

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

AMERICAN HONDA MOTOR CO., INC., )  
AND B.O.O., INC., d/b/a ACURA )  
OF SOUTH FLORIDA, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 04-4108  
 )  
RICK CASE AUTO INC., d/b/a RICK )  
CASE ACURA, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on March 12-17, 2006, March 21-24, 2006, and April 7, 2006, in Tallahassee, Florida, before Florence Snyder Rivas, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner American Honda Motor Co., Inc.

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STATEMENT OF THE ISSUE

Whether Petitioner's application to relocate B.O.O., Inc., d/b/a Acura of South Florida (Acura of South Florida) from its current location in Hollywood, Florida, to its proposed location in Pembroke Pines, Florida, should be approved.

PRELIMINARY STATEMENT

By notice of intent published in the October 15, 2004, Florida Administrative Weekly, American Honda Motor Company, Inc. (American Honda, manufacturer, or licensee) provided public notice of its intention to relocate Acura of South Florida from its current location in Hollywood, Broward County, Florida, (Hollywood) to a proposed new location in Pembroke Pines, in Broward County, Florida (Pembroke Pines). Respondent, Rick Case Auto, Inc., d/b/a Rick Case Acura (Case Acura or protesting dealer), timely lodged a formal protest and asserted its right to an administrative hearing.

The case was forwarded to the Division of Administrative Hearings for formal proceedings on November 12, 2004. Following extensive discovery and motion practice, the case came on for hearing on December 12, 2005. At the start of the hearing, Case

Acura sought a continuance based upon an alleged discovery violation by American Honda. In an abundance of caution, a continuance was granted, and the hearing thereafter went forward on the earliest date the parties and witnesses were available.

The identity of witnesses, exhibits, and attendant rulings is contained in the 18-volume transcript filed with the Division of Administrative Hearings on April 10, 2006, and April 24, 2006. The parties made timely post-hearing submissions, including memorandums of law, written final argument, and proposed recommended orders. The parties' submissions and the voluminous record have all been carefully considered in the preparation of this Recommended Order. The parties have made certain stipulations noted in and supported by the record in this case; to the extent relevant, such stipulations are reported in this Recommended Order and are accepted as true. Statutory references herein are to the Florida Statutes (2004) except where otherwise noted.

#### FINDINGS OF FACT

##### Parties

1. American Honda is a licensee and manufacturer as defined by Section 320.60(8) and (9), Florida Statutes.
2. Acura of South Florida and Case Acura are motor vehicle dealers as defined by Section 320.60(11)(a)1., Florida Statutes.
3. At all relevant times, Acura of South Florida's

principal is Craig Zinn (Mr. Zinn); Case Acura's principals are Rick and Rita Case (Mr. Case and Mrs. Case, respectively, and collectively, the Cases).

#### Notice and Standing

4. With respect to notice and standing, the parties have stipulated as follows: On October 15, 2004, notice of American Honda's intent to relocate Acura of South Florida (proposed relocation) to Pembroke Pines from its current location in Hollywood was duly-noticed by publication in the Florida Administrative Weekly. Case Acura has standing to protest the proposed relocation, and timely filed its protest.

#### The Community or Territory

5. The parties have stipulated that the Community or Territory (generally referred to in the industry as a "comm/terr" ) relevant to this proceeding is the area defined by American Honda as the Pembroke Pines comm/terr (Pembroke Pines comm/terr or comm/terr). Both Acura of South Florida and Case Acura are located within the comm/terr, as is the proposed relocation site. The proposed relocation site is located west of both Acura of South Florida and of Case Acura.

#### The Proposed Relocation and Related Market Studies

6. Case Acura is, at all relevant times, centrally located in Ft. Lauderdale in Broward County, Florida. Major Broward County traffic arteries provide ready access to Case Acura from

the north, south, east and west within the comm/terr. Acura of South Florida is located south of Case Acura, and just north of the Broward County line. Unlike Case Acura, Acura of South Florida does not offer customers ready access from any direction within the comm/terr. Both Case Acura and Acura of South Florida are located well east of the proposed location.

