large, newly remodelled facility at a freeway accessible location.

34. Peter Pan, Stevens Creek and Allison will service a potential 133,019 customers after the relocation and closing of Stanford, where they now service 97,659 customers.

35. Customer convenience in terms of proximity to Allison would be better served at a facility north of its existing location. In fact, Stevens Creek conceded that it is to Allison's advantage to move north.

36. The proposed relocation of Allison would place Stevens Creek nearer to almost 10,000 more customers. The following chart shows the current serviceable customers and the proposed serviceable customers after relocation:

Dealer PMA	Current Households +\$100,000	New Households +\$100,00
Peter Pan	23,849	30,554
Allison	16,858	35,950
Stevens Creek	56,952	66,515

37. Stevens Creek has 12,212 BMW vehicles actually registered with the DMV in its PMA. With the proposed relocation of Allison, the units in operation increases to 15,115 BMW vehicles.

E. Facts Relating to Increased Competition as in the Public Interest.

(Section 3063(e))

38. Of the three dealers involved, all of them will be at or near major freeways.

39. Stevens Creek will be located 6.3 miles south of the proposed Allison facility. Presently, it is located 3.73 miles.

40. The proposed site's freeway accessibility would stimulate competition in sales and service, and provide more convenient access to BMW products and service.

41. Allison is a successful, high quality dealer whose continued presence in the marketplace at an improved location will likely increase both inter- and intra-brand competition which benefits the consuming public.

DETERMINATION OF ISSUES

42. The Protestant has failed to prove that there is good cause not to permit the relocation of Allison in that:

a. Protestant established that its investments are permanent, but failed to establish that their investment would be adversely affected (Section 3063(a));

b. Protestant failed to prove that the relocation would have an adverse effect on the retail motor vehicle business and consuming public in the RMA (Section 3063(b));

c. Protestant failed to prove that the relocation would be injurious to the public welfare (Section 3063(c));

d. Protestant failed to establish that there is adequate competition and convenient consumer care in terms of sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel for BMW in the RMA (Section 3063(d));

e. Protestant failed to prove that the relocation would not increase competition, and therefore would not be in the public interest (Section 3063(e)). Micro-site characteristics such as proximity to a major freeway, traffic volume, and proximity to an auto row or mall can be significant factors affecting dealers' sales.

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PROPOSED DECISION

THEREFORE, the following decision is respectfully proposed:

1. The Protest is overruled.
2. Respondent BMW shall be permitted to relocate the existing Allison dealership to the proposed site in Mountain View, California.

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: December 27, 1994



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DOUGLAS H. DRAKE  
Administrative Law Judge