

2331 Burnett Way
P. O. Box 31
Sacramento, CA 95801
(916) 445-1888

ORIGINAL

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of)
)
BECHERER BUICK, INC.,) Protest Nos. PR-35-75
) and PR-50-75
)
Franchisee,)
)
v.)
)
BUICK MOTOR DIVISION, GENERAL)
MOTORS CORPORATION,)
)
Franchisor.)
.....)

In the Matter of the Protest of)
)
O'DONNELL BUICK-OPEL, INC.,) Protest Nos. PR-36-75
) and PR-51-75
)
Franchisee,)
)
v.)
)
BUICK MOTOR DIVISION, GENERAL)
MOTORS CORPORATION,)
)
Franchisor.)
.....)

DECISION

The attached proposed decisions of the Administrative Law Judge are hereby adopted by the New Motor Vehicle Board, as modified herein, as its decision in the above entitled matters.

Article VII is corrected to read: Buick has been continuously represented in Pasadena from approximately 1916 to March 4, 1974,

when Klock Buick went out of business. The failure of Klock is attributable to management problems rather than to excess competition. There is at present no Buick dealer in Pasadena, although every other major American car manufacturer and most foreign car manufacturers are represented.

The determination of issues is hereby revised to read:

Protestant-franchisees have failed to meet their burden pursuant to Vehicle Code Sections 3063, 3066 of establishing good cause for respondent-franchisor not to enter into a franchise establishing an additional motor vehicles dealership with the Orrin W. Fox Company at 3456 East Colorado Boulevard, Pasadena, California.

1. There will be a permanency of investment;
2. It was not established that there would be any substantial detrimental effect on the retail motor vehicle business in the relevant marketing area. There would not be any detrimental effect to the consuming public in the relevant marketing area;
3. It would not be injurious to the public welfare for an additional franchise in this location to be established. It was established that franchisees of Buicks are in general competition throughout Los Angeles County. It does not appear, however, in view of the declining sales penetration in the area, that there is adequate competition within the particular marketing area;

4. It would to some degree increase competition and would therefore be in the public interest.

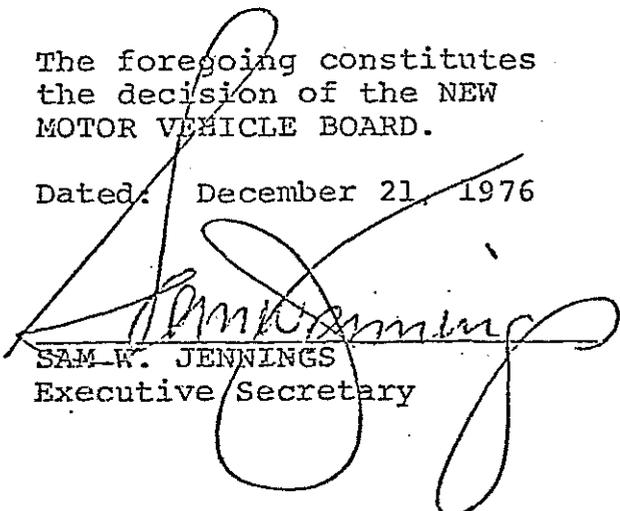
* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The protests of Becherer Buick, Inc., and O'Donnell Buick-Opel, Inc., are overruled. Respondent Buick Motor Division, General Motors Corporation, is entitled to enter into a franchise at Orrin W. Fox Company at 3456 East Colorado Boulevard, Pasadena, California.

The foregoing constitutes the decision of the NEW MOTOR VEHICLE BOARD.

Dated: December 21, 1976


SAM W. JENNINGS
Executive Secretary

PR-35-75
PR-50-75
PR-36-75
PR-51-75

BEFORE THE NEW MOTOR VEHICLE BOARD
OF THE STATE OF CALIFORNIA

In the Matter of the Protest of:

O'DONNELL BUICK-OPEL, INC.

Franchisee,

vs.