7. From time to time, as circumstances warrant, American Honda evaluates specific existing or proposed comm/terrs, including the Pembroke Pines comm/terr, by performing a so-called market study. American Honda's market studies are an integral part of the company's strategic and long-range planning process. American Honda's market studies are conducted by teams of experienced and appropriately credentialed experts (market study team(s)). With reference to this case, market studies in the Pembroke Pines comm/terr were conducted in 1997 and again in 2003. The proposed relocation grew out of the results and recommendations of the 1997 market study team. The same results and recommendations were reached again by the 2003 market study team, based upon updated information concerning relevant data which emerged between the two market studies. Both studies documented that Broward County's population had been and would continue for the foreseeable future to "trend west" within the comm/terr. This westward population trend has been and is predicted to continue and to be particularly pronounced among affluent households. Because American Honda manufactures luxury vehicles under the Acura brand, American Honda and its dealers seek to "capture" or "conquer," i.e. attract the business, of

such households, while maintaining their existing customer base of affluent households.

8. The teams which conducted both market studies determined that the present configuration of Acura dealers within the comm/terr (dealer network) did not provide adequate representation for American Honda's Acura brand (adequate representation). The lack of adequate representation was a function of the westward population trend. To remedy the situation, and in accordance with Florida law concerning dealer relocation, both market study teams reasonably recommended that Acura of South Florida be relocated to western Broward County. The recommendation was not implemented following the 1997 market study; at that time, and for some years before and after, the owners of Acura of South Florida (Mr. Zinn's predecessors) were beset by illness and management difficulties, and not in a position to undertake the recommended relocation. Likewise American Honda was not in a position to force a relocation upon Acura of South Florida, because it had neither contractual rights nor statutory rights to do so.

9. The 2003 market study team revisited the comm/terr in order to verify or refute the conclusions and recommendations of the 1997 study team in light of all that had transpired since 1997. Upon careful consideration of updated data, the 2003 study team reasonably concluded that the dealer network as it was then configured still failed to afford adequate representation. American Honda's market study teams, as a

matter of course, conduct informal interviews with all dealers in the comm/terr when assembling market study data. The 1997 and 2003 market study teams followed this practice. During the 2003 interview with him, Mr. Case was asked whether he would like to move his dealership. Mr. Case replied unambiguously that he was well-satisfied with his present location, where he had become one of Acura's most successful dealers. It is noted that Acura dealers are permitted to market and to sell Acuras anywhere, both within and without the comm/terr in which they are located. The Cases have taken particular advantage of this opportunity, a factor which contributes to Case Acura's significant profitability. Dealer input, and the present success or lack thereof of dealers within a comm/terr, are data considered by market study teams in the context of all the other data. Upon consideration of all relevant data, including the input of the dealers within the Pembroke Pines comm/terr, the 2003 market study team adhered to the conclusion of the 1997 team and recommended implementation of the relocation of Acura of South Florida as proposed in 1997.

10. As Acura of South Florida and American Honda set out to implement the relocation recommendation, Mr. Case had a change of heart and came forward to insist that he was entitled to be the dealer to be relocated. He also insisted that Acura of South Florida remain where it was. In support of these late-

asserted demands, Mr. Case testified that he had previously been informed by the "zone manager" for the comm/terr, one Ray Mikiciuk (Mr. Mikiciuk) that Case Acura (and not Acura of South Florida) would be relocated. According to Mr. Case, Mr. Mikiciuk was authorized by American Honda to so advise Mr. Case on American Honda's behalf. Mr. Case also claims that Case Acura would have been the dealership relocated but for a threat by Mr. Zinn to sue American Honda should Case Acura be relocated. Contrary to Mr. Case's testimony regarding the foregoing, the persuasive evidence established that since 1997, American Honda executives supported the market study recommendations for the Pembroke Pines comm/terr, including the proposed relocation. Mr. Mikiciuk is a low level employee; there is no persuasive evidence that Mr. Mikiciuk ever had authority to speak for American Honda with reference to dealer relocations, let alone to bind the company. These facts were well known to Mr. Case. Mr. Case had unfettered access to the highest level American Honda executives over decades of mutually lucrative dealings with American Honda and related subsidiaries. Mr. Case had no reluctance to use these open lines of communication with regard to matters of minor as well as major importance to Case Acura. Yet, he now posits that American Honda, speaking through zone manager Mikiciuk, intended to overrule its 1997 and 2003 market study teams and relocate Case



