

1401 - 21st Street, Suite 407
Sacramento, California 95814
Telephone: (916) 445-1888

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

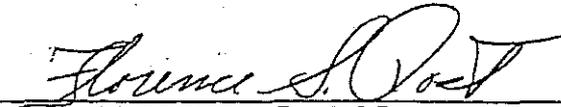
In the Matter of the Protests of)
C. BOB AUTREY MOTORS, INC.,) Protest Nos. PR-187-78
a California Corporation; and)
GREENWOOD PONTIAC, INC.,) PR-188-78
a California Corporation,)
Protestants,)
vs.) Filed: November 30, 1978
MAZDA DISTRIBUTORS PACIFIC, INC.,)
Respondent.)

DECISION

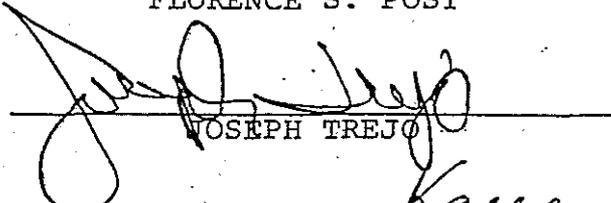
The attached Proposed Decision of the Hearing Officer is hereby adopted by the New Motor Vehicle Board as its Decision in the above entitled matter.

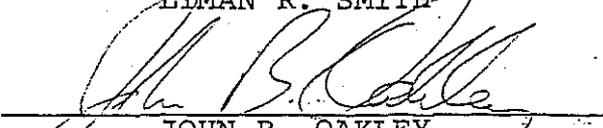
This Decision shall become effective forthwith.

IT IS SO ORDERED this 30th day of November, 1978.


FLORENCE S. POST

absent
LYMAN R. SMITH


JOSEPH TREJO


JOHN B. OAKLEY


KATHLEEN O. TURNER

Public Members
New Motor Vehicle Board

1401 - 21st Street, Suite 407
Sacramento, California 95814
Telephone: (916) 445-1888

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protests of)
C. BOB AUTREY MOTORS, INC.,) Protest Nos. PR-187-78
a California Corporation; and)
GREENWOOD PONTIAC, INC.,) PR-188-78
a California Corporation,)
Protestants,)
vs.)
MAZDA DISRIBUTORS PACIFIC, INC.,)
Respondent.)

PROPOSED DECISION

Procedural Background

1. Respondent, Mazda Distributors Pacific, Inc. ("Distributor"), gave notice on July 31, 1978, pursuant to section 3062 of the Vehicle Code^{1/} of its intention to establish an additional franchise at 10201 Artesia Boulevard, Bellflower, California. The proposed franchise would be Horizon Motors, Inc. ("Horizon").

2. Protests were filed with the New Motor Vehicle Board ("Board") on August 28, 1978, by C. Bob Autrey Motors, Inc. ("Autrey") located at 1860 Long Beach Boulevard, Long Beach

1. All references are to the Vehicle Code unless otherwise indicated.

California, and by Greenwood Pontiac, Inc. ("Greenwood").

3. The protests were consolidated for a hearing held pursuant to section 3066 before Gloriette C. Fong, Hearing Officer of the New Motor Vehicle Board, in Los Angeles, California, on October 4, 5, and 6, 1978, and in Compton, California, on October 9, 1978. Protestants were represented by George E. Leaver, Esq., of Getz, Aikens & Manning. Respondent was represented by Sidney I. Pilot, Esq., and A. Albert Spar, Esq., of Sidney I. Pilot, a Professional Corporation.

Issues Presented

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

- (a) The additional franchise will jeopardize the permanent investment of protestants (§3063(1));
- (b) The additional franchise will have a detrimental affect on the retail motor vehicle business and the consuming public in the relevant market area (§3063(2));
- (c) The additional franchise would be injurious to the public welfare (§3063(3));
- (d) Existing Mazda dealers in the relevant market area are providing adequate competition and convenient consumer care (§3063(4));
- (e) The establishment of an additional franchise would not increase competition and would not be in the public interest (§3063(5)).

Findings Relating to Permanency of Investment
(§3063(1))

C. Bob Autrey Motors, Inc.

5. Robert C. Autrey owns 41% of the stock of Autrey. His shares represent 100% of the voting stock.

6. Autrey has been a new car dealer at the present location since 1965. Autrey is now and has been since 1967 a Fiat franchise. Autrey is also a Lancia franchise, but is in the process of terminating its relationship with Lancia.

7. Autrey acquired its Mazda franchise in January, 1977, by purchasing the assets of Long Beach Mazda. Robert Autrey moved his BMW franchise at that time to the facilities of Long Beach Mazda and the Mazda operation was moved to Autrey Motors.