BUICK MOTOR DIVISION, GENERAL
MOTORS CORPORATION,

Franchisor.

No. PR-36-75

L-9577

F I L E D
New Motor Vehicle Board
Date <i>November 11 1976</i>
By <i>Joseph P. Howell</i>

PROPOSED DECISION

This matter came on regularly for hearing before Willis Mevis, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California on September 15-17 and 20-23 1976. The protest Becherer Buick, Inc. was represented by Thomas R. Suttner and Charles L. Duffy of the firm of Boer, Suttner and Gekas, and respondent was represented by Gerard E. Boudreau, Jr. and John D. Niles of the firm of O'Melveny & Myers and by Robert W. Culber, Senior Attorney, Office of the General Counsel, General Motors Corporation. The two protests of Becherer Buick, Inc., being case No. PR-35-75 (L-9544) and PR-50-75 (L-9920), by stipulation were consolidated, and these matters in turn were consolidated with the matter of the protest of O'Donnell Buick-Opel, Inc. versus Buick Motor Division, General Motors Corporation, being case No. PR-36-75 (L-9577) and case No. PR-51-75 (L-9919) for the purposes of receiving evidence. The motion of the respondent Buick Motor Division, General Motors Corporation, to dismiss all matters based upon the unconstitutionality of sections 3062, 3063 and 3066 of the California Vehicle Code was denied.

Pursuant to a stipulation to entry of protective order in Becherer Buick, Inc. and O'Donnell Buick-Opel, Inc. versus Buick

Motor Division, General Motors Corporation and the order entered thereon in the Superior Court of the State of California, County of Los Angeles, case No. NEC 18000, exhibits 9, 10, 13, 14, 17, 22 and exhibits J, L, N, AA, BB, CC, DD, FF, MM, NN, OO, PP, QQ in evidence in the consolidated hearings is designated as confidential and privileged material pursuant to section 1060 of the California Evidence Code and has been placed in sealed envelopes.

Evidence both oral and documentary was received, the parties submitted written arguments on October 4, 1976 which are designated and received as exhibit 26 for identification and exhibit RR for identification respectively. By written stipulation of the parties copies of the notices sent pursuant to section 3062 of the Vehicle Code and the protests was received in evidence and marked exhibit SS. Exhibit 19, upon which a ruling was reserved, is admitted in its entirety. The Administrative Law Judge now finds the following facts:

I

Respondent Buick Motor Division, General Motors Corporation, hereinafter referred to as Buick, gave notice to the New Motor Vehicle Board on February 5, 1975 of Buick's intention to grant a franchise to Orrin W. Fox Company, hereinafter referred to as Fox, a franchise dealer for American Motor Automobiles and GMC Trucks located at 3456 East Colorado Boulevard, Pasadena, California. Notice was not given to other Buick-Opel dealers at that time. On May 22, 1975 protests were filed with the New Motor Vehicle Board by Becherer Buick, Inc., hereinafter referred to as Becherer and located at 840 West Huntington Drive, Monrovia, California and O'Donnell Buick-Opel, Inc., hereinafter referred to as O'Donnell, and located at 220 South San Gabriel Boulevard, San Gabriel, California.

II

On July 24, 1975, Buick gave written notice pursuant to Vehicle Code section 3062 to the New Motor Vehicle Board and to all Buick-Opel dealers within a 10 mile radius of 3456 E. Colorado Boulevard in Pasadena of Buick's intention to grant a Buick and Opel

franchise to Fox. Timely protests were filed by Becherer and O'Donnell. Colonial Buick, Inc., the only other Buick-Opel dealer located within the 10 mile radius from the proposed franchise was notified but did not file a protest.

III

In its protest O'Donnell raises the following issues:

- A. There is no present need for a Buick dealer in Pasadena.
- B. The Orrin W. Fox Company would be located too close to O'Donnell.
- C. Foxes facilities are inadequate to sell and service Buick and Opels in addition to its existing franchises.
- D. It is unfair to grant the franchise to Fox in that he already has an AMC-GMC Truck dual franchise.