Acura, and reneged only because of Mr. Zinn's threat to litigate. The foregoing scenario is charitably described as counterintuitive. No corroborating evidence was provided. Mr. Case's testimony concerning his dealings with American Honda in regard to the proposed relocation is uncorroborated, unbelievable, and not credited by the fact-finder.

11. Mr. Zinn initiated his purchase of Acura of South Florida in the spring of 2003. By the time the transaction was finalized in December 2003, anticipated future change(s)--including the westward population trend identified in the 1997 market study--had become substantially more pronounced. Other changes had developed, or were reasonably anticipated to develop in the foreseeable future. For example, Acura of South Florida is presently and permanently foreclosed from providing customers and staff even the basic amenity of on-site parking, inasmuch as the Florida Department of Transportation (DOT) has taken by condemnation a 23-foot strip along the entire dealership frontage. Thirty parking places have been lost. Signage advising the public that they had reached Acura of South Florida is no longer permitted. At its present location, it is impossible for Acura of South Florida to be brought into compliance with Acura's so-called Design Image Standards (DIS) because the dealership property is too small to allow for the expansion required by DIS. American Honda and its network of dealers deem implementation of DIS at every dealership to be

crucial to Acura's future success or failure in the marketplace. Additionally, the dealership is a prime candidate to be declared a "non-conforming use" by local zoning authorities. Such designation would render it impossible to obtain necessary permits to make needed improvements in the future.

An Objective, Reasonable Standard

12. In order to assess the adequacy of representation afforded by the existing dealer network in the comm/terr and to measure the level of opportunity available in the market, it is necessary to develop an objective, reasonable standard against which to compare the actual market penetration achieved by the existing dealer network, which includes, in this case, Acura of South Florida and Case Acura.

13. A standard is a measure of the level of performance a brand can reasonably expect to achieve in the market with an adequately performing dealer network; that is, an adequate number of dealers performing competitively.

14. The most objective data available for measuring the performance of a dealer network is market penetration data. Market penetration is the ratio of a brand's performance against the competitive industry. Market penetration is a direct measure of both inter-brand and intra-brand competition. Intra-brand competition is competition between competitors of the same brand. Inter-brand refers to competitors of different brands.

15. The first step in developing a reasonable standard is to select a suitable comparison area. When choosing a comparison area, it is essential to select an area that is itself adequately represented. In determining whether a proposed comparison area is adequately represented, national average market penetration is an extremely conservative benchmark, because it includes all of the adequately represented, inadequately represented, and unrepresented areas within the United States.

16. By contrast, the State of Florida is not an appropriate standard comparison area against which to judge the performance of Acura in the Pembroke Pines comm/terr because at relevant times the brand performs below national average in Florida. This is so because Florida has a disproportionate number of areas in which Acura has no dealer representation as well as a disproportionate share of underperforming dealers.

17. National average market penetration is, under all the facts and circumstances of this case, the appropriate starting point for developing a reasonable standard for the Acura brand. The national average must be adjusted, however, to take into account unique consumer preferences over which the dealer network has no control, which can affect market share.

18. Unique consumer preferences in the local market can be accounted for through a process called segmentation analysis. In

this process, groups of vehicles in the segments to be analyzed are far more comparable with each other than with other vehicles not in the segments. Consequently, segments contain a group of similar vehicles that, by their design and physical characteristics, meet a certain set of consumer transportation needs. American Honda arranges its Acura vehicles into seven segments: small sporty, sporty luxury coupe, mid-size luxury sedan, full size luxury sedan, near luxury, exotic, and mid-luxury. The segmentation analysis process employed by American Honda accurately reflects the demographic features--including age, income, and education--of consumers who have actually purchased the vehicles in Acura's seven segments. In addition, the segmentation analysis employed by American Honda takes into account other factors which are unrelated to any particular consumer. Such factors include the state of the economy, product quality, and design features.

