

**JURISDICTION:** OKLAHOMA TAX COMMISSION - DECISION  
**CITE:** 2000-08-29-013 / NOT PRECEDENTIAL  
**ID:** SJ990065  
**DATE:** 08-29-00  
**DISPOSITION:** SUSTAINED IN PART / DENIED IN PART  
**TAX TYPE:** BOAT AND MOTOR / DEALERS LICENSE  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the transcript of the proceeding and the exhibits received into evidence, the undersigned finds:

1. That Applicant purchased the existing dealership of COMPANY ONE located at ANYTOWN, Oklahoma.
2. That the business location was established in 1995 and complies with the zoning ordinances of the City OF ANYTOWN.
3. That Applicant lists said location as its principal place of business.
4. That the location consists of approximately two and one-half acres.
5. That the physical facilities consist of a 3,500 square foot indoor showroom, a service area, a service lot, a parts department and approximately an acre of outdoor show area.
6. That Applicant has an investment of approximately \$1,750,000.00 in inventory and \$1,500,000.00 in facilities, parts, accessories and equipment.
7. That Applicant has been in the marine sales and service business since 1993 and currently has four other locations each one of which, including the location at issue, is primarily engaged in the business of marine sales and service.
8. That Applicant conducts business during the hours of 9:00 a.m. until 6:00 p.m. Monday through Friday and 9:00 a.m. through 4:00 p.m. on Saturdays.
9. That Applicant is closed on major holidays.
10. That Applicant currently employs eleven individuals, consisting of four service technicians, two salespersons, two counter persons, a lot porter and an office manager.
11. That one of the service technicians is a certified Mercury outboard mechanic.

12. That Applicant's business location is within a fifteen (15) mile radius of each of Protestants' business locations.

13. That Applicant is currently licensed to sell and act as the dealer of the following boats, to-wit: Ranger, Rinker, Lund, Monark and Buster; and the following motors, to-wit: Mercruiser and Johnson/Evinrude.

14. That Applicant is the exclusive dealer of Ranger, Lund and Monark boats in the ANYTOWN area.

15. That Applicant seeks to amend its license to sell Mercury outboard motors on the brands of boats it sells.

16. That the Sales & Service Agreement between Mercury Marine and Applicant indicates that Applicant has been appointed as a full-line dealer of Mercury Outboard Motors and Mercury Marine Accessories & Service Parts.

17. That upon notification of Applicant's intent to sell Mercury outboard motors, Protestants each filed timely protests to the granting of the licensure amendment.

18. That Protestants are licensed Mercury outboard motor dealers.

19. That at least two of the Protestants are only authorized "pre-rig" or "packaged" dealers of Mercury outboard motors.

20. That the evidence shows only one of the Protestants is a full-line dealer of Mercury outboard motors.

21. That inclusive of Protestants, there are at least five (5) Mercury outboard motor dealers in the central ANYTOWN market area.

22. That marine product consumers shop for a boat primarily and a motor secondarily.

23. That the concept of boat packaging, where a boat manufacturer pre-rigs its boat with a motor and a trailer, allows a consumer to save up to six percent (6%) on the purchase price of a motor.

24. That a consumer in the ANYTOWN market cannot purchase a Ranger, Lund or Monark boat packaged with a Mercury engine.

25. That to purchase the boat separate from the engine costs the consumer the package discount and causes inconveniences to the consumer.

26. That consumers in the ANYTOWN market will be benefitted by additional choices of boats which can be packaged with Mercury outboard motors and an additional source of service, parts and repairs.

27. That the ANYTOWN market for Mercury outboard motors is highly concentrated which may be a precondition for market dominance and market power abuses.

28. That granting Applicant's license to sell Mercury outboard motors will cause a decrease in the ANYTOWN market concentration.

29. That granting Applicant's license to sell Mercury outboard motors will increase competition in the ANYTOWN market for Mercury outboard motors.

30. That according to Protestants there is a proliferation of Mercury products in the ANYTOWN market area, that they provide adequate competition and the consuming public is adequately represented and serviced.

31. That Protestants believe the addition of another Mercury outboard dealership will cause existing service and sales to decline and will impede the ability to obtain parts to service repairs which will negatively impact the consuming public by delays in returning their boats.

### **ISSUES**

The following constitute the issues as framed by the application and the protests thereto.

1. Whether Applicant has sustained its burden of proving by a preponderance of the evidence that good cause exists for permitting the Applicant to establish a full-line Mercury outboard motor dealership within the relevant market area.

2. Whether Applicant has sustained its burden of proving by a preponderance of the evidence that no good cause exists for denying the application to establish the full-line Mercury outboard motor dealership within the relevant market area.

### **CONCLUSIONS OF LAW**

1. That jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 63 O.S. 1991, §§ 4042, 4033, 4037.1 and 4037.2.

2. That Applicant is clearly recognizable as a bona fide new and used boat and motor dealer having satisfied the existing requirements of subsections (B), (C) and (D) of § 4033 of Title 63 of the Oklahoma Statutes.

3. That based on the evidence presented, Applicant sustained its burden of proving by a preponderance of the evidence that good cause exists for granting the application to amend its current license to establish a full-line Mercury outboard dealership within the relevant market area. The evidence indicates that the addition of another Mercury outboard dealership will decrease market concentration and increase competition. In addition, the consuming public will be benefited by additional choices of boats which can be packaged with Mercury outboard motors and an additional source of service, parts and repairs.

4. That based on the evidence presented, Applicant also sustained its burden of proving by a preponderance of the evidence that no good cause exist for denying the application to amend its current license to establish a full-line Mercury outboard dealership within the relevant market area. Protestants argue that the addition of another dealership will cause existing sales and service to decline and will impede their ability to obtain parts to service consumers. No evidence, however, has been presented to show that existing sales and service in the ANYTOWN market area will decline or that there is an unavailability of parts. In fact, the evidence shows that the ANYTOWN market area will benefit with the addition by allowing those people who might go outside the area to purchase within.

5. Applicant's request to amend its current new and used boat and motor dealers license to establish a full-line Mercury outboard motor dealership should be sustained.

6. Protestants' protest to Applicant's request should be denied.

### DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it WAS DETERMINED that the application of the APPLICANT be sustained. It WAS further DETERMINED that the protest of PROTESTANTS be denied.

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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.