IV

Becherer is a Buick-Opel dealer located at 840 West Huntington, Monrovia, California and has been a franchised Buick dealer at that location since April, 1950 and has a substantial capital investment.

V

O'Donnell is a Buick-Opel dealer located at 220 South San Gabriel, San Gabriel, California and has been a franchise Buick dealer at that location since June 1964 and has a substantial capital investment therein.

VI

Orrin Fox Company hereinafter referred to as Fox is an AMC-GMC dealer located at 3456 East Colorado Boulevard, Pasadena, California. The corporation is owned by Richard Fox (65) and Ralph Thorson (35%). The corporation has been in business as an automobile dealer in Pasadena since 1930. Richard Fox joined the corporation in 1948. Ralph Thorson has been a member since 1973. Fox has a substantial capital investment. Richard Fox personally owns the nearly five acres of land upon which Fox is

located and which is worth in excess of \$1 million dollars.

VII

Buick has been continuously represented in Pasadena from 1961 to March 4, 1974 when Klock Buick went out of business due to management problems. There is at present no Buick dealer in Pasadena, although every other major American car manufacturer and most foreign car manufacturers are represented.

VIII

Becherer is located approximately four miles from Fox; O'Donnell, 3.08 miles from Fox; and Colonial, 9.44 miles from Fox. The Fox dealership is located 2.60 miles east of the former Klock Buick location on Colorado Boulevard in Pasadena and Becherer and O'Donnell are respectively 6.28 and 3.68 miles from the former Klock Buick location. Becherer and O'Donnell are 4.96 miles apart.

IX

The facilities of the former Buick dealership in Pasadena, Klock Buick, have been subsequently leased to other interests and are no longer available.

X

For many years Becherer and O'Donnell successfully and profitably competed with Klock Buick and its predecessors for Buick customer sales and service in this area. The evidence established that Klock had a greater volume of business. Since Klock Buick went out of business in March of 1974, Buick Sales penetration in the Pasadena area has declined but the average gross profit received by Becherer and O'Donnell has increased. The market potential is sufficient to support an additional Buick-Opel dealer at the Fox location.

XI

Fox will lease additional land which together with its existing facilities will be adequate to sell and service all makes for which it has or now seeks a franchise.

XII

A dual dealership in itself is not unfair competition. Protestants are free under their franchise agreements to franchise other makes of automobiles.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

Good cause has been established to establish a Buick franchise dealership at Orrin Fox Company pursuant to section 3063 of the Vehicle Code in that:

1. There will be a permanency of investment;
2. It was not established that there would be any substantial detrimental effect on the retail motor vehicle business in the relevant marketing area. There would not be any detrimental effect to the consuming public in the relevant marketing area;
3. It would not be injurious to the public welfare for an additional franchise in this location to be established. It was established that franchisees of Buicks are in general competition throughout Los Angeles County. It does not appear, however, in view of the declining sales penetration in the area, that there is adequate competition within the particular marketing area.
4. The establishment of the proposed franchise by Orrin W. Fox would to some degree increase competition would therefore be in the public interest.

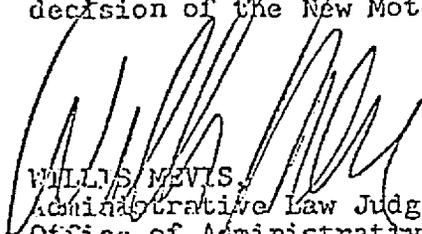
* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The protest of O'Donnell Buick-Opel, Inc. is overruled. Respondent Buick Motor Division, General Motors Corporation is entitled to establish the proposed Buick franchise at Orwin W. Fox Company, at 3456 East Colorado Boulevard, Pasadena, California.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter as a result of the 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.



WILLIS MEVIS,
Administrative Law Judge
Office of Administrative Hearings

DATED: October 19, 1976

WM: jm

BEFORE THE NEW MOTOR VEHICLES BOARD
OF THE STATE OF CALIFORNIA

In the Matter of the Protest of:

BECHERER BUICK, INC.,

Franchisee,

vs.