19. Under all the facts and circumstances revealed in the record, the national average performance for Acura as adjusted for local consumer preferences in the Pembroke Pines comm/terr (the expected standard) is the appropriate standard for measuring the adequacy of representation being provided by existing Acura dealer networks and for establishing the level of opportunity available to Acura dealers in the Pembroke Pines comm/terr.

20. At all relevant times, national average penetration, adjusted for local consumer preferences, produces an expected standard in the comm/terr of 10.58 percent, while the comm/terr is 10.3 percent of the retail industry segments in which Acura competes. For the year 2005 through June 30, the expected standard for the Pembroke Pines comm/terr is 11.37 percent while the Pembroke Pines comm/terr is 10.92 percent of the retail industry segments in which Acura competes.

21. The reasonableness of the expected standard is confirmed by the fact that Acura has achieved or exceeded the standard in the recent past or currently meets or exceeds the standard in several markets in Florida; a sixth market in recent years has missed the standard only once, by four-tenths of a point in 2004.

22. The persuasive data established that the expected standard is reasonable and can be achieved in the comm/terr if the Acura brand is adequately represented.

23. Taking the foregoing factors into account, national average, adjusted for local consumer preferences, is the appropriate standard by which to judge the adequacy of representation being provided by the existing Acura dealer network and the level of opportunity available in the comm/terr.

Impact on Manufacturer

24. American Honda's Acura brand is, at relevant times, losing available sales in the comm/terr due to the inability of

the existing Acura dealer network to penetrate the comm/terr at reasonably expected levels in light of the opportunity available. The persuasive evidence established that the gap between reasonably expected levels of penetration and the actual dealer network performance will grow.

25. Taking reasonably anticipated future changes into account, the evidence of record established that the manufacturer will enjoy increased sales and overall increased customer convenience as a result of the proposed relocation.

#### Investment of and Potential Impact Upon Existing Dealers

26. Mr. Zinn and the Cases have invested significant dollar amounts to perform their obligations under their respective American Honda/Acura franchise agreements. They have likewise invested significant sweat equity, and expect to continue to manage their dealerships in a hands-on manner. The Cases contend that their investment in their Acura dealership will be at risk should the proposed relocation proceed. There was no persuasive evidence to support this contention. Rather, Case Acura is well positioned; well capitalized; and highly likely to respond positively to inter-brand competition arising from the proposed relocation. The Cases are aggressive and highly experienced dealers. It is reasonable to anticipate that the Cases will not lose sales; profit; reasonable opportunity for growth; or growth in the value of their multi-million dollar

investment in Case Acura. Likewise, other existing dealers in the comm/terr are reasonably expected to grow and to maintain the value of their investments if the proposed relocation goes forward. Additionally and more specifically, the evidence is sufficient to establish that existing dealers in the comm/terr will be positively impacted by increased sales and service opportunities if the proposed relocation goes forward. Based upon the foregoing, the evidence is sufficient to establish that the proposed relocation is warranted and justified based on economic and marketing conditions, including future changes and present, accelerating trends in the comm/terr, which continues to grow rapidly in terms of population and of affluent households, which factors present increased sales and service opportunity for dealers. These opportunities are likely to be captured if the proposed relocation goes forward, and unlikely to be captured if it does not.

#### Coercion of Existing Dealers

27. There have been no efforts by American Honda to coerce any existing dealer to consent to the proposed relocation.

#### Protesting Dealer Compliance with Dealer Agreement

28. Case Acura is at all relevant times in compliance with the terms of its dealer agreement.

#### Distance and Accessibility

29. Congested traffic conditions in the western portion of the comm/terr militate heavily in favor of the proposed relocation. The proposed relocation will provide consumers with an increased level of convenience, and stimulate inter-brand competition. The market studies and common sense demonstrate that affluent consumers will not travel substantial distances to purchase an Acura when a variety of other luxury cars are more conveniently available. Other luxury vehicle dealers have taken note of the rapid growth of affluent homes in west Broward, and have provided and continue to provide improved accessibility. Acura's current dealer network in the comm/terr has not kept pace with American Honda's need to offer its existing and prospective customers an adequate level of accessibility, convenience and service.

