



1507 - 21st Street, Suite 330  
Sacramento, California 95814  
Telephone: (916) 445-1888

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of:            )  
  )  
BRITISH MOTORS OF MONTEREY, INC.,         )  
  )  
  Protestant,     )  
  )  
  vs.                )  
  )  
MASERATI IMPORT COMPANY,                    )  
  )  
  Respondent.     )  
\_\_\_\_\_

Protest No. PR-512-84

Procedural Background

1. By letter dated September 21, 1982, British Motor Car Distributors, Ltd., doing business as MASERATI IMPORT COMPANY (Maserati) notified BRITISH MOTORS OF MONTEREY, INC. (British Motors) that British Motors' Dealer Agreement had expired on August 31, 1982, and that Maserati did not intend to renew the agreement. The termination was to be effective 30 days from the receipt of the letter by British Motors.

2. On January 9, 1984, British Motors filed a protest with the New Motor Vehicle Board (Board) under the provisions of Vehicle Code Section 3060.<sup>1/</sup>

3. A hearing on the protest was held before Geoffrey N. Carter, Administrative Law Judge for the Board. The hearing was conducted on April 30, 1984.

4. British Motors was represented by Andrew H. Swartz of Spiering & Swartz. Maserati was represented by Marvin E. Cardoza.

#### Issues Presented

I. WHETHER THE PROTEST FILED BY BRITISH MOTORS ON JANUARY 9, 1984 WAS TIMELY.

II. WHETHER GOOD CAUSE FOR THE TERMINATION OF THE FRANCHISE WAS ESTABLISHED BY MASERATI IN CONSIDERATION OF THE FOLLOWING:

a) The amount of business transacted by British Motors as compared to the business available to it [3061(a)];

<sup>1/</sup> All references are to the California Vehicle Code unless otherwise indicated.

b) The investment necessarily made and obligations incurred by British Motors to perform its part of the franchise [3061(b)];

c) The permanency of the investment [3061(c)];

d) Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of British Motors disrupted [3061(d)];

e) Whether British Motors had adequate sales and service facilities, equipment, parts, and qualified service personnel to reasonably provide for the needs of the consumers for the Maserati motor vehicles handled by British Motors and had been rendering adequate services to the public [3061(e)];

f) Whether British Motors failed to fulfill the warranty obligations of Maserati to be performed by British Motors [3061(f)]; and

g) The extent of British Motors' failure to comply with the terms of the franchise [3061(g)].

## Findings Of Fact

### I. WHETHER THE PROTEST FILED BY BRITISH MOTORS ON JANUARY 9, 1984 WAS TIMELY.

5. British Motors held a Maserati franchise from June 23, 1980 until it was terminated on October 20, 1982.

6. Vehicle Code Section 3060 provides that "Notwithstanding the terms of any franchise, no franchisor shall terminate or refuse to continue any existing franchise unless . . . the franchisee and the board have received written notice from the franchisor . . . setting forth the specific grounds . . ." for termination or refusal to continue.

7. The letter of termination sent by Maserati to British Motors, dated September 21, 1982, does not specify any reason for the termination or refusal to continue the franchise.

8. Maserati did not send notice of the termination of the franchise to the Board and the Board did not receive such notice until a copy of Maserati's letter to British Motors was included in a "Motion to Dismiss Protest" filed by Maserati with the Board on February 21, 1984.

9. Maserati sent a letter, dated October 20, 1982 to the Department of Motor Vehicles Occupational Licensing Section, P. O. Box 1642, Sacramento, California, advising only that British Motors was no longer authorized to sell Maseratis effective October 21, 1982.

10. Maserati's Motion to Dismiss Protest was heard, and by order dated March 1, 1984, the Board ruled that the filing of the protest was timely. Maserati failed to comply with the provisions of Section 3060 prior to terminating the franchise of British Motors. Notice was never sent to or received by the Board and the notice sent to British Motors did not specify the reasons for termination.

II. WHETHER GOOD CAUSE FOR THE TERMINATION OF THE FRANCHISE WAS ESTABLISHED BY MASERATI.

A. FACTS RELATING TO THE AMOUNT OF BUSINESS TRANSACTED BY BRITISH MOTORS AS COMPARED TO THE BUSINESS AVAILABLE TO IT [3061(a)].