BUICK MOTOR DIVISION, GENERAL
MOTORS CORPORATION,

Franchisor.

No. PR-35-75

L-9544

FILED

New Motor Vehicle Board

Date *November 1, 1976*

By *Joseph H. Powell*

PROPOSED DECISION

This matter came on regularly for hearing before Willis Mevis, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California on September 15-17 and 20-23, 1976. The protestant Becherer Buick, Inc. was represented by Thomas R. Suttner and Charles L. Duffy of the firm of Boer, Suttner and Gekas, and respondent was represented by Gerard E. Boudreau, Jr., and John D. Niles of the firm of O'Melveny & Myers and by Robert W. Gulver, Senior Attorney of the Office of the General Counsel, General Motors Corporation. The two protests of Becherer Buick, Inc. being case No. PR-35-75 (L-9544) and PR-50-75 (L-9920), by stipulation were consolidated, and these matters in turn were consolidated with the matter of the protest of O'Donnell Buick-Opel, Inc. versus Buick Motor Division, General Motors Corporation, being case No. PR-36-75 (L-9577) and case No. PR-51-75 (L-9919) for the purposes of receiving evidence. The motion of the respondent Buick Motor Division, General Motors Corporation to dismiss all matters based upon the constitutionality of sections 3062, 3063 and 3066 of the California Vehicle Code was denied.

Pursuant to a stipulation to entry of protective order in Becherer Buick, Inc., and O'Donnell Buick-Opel, Inc. versus Buick Motor Division, General Motors Corporation and the order

entered thereon in the Superior Court of the State of California, County of Los Angeles, case No. NEC 18000, exhibits 9, 10, 13, 14, 17, 22 and exhibits J, L, N, AA, BB, CC, DD, FF, MM, NN, OO, PP, QQ in evidence in the consolidated hearings is designated as confidential and privileged material pursuant to section 1060 of the California Evidence Code and has been placed in sealed envelopes.

Evidence both oral and documentary was received, the parties submitted written arguments on October 4, 1976 which are designated and received as exhibit 26 for identification and exhibit RR for identification respectively. By written stipulation of the parties copies of the notices sent pursuant to section 3062 of the Vehicle Code and the protests was received in evidence and marked exhibit SS. Exhibit 19, upon which a ruling was reserved is admitted in its entirety. The Administrative Law Judge now finds the following facts:

I

Respondent Buick Motor Division, General Motors Corporation, hereinafter referred to as Buick, gave notice to the New Motor Vehicle Board on February 5, 1975 of Buick's intention to grant a franchise to Orrin W. Fox Company, hereinafter referred to as Fox, a franchise dealer for American Motor Automobiles and GMC Trucks located at 3456 East Colorado Boulevard, Pasadena, California. Notice was not given to other Buick-Opel dealers at that time. On May 22, 1975 protests were filed with the New Motor Vehicle Board by Becherer Buick, Inc. hereinafter referred to as Becherer, and located at 840 West Huntington Drive, Monrovia, California and O'Donnell Buick-Opel, Inc., hereinafter referred to as O'Donnell and located at 220 South San Gabriel Boulevard, San Gabriel, California.

II

On July 24, 1975, Buick gave written notice pursuant to Vehicle Code section 3062 to the New Motor Vehicle Board and to all Buick-Opel dealers within a 10 mile radius of 3456 E. Colorado Boulevard, in Pasadena of Buick's intention to grant a Buick and Opel franchise to Fox. Timely protests were filed by Becherer

and O'Donnell. Colonial Buick, Inc., the only other Buick-Opel dealer located within the 10 mile radius from the proposed franchisee was notified but did not file a protest.

III

In its protest Becherer raises the following issues:

- A. There is no present need for a Buick dealer in Pasadena.
- B. The Orrin W. Fox Company would be located too close to Becherer.
- C. Foxes' facilities are inadequate to sell and service Buick and Opels in addition to its existing franchises.