Benefits to Consumers Obtained by Geographic or Demographic Changes

30. The evidence is sufficient to establish that consumer benefits will occur as a result of the relocation of Acura of South Florida. Such benefits cannot be obtained by expected demographic or geographic changes in the comm/terr.

Adequacy of Interbrand and Intra-brand Competition and Consumer Care

31. The evidence is sufficient to establish that the performance of Acura in the comm/terr is below reasonable levels under the appropriate standard, thereby reflecting inadequacy of



inter-brand and intra-brand competition. With regard to consumer convenience, the evidence is sufficient to establish that it is necessary to locate a dealership within in the western portion of the comm/terr, where existing and potential Acura customers have moved and continue to move in large numbers, in order to provide them adequate customer care, including sales and service facilities.

Relocation Justification Based on Economic and Marketing Conditions

32. The evidence is sufficient to establish that the proposed relocation is warranted and justified based on economic and marketing conditions, including future changes. Western Broward County continues to grow at a rapid rate in terms of affluent population, households, and increased sales and service opportunities which are likely to be captured if the proposed relocation goes forward.

Volume of Existing Dealers Registrations and Service Business

33. The evidence is sufficient to establish that the volume of registrations and service business is hindered by the present configuration of the dealer network in the comm/terr, and that the volume of registrations and service business by existing Acura dealers in the comm/terr will improve if the proposed relocation goes forward.

CONCLUSIONS OF LAW

34. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this

proceeding pursuant to Sections 120.569 and 120.57 and Subsection 320.642(2)(a), Florida Statutes (2006).

35. Section 320.642, Florida Statutes, governs requests to relocate a dealership and provides in pertinent part:

(2)(a) An application for a motor vehicle dealer license in any community or territory shall be denied when:

1. A timely protest is filed by a presently existing franchised motor vehicle dealer with standing to protest as defined in subsection (3); and

2. The licensee fails to show that the existing franchised dealer or dealers who register new motor vehicle retail sales or retail leases of the same line-make in the community or territory of the proposed dealership are not providing adequate representation of such line-make motor vehicles in such community or territory. The burden of proof in establishing inadequate representation shall be on the licensee.

\* \* \*

(3) An existing franchised motor vehicle dealer or dealers shall have standing to protest a proposed additional or relocated motor vehicle dealer where the existing motor vehicle dealer or dealers have a franchise agreement for the same line-make vehicle to be sold or serviced by the proposed additional or relocated motor vehicle dealer and are physically located so as to meet or satisfy any of the following requirements or conditions:

\* \* \*

(b) If the proposed additional or relocated motor vehicle dealer is to be

located in a county with a population of more than 300,000 according to the most recent data of the United States Census Bureau or the data of the Bureau of Economic and Business Research of the University of Florida:

1. Any existing motor vehicle dealer or dealers of the same line-make have a licensed franchise location within a radius of 12.5 miles of the location of the proposed additional or relocated motor vehicle dealer; or

2. Any existing motor vehicle dealer or dealers of the same line-make can establish that during any 12-month period of the 36-month period preceding the filing of the licensee's application for the proposed dealership, such dealer or its predecessor made 25 percent of its retail sales of new motor vehicles to persons whose registered household addresses were located within a radius of 12.5 miles of the location of the proposed additional or relocated motor vehicle dealer; provided such existing dealer is located in the same county or any county contiguous to the county where the additional or relocated dealer is proposed to be located.

36. Case Acura has standing to protest the proposed relocation and has timely filed its protest.

37. American Honda, as the licensee, has the burden of proof in this proceeding. See Section 320.642(2)(a)2., Florida Statutes. To prevail, American Honda must establish by a preponderance of evidence that the existing franchised dealers for Acura are not providing adequate representation in the Pembroke Pines comm/terr.

