

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2000-03-28-012 / NOT PRECEDENTIAL
ID: SJ-99-063 / SJ-99-064 / SJ-99-066
DATE: 03-28-00
DISPOSITION: PROTEST DENIED / APPLICATIONS GRANTED
TAX TYPE: BOAT AND MOTOR LICENSE
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW, on January 13, 2000, at 1:30 p.m., the above-styled and numbered consolidated causes come on for consideration. A hearing was had, at which hearing the applicants, "**A**" **Boating Center** (" **A** "), "**B**" **Marine** (" **B** ") and "**C**" **Marine** (" **C** ") appeared by and through their counsel; the protestant "**Z**" **Boat Sales** (" **Z** " or "protestant") appeared by its counsel; and the Oklahoma Tax Commission ("OTC") appeared by REPRESENTATIVES for the office of the General Counsel of the Oklahoma Tax Commission.

At the commencement of the hearing, " **A** ", " **B** ", and " **C** " submitted motions to dismiss for filing in open court along with the deposition testimony of THE REGIONAL BUSINESS DIRECTOR of Brunswick Corporation, Mercury Marine Division. The Administrative Law Judge considered the motions as a preliminary matter, the evidence submitted in support of the motions and heard the arguments of counsel in opposition to the motions. The Administrative Law Judge makes the following findings of fact and conclusions of law as to the motions to dismiss.

FINDINGS OF FACT

1. On January 13, 2000 at 1:30 p.m. the three applicants and the protestant all appeared in person and by counsel as set forth above, for hearing pursuant to the Notice of Hearing issued by the Administrative law Judge on December 28, 1999.
2. At the commencement of the hearing, the three applicants presented written unfiled motions to dismiss, based upon the deposition testimony of the Regional Business Director for the Mercury Marine Division of Brunswick Corporation.
3. The above cases all involve a common issue as to the identity of a product line raised by the protests filed by " **Z** " to the three separate applications.
4. " **A** ", " **B** " and " **C** " have all been duly authorized and licensed dealers for Mariner brand outboard motors at the addresses set forth in the above style.
5. " **Z** " is an authorized and licensed Mercury brand outboard motor dealership located at 99999 ANONYMOUS Street, Tulsa, Oklahoma.
6. The Mariner outboard motor is manufactured and distributed by the Mercury Marine Division of Brunswick Corporation.
7. The Mercury Marine Division of Brunswick Corporation also manufactures and distributes

the Mercury brand outboard motor.

8. Effective January 1, 2000, the Mercury Marine Division of Brunswick Corporation discontinued the sale and distribution of Mariner outboard motors in the United States.

9. " A ", " B ", and " C " have separate applications currently pending before the Commission for the amendment to their existing license to add the Mercury brand outboard motor in the place of the discontinued Mariner brand outboard motor. No waiver of protest was filed with the three separate applications.

10. " Z " has filed a separate protest to each of the three separate applications stating:

I object to " A ", " B ", and " C " being granted a Mercury Marine brand dealership, due to its proximity to our location and the number of Mercury dealerships already established in and around the Tulsa area.

11. The Mariner brand outboard motor is the same product line as the Mercury brand outboard motor.

CONCLUSIONS OF LAW AND RECOMMENDATIONS

1. The Oklahoma Tax Commission has jurisdiction to consider the applications of " A ", " B ", and " C " for a New and Used Boat and Motor Dealer License pursuant to 63 O.S. (Supp. 1999) § 4033 and §§ 4037, 4037.1, and 4037.2.

2. The Oklahoma Tax Commission has jurisdiction to consider " Z "'s protest pursuant to 63 O.S. (Supp. 1999) §§ 4037.1 and 4037.2.

3. The cases are consolidated for purposes of this hearing.

4. Because the Mariner outboard motor and the Mercury outboard motor constitute the same product line, the applications that are currently before the Commission do not constitute the establishment of a new dealer of the same product line within a 15-mile radius.

5. The applications of " A ", " B ", and " C " are granted and the licenses requested in such applications should be issued pending any appeal.

6. The three protests of " Z " are denied.

MADE AND ENTERED this 23rd day of February, 2000.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was **NOT** deemed precedential by the Commission. This means that the legal conclusions are not generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.