IV

Becherer is a Buick-Opel dealer located at 840 West Huntington, Monrovia, California and has been a franchised Buick dealer at that location since April, 1950 and has a substantial capital investment.

V

O'Donnell is a Buick-Opel dealer located at 220 South San Gabriel, San Gabriel, California and has been a franchise Buick dealer at that location since June, 1964 and has a substantial capital investment therein.

VI

Orrin Fox Company, hereinafter referred to as Fox, is an AMC-GMC dealer located at 3456 East Colorado Boulevard, Pasadena, California. The corporation is owned by Richard Fox (65%) and Ralph Thorson (35%). The corporation has been in business as an automobile dealer in Pasadena since 1930. Richard Fox joined the corporation in 1948. Ralph Thorson has been a member since 1973. Both individuals have long experience in the auto sales industry. Fox has a substantial capital investment. Richard Fox personally owns the nearly five acres of land upon which Fox is located and which is worth in excess of \$1 million dollars.

VII

916 (1961) Buick has been continuously represented in Pasadena from 1961 to March 4, 1974, when Klock Buick went out of business due to management problems. There is at present no Buick dealer in Pasadena, although every other major American car manufacturer and most foreign car manufacturers are represented.

VIII

Becherer is located approximately 4 miles from Fox; O'Donnell, 3.08 miles from Fox; and Colonial, 9.44 miles from Fox. The Fox dealership is located 2.06 miles east of the former Klock Buick location on Colorado Boulevard in Pasadena and Becherer and O'Donnell are respectively 6.28 and 3.68 miles from the former Klock Buick location. Becherer and O'Donnell are 4.96 miles apart.

IX

The facilities of the former Buick dealership in Pasadena, Klock Buick, have been subsequently leased to other interests and are no longer available.

X

For many years Becherer and O'Donnell successfully and profitably competed with Klock Buick and its predecessors for Buick customer sales and service in this area. The evidence established that Klock had a greater volume of business. Since Klock Buick went out of business in March of 1974, Buick sales penetration in the Pasadena area has declined but the average gross profit received by Becherer and O'Donnell has increased. The market potential is sufficient to support an additional Buick-Opel dealer at the Fox location.

XI

Fox will lease additional land which together with its existing facilities will be adequate to sell and service all makes for which it has or now seeks a franchise.

* * * * *

Pursuant to the foregoing findings of fact, the Admini-

strative Law Judge makes the following determination of issues:

Good cause has been established to establish a Buick franchise dealership at Orrin Fox Company pursuant to section 3063 of the Vehicle Code in that:

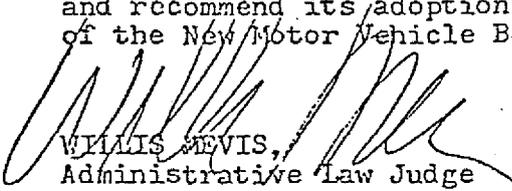
1. There will be a permanency of investment;
2. It was not established that there would be any substantial detrimental effect on the retail motor vehicle business in the relevant marketing area. There would not be any detrimental effect to the consuming public in the relevant marketing area;
3. It would not be injurious to the public welfare for an additional franchise in this location to be established. It was established that franchisees of Buicks are in general competition throughout Los Angeles County. It does not appear, however, in view of the declining sales penetration in the area, that there is adequate competition within the particular marketing area;
4. The establishment of the proposed franchise by Orrin W. Fox would to some degree increase competition and would therefore be in the public interest.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The protest of Besherer Buick, Inc. is overruled. Respondent Buick Motor Division, General Motors Corporation, is entitled to establish the proposed Buick franchise at Orrin W. Fox Company at 3456 East Colorado Boulevard, Pasadena, California.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter as a result of the 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.


WILLIS NEVIS,
Administrative Law Judge
Office of Administrative Hearings

DATED: October 19, 1976
WM:jm