38. The scope of inquiry to determine whether existing dealers are providing adequate representation is set forth in Subsection 320.642(2)(b), Florida Statutes. The subsection identifies 11 factors which may be considered and states:

(b) In determining whether the existing franchised motor vehicle dealer or dealers are providing adequate representation in the community or territory for the line-make, the department may consider evidence which may include, but is not limited to:

1. The impact of the establishment of the proposed or relocated dealer on the consumers, public interest, existing dealers, and the licensee; provided, however, that financial impact may only be considered with respect to the protesting dealer or dealers.

2. The size and permanency of investment reasonably made and reasonable obligations incurred by the existing dealer or dealers to perform their obligations under the dealer agreement.

3. The reasonably expected market penetration of the line-make motor vehicle for the community or territory involved, after consideration of all factors which may affect said penetration, including, but not limited to, demographic factors such as age, income, education, size class preference, product popularity, retail lease transactions, or other factors affecting sales to consumers of the community or territory.

4. Any actions by the licensees in denying its existing dealer or dealers of the same line-make the opportunity for reasonable growth, market expansion, or relocation, including the availability of line-make vehicles in keeping with the reasonable expectations of the licensee in

providing an adequate number of dealers in the community or territory.

5. Any attempts by the licensee to coerce the existing dealer or dealers into consenting to additional or relocated franchises of the same line-make in the community or territory.

6. Distance, travel time, traffic patterns, and accessibility between the existing dealer or dealers of the same line-make and the location of the proposed additional or relocated dealer.

7. Whether benefits to consumers will likely occur from the establishment or relocation of the dealership which cannot be obtained by other geographic or demographic changes or expected changes in the community or territory.

8. Whether the protesting dealer or dealers are in substantial compliance with their dealer agreement.

9. Whether there is adequate interbrand and intrabrand competition with respect to said line-make in the community or territory and adequately convenient consumer care for the motor vehicles of the line-make, including the adequacy of sales and service facilities.

10. Whether the establishment or relocation of the proposed dealership appears to be warranted and justified based on economic and marketing conditions pertinent to dealers competing in the community or territory, including anticipated future changes.

11. The volume of registrations and service business transacted by the existing dealer or dealers of the same line-make in the relevant community or territory of the proposed dealership.

39. Factor 1 addresses the impact a relocated dealership will have on consumers, the public interest, existing dealers and the licensee. See Section 320.642(2)(b)1., Florida Statutes. With reference to Factor 1, the evidence established that the proposed relocation will benefit consumers, existing dealers and the licensee, and will serve the public interest. Consumers will benefit from the presence of an updated Acura of South Florida with improved service facilities and adequate space. Consumers benefit, too, from Acura's new owner, who is experienced and committed to the success of the dealership at its new location. Additionally, the proposed relocation will stimulate both inter-brand and intra-brand competition, which is in the public interest. The Acura brand will benefit through increased exposure, market penetration, and sales and service capacity in the comm/terr, where the brand is not, at present, adequately represented. It is not likely there will be a negative impact to existing dealerships, including the protesting dealer. There is a significant and growing untapped market potential opportunity in the comm/terr. If the protesting dealer and other dealers in the network respond positively and offer competitive value, they will capture some of the increased sales opportunity generated by Acura of South Florida's relocation, and will fare well under the reconstituted dealer network.

40. Another element of Factor 1 which may be considered is the financial impact on the protesting dealer, which impact must be analyzed as it relates to determining adequacy of

representation. Here, the evidence established that there is no reason to expect the existing dealership to lose sales as a result of the implementation of the proposed relocation. Case Acura is highly profitable. It has substantial capital and cash assets with which to compete in the marketplace. However, even if some sales are lost, the manufacturer is not statutorily required to prove an absence of any financial impact on the protesting dealer. See Chevrolet Motor Division, General Motors Corporation, et al. v. Fred Bondesen Chevrolet, DOAH Case No. 98-1559 (DOAH February 1, 1999); and Kawasaki Motors Corp., et al. v. Cycle Sports Center, Inc., Case No. 95-3852 (DOAH January 5, 1996).