11. Maserati distributes Maserati cars throughout seven (7) western states. There are a total of seventeen (17) Maserati dealerships within that

area, thirteen (13) of which are in California. Most of the California dealerships are located in the heavily populated areas of Southern California, such as Santa Monica, San Diego, and Anaheim.

12. Maserati maintains only one (1) dealership in the state of Washington, which has a population in excess of three (3) million, and one dealership in Oregon, a state with a population exceeding two (2) million. There are no Maserati franchisees located in Idaho or Nevada.

13. In Northern California Maserati presently has dealerships located in Sacramento, San Francisco, Palo Alto, Walnut Creek, and San Jose. The San Jose dealership was established subsequent to the termination of British Motors.

14. The Maserati Standard Distributor/Dealer Agreement did not specify the market area for British Motors nor did it restrict the area in which British Motors could advertise.

Oregon, a state with a population exceeding two (2) million. There are no Maserati franchisees located in Idaho or Nevada.

13. In Northern California Maserati presently has dealerships located in Sacramento, San Francisco, Palo Alto, Walnut Creek, and San Jose. The San Jose dealership was established subsequent to the termination of British Motors.

14. The Maserati Standard Distributor/Dealer Agreement did not specify the market area for British Motors nor did it restrict the area in which British Motors could advertise.

15. Maserati believed that British Motors' market area was the Monterey Peninsula. British Motors believed that its market area included not only the Monterey Peninsula, but all of the San Joaquin Valley as well. Many persons with homes in the Monterey community also reside in Bakersfield, Fresno, Modesto, and other cities in both Northern and Southern California. British Motors advertised in and sold Maseratis to persons from such other areas.

15. Maserati believed that British Motors' market area was the Monterey Peninsula. British Motors believed that its market area included not only the Monterey Peninsula, but all of the San Joaquin Valley as well. Many persons with homes in the Monterey community also reside in Bakersfield, Fresno, Modesto, and other cities in both Northern and Southern California. British Motors advertised in and sold Maseratis to persons from such other areas.

16. The letter of termination from Maserati to British Motors, dated September 21, 1982, did not specify any reason for termination of the franchise. One of the reasons for the termination, as testified to at the hearing, was that the Monterey market area was insufficient to support a dealership.

17. British Motors sold all of the Maseratis allocated to it at a faster rate than many other Maserati dealerships. During one month British Motors came close to setting a record for the most Maseratis sold in the distributorship area.

B. FACTS RELATING TO THE INVESTMENT NECESSARILY MADE AND OBLIGATIONS INCURRED BY BRITISH MOTORS TO PERFORM ITS PART OF THE FRANCHISE [3061(b)].

18. At the time of acquiring the Maserati franchise, British Motors also represented Ferrari, Rolls Royce, Jaguar, Aston-Martin, Alfa Romeo, and AMC/Jeep and Renault.

19. British Motors acquired a Ferrari franchise in the middle of 1979. Beginning in late 1979, discussions began between Gerald G. Byrne, President of British Motors, and Jack Flaherty concerning the acquisition by British Motors of a Maserati franchise. For over 30 years Flaherty had been a business associate and close friend of Kjell Qvale, Chairman of the Board of Maserati. During the course of the discussions the representations made by Flaherty caused Byrne to believe that a Maserati franchise would be granted to British Motors.

20. Based in part upon the representations of Flaherty, British Motors, at the end of 1979, leased a building adjacent to its existing facilities. The building was intended to house both Ferrari and Maserati.

21. In January 1980, British Motors began extensive remodeling of the leased premises. The remodeling was concluded in April 1980, and Ferrari was moved into the building. Total expenditures on the leasehold improvements approximated \$150,000. These improvements were begun before British Motors had formally applied for the Maserati franchise on February 28, 1980 but subsequent to the time that Flaherty had informed Byrne that the franchise would be granted to British Motors.