8. All the fixed assets purchased from Long Beach Mazda were used for the BMW store. Part of the reason for purchasing Long Beach Mazda was to find a facility for the BMW franchise.

9. Autrey paid \$41,000 to \$42,000 for the Mazda parts inventory of Long Beach Mazda and \$628 for shop supplies. Nothing was paid for the good will of Long Beach Mazda.

10. The property occupied by Autrey is valued at \$500,000 and is owned by Mr. and Mrs. Autrey and leased to Autrey Motors at a rent of \$5,225 per month.

11. The premises is used for the Fiat and Lancia franchises as well.

12. Autrey Motors' capital stock is \$21,000.

Greenwood Pontiac, Inc.

13. Harvey Greenwood is the sole shareholder of Greenwood.

14. Greenwood was incorporated in May, 1977, and obtained its Mazda franchise on June 6, 1977, and started doing business on July 1, 1977, after purchasing the assets of an existing Pontiac-Mazda dealer.

15. Greenwood has a Pontiac franchise and does not maintain a separate sales or service facility for either Pontiac or Mazda.

16. Harvey Greenwood invested \$275,000 of his own funds and borrowed an additional \$275,000 from a bank to capitalize the corporation. The majority of the investment was for the Pontiac franchise.

17. Twenty-five thousand dollars of the \$550,000 was allocated to the Mazda parts inventory.

18. Greenwood leases the premises under a 10-year lease with an option to renew for an additional 10-years. The rent is \$9,000 per month for the first five years and \$11,000 per month for the second five years.

19. Since purchasing the business, Greenwood has spent \$40,000 to improve the appearance and usefulness of the facility, \$30,000 for a telephone system, and \$27,000 for a modular building employed as a used car sales office. It is impossible to determine how much of the above \$97,000 is a permanent investment attributable to carrying out Greenwood's responsibility as a Mazda franchise.

Findings Relating to the Effect of an
Additional Franchise Upon the Retail
Motor Vehicle Business and the Consuming
Public in the Relevant Market Area.

(§3063(2))

20. Autrey shows a net profit of 28.7% on its investment during the first 8 months of 1978.

21. During this same period Autrey's gross profits from Mazda sales comprised 34% of the total gross profits of the dealership's new car sales.

22. In 1977 Mazda accounted for about 15% of the total new car gross profits of Greenwood and 15% of the total new car sales of the dealership.

23. Greenwood showed a net profit of 31.3% on its investment during the first 8 months of 1978.

24. The Mazda GLC is in abundant supply and relatively low demand. Protestants each have about a 3 month supply of these vehicles.

25. In direct contrast with Mazda's GLC, Mazda's RX-7 sportscar, which came out in May of 1978, is in great demand but in short supply.

26. Allocation of RX-7's to existing dealers is now based on total Mazda sales, less RX-7's, for the 110 days prior to the computation of the allocation. The more Mazda vehicles sold by a dealership, the greater the RX-7 allocation to that dealer.

27. There are 104 Mazda dealerships in respondent's distributorship. The distributorship includes 7 western states and 1 town in Texas. The distributorship currently ships 900

RX-7's a month. The RX-7's availability through the distributorship will increase to 14,000 for the 1979 model year (an average of 1,167 per month).

28. Mazda has provided for special allocation of cars, including RX-7's, designated especially for new dealerships. This special allocation will be in effect for at least a year. If the additional franchise is established, availability of RX-7's to existing dealers will not be reduced. If the additional franchise is not established, the availability of RX-7's to existing dealerships will not be increased because the special allocation vehicles will be reallocated for worldwide distribution.

29. If Autrey lost all their Bellflower-Lakewood Mazda sales for the first 8 months of 1978, the adjusted net return for the dealership would be reduced from 28.7% to 27.1%.

30. If Greenwood had lost all of their Bellflower-Lakewood Mazda sales for the first 8 months of 1978, the adjusted net return for its investment would be reduced from 31.3% to 29%.

Findings Relating to Whether the Establishment
of an Additional Franchise Would Be Injurious
to the Public Welfare. (§3063(3))

31. The owners of Horizon have interest in 5 other dealerships holding Volkswagen and Datsun franchises.

32. The management of Horizon is experienced in the automobile industry including retail sales. The owners of Horizon are familiar with the Bellflower-Lakewood area and generally enjoy a good reputation in the community and automobile industry.

33. The premises upon which Horizon is to be located have been leased under a written agreement. The proposed facility is an existing lot and building which will be improved and utilized for new and used cars.

Findings Relating to Adequate Competition
and Convenient Consumer Care. (§3063(4))

34. Autrey and Greenwood have service departments which operate at a loss. The service departments of the dealerships operated by the owners of Horizon all show a profit.

35. Autrey's hourly labor rate is \$22.50. Greenwood's hourly labor rate is \$24. Horizon's labor rate will be \$18, the same as charged by the Datsun stores operated by Horizon's owners.

