

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2002-08-28-014 / NOT PRECEDENTIAL
ID: SJ020001
DATE: 08-28-02
DISPOSITION: PROTEST DENIED / APPLICATION GRANTED
TAX TYPE: BOAT / DEALER APPLICATION
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. By letters dated August 15, 2001, APPLICANT notified the Oklahoma Tax Commission and PROTESTANT of its intent to establish a Mercury dealership at XXXX HIGHWAY, ANYTOWN, OK.
2. APPLICANT'S District Account Manager issued a letter in support of APPLICANT becoming a Mercury pre-rig dealership, upon authorization from the State of Oklahoma and provided the dealership meets the criteria needed to become a Mercury pre-rig dealership.
3. The *Dealer Sales & Service Agreement*, dated March 22, 2002, (hereinafter "Dealer Agreement") between Mercury and APPLICANT indicates that APPLICANT would be appointed as an authorized dealer for pre-rigged Mercury-brand outboard motors at the ANYTOWN, OK location. The Dealer Agreement is contingent upon the Oklahoma Tax Commission's issuance of a license to APPLICANT at the location indicated and upon the acceptance by Mercury.
4. The Applicant's Dealer Agreement dated March 22, 2002, limits the Mercury-brand products to be handled by APPLICANT to Mercury outboard motors when purchased pre-rigged by a boat builder as authorized by Mercury Marine.
5. APPLICANT is now making application to amend its existing New and Used Boat and Motor Dealer License to add Mercury outboard motors to its authorized product line for the limited purpose of selling a Mercury outboard motor where it is prepackaged with certain brands of boats, including Ranger, Fisher and Lowe boats.
6. Upon notification of Applicant's intent to sell Mercury outboard motors, PROTESTANT filed a timely protest to the granting of the licensure amendment.
7. PROTESTANT has been in the boat and motor business since 1971, and has been an authorized dealer for Mercury motors for 15 years. In addition, Protestant carries other product lines, including Yamaha motors, and certain brands of boats, including Champion Bass Boats, Triton Boats, Bennington aluminum boats, Xpress aluminum boats and Chaparral ski boats. Protestant's dealership is located at XXXX ANONYMOUS ST, ANYTOWN, OK, where it has been located for over 31 years.

8. Protestant's technicians are required and have completed continuing education classes given by Mercury.

9. Protestant employs three service technicians, two of which are certified Mercury outboard mechanics.

10. Fourth quarter 2001 and first quarter 2002 Mercury Marine Customer Satisfaction Reports rate PROTESTANT as receiving 93% and 95% rankings, respectively, in overall customer satisfaction.

11. Protestant is a Platinum Service dealer for Mercury marine products.

12. Protestant's location at XXXX ANONYMOUS ST, ANYTOWN, OK lies within a fifteen mile radius of the proposed new dealer location for APPLICANT at XXXX HIGHWAY, ANYTOWN, OK.

13. The relevant market area for purposes of 63 O.S. 1991, § 4037.1 includes all points within a fifteen square mile radius of the proposed new dealer, APPLICANT.

14. After the granting of continuances, on March 28, 2002, the Oklahoma Tax Commission issued a notice of hearing for May 7, 2002.

15. Applicant currently has six locations and each one, including the location at issue, is primarily engaged in the sale and service of boats and motors.

16. Applicant purchased an existing dealership at XXXX HIGHWAY, ANYTOWN, OK in February 2002.

17. The physical facilities include an indoor showroom, an outside display area and a service area.

18. At the ANYTOWN location, Applicant currently maintains a display area which meets state requirements on size, visibility and access.