22. When the Maserati franchise was acquired in June 1980, the Maserati cars were moved into the building with Ferrari.

23. The leased building also provided a service area as well as parts storage space for Maserati and Ferrari.

24. In December 1982, after it became apparent to Byrne that Maserati would not rescind the termination, the building was leased to a third party. In 1983 the Ferrari portion of the dealership was moved into the main building with the Rolls Royce and Jaguar cars.

C. FACTS RELATING TO THE PERMANENCY OF THE INVESTMENT [3061(c)].

25. British Motors maintained a substantial investment in its total dealership facilities. However, British Motors could not identify a specific amount exclusively attributable to its Maserati franchise as compared to the other franchises it held.

26. The Maserati Standard Distributor/Dealer Agreement contains no specific requirements as to the type or size of physical facilities that a franchisee must have, nor does Maserati require that the dealer stock an extensive inventory of parts or accessories.

D. FACTS RELATING TO WHETHER IT IS INJURIOUS OR BENEFICIAL TO THE PUBLIC WELFARE FOR THE FRANCHISE TO BE MODIFIED OR REPLACED OR THE BUSINESS OF BRITISH MOTORS DISRUPTED [3061(d)].

27. British Motors is a dealership which specializes in exotic automobiles. Prior to termination by Maserati, buyers of such cars had an opportunity to compare Maserati with the other luxury models offered by British Motors.

28. Prior to termination by Maserati, British Motors provided service and parts to both resident and non-resident owners of Maserati automobiles.

29. Maserati has no plans to replace British Motors with another Maserati dealership in the Monterey area.

30. No evidence was presented by Maserati to indicate that the termination of the franchise would be beneficial to the public welfare.

E. FACTS RELATING TO WHETHER BRITISH MOTORS HAD ADEQUATE SALES AND SERVICE FACILITIES, EQUIPMENT, PARTS, AND QUALIFIED SERVICE PERSONNEL TO REASONABLY PROVIDE FOR THE NEEDS OF THE CONSUMERS FOR THE MASERATI MOTOR VEHICLES HANDLED BY BRITISH MOTORS AND HAD BEEN RENDERING ADEQUATE SERVICES TO THE PUBLIC [3061(e)].

31. Maserati had never received any complaints regarding British Motors' facilities, or the quality of its personnel.

32. Maserati presented no evidence to establish that British Motors did not have adequate sales and service facilities, equipment, parts, or qualified personnel to

provide reasonably for the needs of its Maserati customers or that British Motors had not been rendering adequate services to the public.

F. FACTS RELATING TO WHETHER BRITISH MOTORS FAILED TO FULFILL MASERATI'S WARRANTY OBLIGATIONS [3061(f)].

33. Maserati presented no evidence to indicate that British Motors failed to fulfill Maserati's warranty obligations.

G. FACTS RELATING TO THE EXTENT OF BRITISH MOTORS' FAILURE TO COMPLY WITH THE TERMS OF THE FRANCHISE [3061(g)].

34. The letter of termination from Maserati to British Motors, dated September 21, 1982, did not specify any reason for the termination of the franchise.

35. By letter dated July 26, 1982, British Motors notified Maserati that Bruce Redding had become a stockholder, corporate officer, and General Sales Manager of the dealership. This letter also requested that Kjell Qvale contact Byrne to "arrange a meeting to formalize, with your approval, this arrangement".

36. On July 28, 1982, the officers and directors of British Motors ratified the transfer of 50 percent of the outstanding stock to Redding.

37. All of British Motors' other franchisors, specifically Ferrari of North America, Rolls Royce Motors, Jaguar Cars Inc., Aston-Martin/Lagonda, Alfa Romeo, and American Motors Sales Corporation, approved the transfer of stock to Redding.

38. By letter dated August 9, 1982, Maserati responded to British Motors' notification that Redding had become a major shareholder. This response read in relevant part as follows:

As you no doubt are aware, your Dealer Agreement states very clearly under Paragraph 14 that we have the right to terminate the Agreement . . . "If any material change in the control or management takes place as to the business of Dealer or as to the interest therein of its present stockholders", etc., I, therefore, will contact you shortly so that we may have a meeting where it can be determined if we are willing to accept your new arrangements as well as a reevaluation of your financial capability.