36. Autrey has 23 service stalls. The sales and service facilities are not separated as to the different franchises.

37. Greenwood has 82 stalls. Fourteen stalls are used for Mazda repairs only, with 7 of these having lifts. Another 12 to 14 stalls are used for preparing Mazdas for sale.

38. The distributorship conducts training courses for Mazda mechanics requesting, but not requiring, that they be attended. From February, 1977, through April, 1978, five Autrey mechanics attended six training sessions, while four Greenwood mechanics attended six training sessions.

39. The owners of Horizon have added new staff and personnel to their existing dealerships so trained persons will be available if the proposed franchise is established. This will avoid the hiring away of personnel from existing dealers.

40. The distance from Horizon's proposed location to Autrey by surface streets is 10.1 miles and the travel time is 29 minutes. The distance by freeway is 12.7 miles with a 17 minute and 30 second travel time.

41. The distance from Horizon's proposed location to Greenwood by surface streets is 8.1 miles and may be traveled in 20 minutes and 30 seconds. The distance by freeway is 11.3 miles and the travel time is 20 minutes.

Findings Relating to Adequate Competition
and Convenient Consumer Care. (§3063(4))

42. Both Autrey and Greenwood are in District 2 of the distributorship. Autrey has primary sales responsibility in the Long Beach sales locality and Greenwood in the Downey trading area. The proposed new franchise is to be located in Bellflower.

43. Mazda registrations as a percent of total imports are:

Import Market Penetration by Mazda

<u>Market</u>	<u>1977</u>	<u>January to June, 1978</u>
National	2.43% (RT 554)	2.74% (RT 555)
District 2	1.93% (RT 593)	1.61% (RT 593)
Long Beach	2.06% (RT 554)	1.78% (RT 555)
Downey	1.94% (RT 556, 596)	1.58% (RT 558)
Bellflower-Lakewood	1.73% (RT 558)	1.32% (RT 558)

44. Autrey expended \$1,500 per month on advertising for Mazdas, some of which penetrates the Bellflower market area. In the 18-month period beginning January 15, 1977, Autrey sold 12 Mazdas into Lakewood and 2 into Bellflower.

45. Greenwood spends approximately \$6,000 per month for advertising which penetrates the Bellflower area; the majority of that advertising is for Pontiac.

46. The gross profits for an RX-7 window sticker price is \$1,104. Autrey's average gross profit on an RX-7 is \$2,595. Greenwood's average gross profit on an RX-7 is \$2,434.^{2/} Of the remaining 15 dealers in District 2, the 11 dealers reporting realized an average gross profit on RX-7 sales of \$1,675.

47. Robert C. Autrey is the President of ABC Leasing Company. Autrey sold two RX-7's to ABC in August, 1978, despite the short supply of RX-7's to the dealership. ABC was advertising these RX-7's for sale or lease in the Los Angeles paper at the time of this hearing.

Determination of Issues

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

1. There was no substantial evidence that the establishment of the additional franchise would jeopardize the permanent investments of protestants.

2. The establishment of an additional franchise will not have a detrimental effect upon the retail motor vehicle business

2. These figures were provided by respondent Mazda. Autrey's own figure is \$3,200 and Greenwood's own figure is \$2,499.

and the consuming public in the relevant market area. Mazda sales comprise less than a majority of protestants new car sales although they have the capacity and potential to increase their sales volume to achieve a greater percentage of market penetration. The RX-7, which is in great demand by the consumer, will be more available due to increased production. A special allocation of RX-7's to the new franchise will increase availability of the RX-7 to the public.

3. There was no showing that the establishment of the additional franchisee would be injurious to the public welfare.

4. The establishment of the additional franchise will provide increased competition and convenient consumer care by establishing an additional sales and service facility operated by qualifed, experienced personnel.

5. The establishment of the additional franchise would provide increased competition in the sales of Mazda GLC's and the RX-7, which is in great demand, and would therefore be in the public interest.

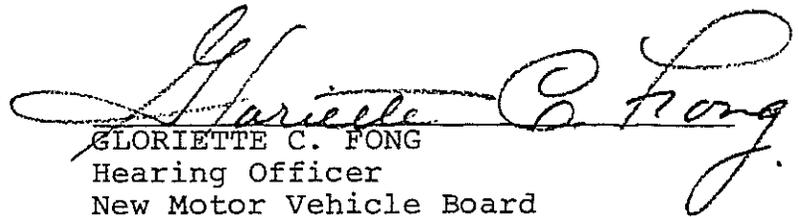
* * * * *

The following proposed decision is respectfully submitted:

The protests are overruled. The respondent is entitled to establish the additional Mazda dealership in Bellflower.

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

Dated: November 22, 1978.


GLORIETTE C. FONG
Hearing Officer
New Motor Vehicle Board