19. Substantially all of the location's annual sales come from the marine business.

20. The business location complies with the zoning ordinances of the City of ANYTOWN.

21. Applicant advertises as a boat and motor dealer.

22. Applicant has an investment of approximately \$325,000 in the property and \$620,000 in inventory at the ANYTOWN location.
23. Business is conducted during the hours of 8:00 a.m. until 6:00 p.m. six days a week.
24. Applicant, at the location, employs a store manager and two service technicians.
25. THE General Manager of the six dealerships of APPLICANT testified that the ANYTOWN dealership currently sells Ranger, Glastron and Lowe aluminum boats. Additionally, he testified that APPLICANT is seeking authorization to sell Mercury motors pre-rigged on Ranger, Fisher and Lowe boats.
26. THE GENERAL MANAGER stated that three of APPLICANT's locations are Platinum Dealers; however, the ANYTOWN location has not met the years of operation and good service requirements.
27. AN economist testified that the granting of the application would be in the public interest due to increased competition, resulting in reduced prices and improved service, and more variety in products offered.
28. THE General Manager of PROTESTANT testified that PROTESTANT adequately meets the needs of the customers in the area and experiences competition from other brands of products and other Mercury dealers throughout Oklahoma.
29. The permanency of APPLICANT's investment in the proposed new dealer ANYTOWN location is evidenced by APPLICANT's ownership of the building and premises, purchased in February 2000, where the dealership is located.
30. The evidence establishes that the dealer agreement to be executed by and between APPLICANT and Mercury complies with the provisions of the Oklahoma Vessel and Motor Registration Act.
31. Consumers of marine products shop for a boat primarily and a motor secondarily.
32. PROTESTANT is not authorized to sell Ranger, Fisher or Lowe boats, and thus does not offer for sale any Mercury motors pre-rigged with these brands of boats.

33. Additional choices of boats which can be packaged with Mercury outboard motors and an additional source of service, parts and repairs, will benefit consumers in the ANYTOWN market.

34. The testimony and evidence as set forth in the record herein establishes that the sole new and used boat and motor dealer licensee authorized to sell Mercury-brand outboard motors within the relevant market area is PROTESTANT, which is a full line Mercury outboard motor dealer.

35. The ANYTOWN market will benefit with the additional choices of boats packaged with Mercury outboard motors by allowing those who might go outside the area to purchase within.

ISSUES

I. Whether APPLICANT meets the statutory requirements for the issuance of a new and used boat and motor dealers license under the provisions of Section 4033 of Title 63 of the Oklahoma Statutes.

II. Whether under 63 O.S. 1991, § 4037.2 "good cause" exists for not permitting or licensing APPLICANT to sell Mercury-brand outboard motors packaged with Ranger, Fisher or Lowe aluminum boats within a fifteen mile radius of the proposed new dealer location because an existing Mercury-brand full line outboard motor dealer, PROTESTANT, being located within the fifteen-mile radius.

CONCLUSIONS OF LAW AND RECOMMENDATIONS

1. The Oklahoma Tax Commission has jurisdiction to consider the application of APPLICANT for a New and Used Boat and Motor Dealer License pursuant to Sections 4033, 4037, 4037.1 and 4037.2 of Title 63 of the Oklahoma Statutes.

2. The Oklahoma Tax Commission has jurisdiction to consider the protest of PROTESTANT pursuant to 63 O.S. 1991, §§ 4037.1 and 4037.2.

3. Applicant is clearly recognizable as a bona fide new and used boat and motor dealer having satisfied the existing requirements of Section 4033 of Title 63 of the Oklahoma Statutes.

4. The dealer agreement between APPLICANT and Mercury Marine is in compliance with the Oklahoma Vessel and Motor Registration Act as set forth at 63 O.S. Supp. 1993, §4037(A).

5. APPLICANT has carried its burden of proof that good cause does not exist for not issuing a New and Used Boat and Motor Dealer License at the ANYTOWN, Oklahoma, location.

6. Applicant's request to amend its new and used boat and motor license to engage in the business of selling and acting as a dealer of pre-rig Mercury Marine outboard motors should be granted.

7. Protestant's protest to Applicant's request should be denied.

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.