The letter did not evince Maserati's present intention to terminate the franchise but rather indicated that no decision would be made until a meeting was held between the parties. This letter was signed by Kjell Qvale.

39. About a week after the letter of August 9, 1982, a luncheon meeting was held in Monterey. Among the topics discussed was Redding's participation in the dealership. This meeting was attended by Gerald Byrne and Bruce Redding as representatives of British Motors and by C. D. Matlock, Bud Perry, Bruce Nye, and Jeffrey Qvale of Maserati. Kjell Qvale was not present.

40. Following the meeting, Byrne believed that there had been a meeting of the minds and that Maserati had consented to Redding's participation. The first notice that British Motors received indicating anything to the contrary was the notice of termination sent by Kjell Qvale.

41. Of the Maserati personnel, C. D. Matlock, the Dealer Development Manager, had the most frequent contact with British Motors.

42. At some point prior to the time Redding actually became a stockholder, Byrne advised Matlock that Redding was proposing participation in British Motors. At this time Byrne was informed that Matlock personally had no objections to such an arrangement but that Byrne should write directly to Maserati.

43. Prior to Redding becoming a stockholder of British Motors, Matlock and Redding discussed Redding's automobile business experience.

44. Byrne was told by Matlock, as well as by representatives of British Motors' other franchisors, that Redding's participation would be approved upon submission of the necessary paperwork.

45. Although Kjell Qvale testified that he was the only one at Maserati vested with the authority to either approve or cancel a dealer, it was Matlock who, on behalf of Maserati, signed the Dealer Agreement with British Motors. British Motors reasonably believed that the representations made by Matlock concerning the acceptability of Redding were in fact those of Maserati.

46. At no time prior to the termination of the franchise did Kjell Qvale meet with representatives of British Motors to discuss Redding's participation, nor did he evaluate British Motors' financial capabilities, as he stated he would in his letter of August 9, 1982.

47. Kjell Qvale never met Redding or reviewed his financial declaration or evaluated Redding's experience in the automobile business prior to the termination of the franchise. Matlock never made a recommendation to Kjell Qvale as to whether Maserati should approve or disapprove of Redding's participation in British Motors.

48. One of the reasons for Kjell Qvale's decision to terminate the franchise was that he believed that it should not have been granted originally and that he was taking this opportunity to correct what he perceived to be an error.

49. Maserati also alleged at the hearing that British Motors failed to register with Maserati cars which were put into service as demonstrators. There was insufficient evidence presented to show that there was a violation of the franchise in this regard.

Determination of Issues

I. The protest filed by British Motors on January 9, 1984 was timely.

II. Maserati failed to establish good cause to "terminate or refuse to continue" the franchise held by British Motors, in that:

a) Maserati did not establish that the amount of business transacted by British Motors was inadequate as compared to the business available to it [3061(a)];

b) Maserati did not establish that British Motors did not have a material investment and Maserati did not establish that British Motors had not incurred material obligations in the performance of its part of the franchise [3061(b)];

c) Maserati failed to establish that the investment of British Motors was not permanent [3061(c)];

d) Maserati did not establish that it would be beneficial or not injurious to the public welfare for the business of British Motors to be disrupted [3061(d)];

e) Maserati did not establish that British Motors did not have adequate sales and service facilities, equipment, parts, and qualified service personnel to provide reasonably for the needs of the consumers of Maserati cars or that British Motors had not been rendering adequate services to the public [3061(e)];

f) Maserati did not establish that British Motors failed to fulfill the warranty obligations of Maserati [3061(f)];

g) Maserati did not establish that British Motors failed to comply with the terms of the franchise. [3061(g)].

\* \* \* \* \*

The following proposed decision is respectfully submitted:

The Protest is sustained. Maserati has not established good cause to "terminate or refuse to continue" the franchise of British Motors.

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 and recommend its adoption as the decision of the New Motor Vehicle Board.

DATED: July 12, 1984



---

GEOFFREY N. CARTER  
Administrative Law Judge  
New Motor Vehicle Board