41. Factor 2 relates to the size and permanency of the dealers' investments and obligations they have incurred to comply with their respective dealer agreements. See Section 320.642(2)(b)2., Florida Statutes. Here, there is no dispute that the Cases have made substantial financial and personal investments in their Acura dealership. Such investments will not be impaired if the proposed relocation is approved.

42. Factor 3 relates to the reasonably expected market penetration of the line-make motor vehicle for the comm/terr. See Section 320.642(2)(b)3., Florida Statutes. In this case, the reasonably expected market penetration is the national average, after adjustments for segment popularity and demographic factors in the comm/terr.

43. Factor 4 relates to the actions of the licensee to deny existing dealer opportunities for growth, expansion, or

relocation. See Section 320.642(2)(b)4., Florida Statutes.

Here, there is no persuasive evidence that American Honda prevented the protesting dealer from expanding or relocating to meet the needs of the territory or community.

44. Factor 5 addresses attempts of the licensee to coerce existing dealers into consenting to the proposed relocation. See Section 320.642(2)(b)5., Florida Statutes. Here, there is no evidence that American Honda made attempts to coerce the protesting dealer into consenting to the proposed relocation.

45. Factor 6 addresses accessibility of existing dealer(s) relative to the proposed dealership location. See Section 320.642(2)(b)6., Florida Statutes. The evidence is sufficient to establish that the proposed new dealership site will improve accessibility for consumers within the comm/terr.

46. Factor 7 addresses benefits to consumers from the proposed relocation which cannot be obtained by other geographic or demographic changes or expected changes within the comm/terr. See Section 320.642(2)(b)7., Florida Statutes. The evidence is sufficient to establish that the proposed relocation will benefit consumers by providing adequate levels of convenience, access and service to Acura customers and prospective customers in the comm/terr; and that such benefits cannot be obtained by other geographic or demographic changes or expected changes in the comm/terr.

47. Factor 8 concerns the compliance of the protesting dealer with h/er dealer agreement. See Section 320.642(2)(b)8.,



Florida Statutes. Here, there is no evidence that the Cases are not in compliance with their dealer agreement.

48. Factor 9 addresses the issue of adequacy of inter-brand and intra-brand competition with respect to the subject line-make in the comm/terr, including adequacy of convenience of consumer care. See Section 320.642(2)(b)9., Florida Statutes. The evidence established that the performance of Acura is sub-par, reflecting, among other things, inadequate inter-brand and intra-brand competition. With reference to consumer convenience, the western part of the comm/terr lacks adequate sales and service facilities.

49. Factor 10 considers the justification of the proposed relocation based on the economic and marketing conditions pertinent to dealers competing in the comm/terr. See Section 320.642(2)(b)10., Florida Statutes. The evidence is sufficient to establish that the proposed relocation is warranted and justified based on economic and marketing conditions, including future changes and present, accelerating trends in the comm/terr, i.e. rapid growth in terms of affluent population and households, which presents increased sales and service opportunity for dealers.

50. Factor 11 considers the volume of registrations and service business transacted by the existing dealers of the same line-make in the comm/terr. See Section 320.642(2)(b)11., Florida Statutes. The evidence was sufficient to establish that statistics relevant to volume of registrations and service

business transacted by the existing Acura dealers in the comm/terr will improve if the proposed relocation goes forward.

51. Having weighed the statutory criteria enumerated in Subsection 320.642(2)(b), Florida Statutes, and in light of the facts found herein, it is concluded that American Honda has met the burden to prove by a preponderance of the evidence that the existing dealer network is not providing adequate representation. A balancing of the statutory factors supports the conclusion that the benefits of approving the proposed relocation outweigh any negative impact on the existing dealerships, including Case Acura.

52. The Legislature expressed its intent when it enacted the 1988 version of Section 320.642, Florida Statutes. The goals established therein include protecting the welfare of Florida citizens by (1) maintaining competition and (2) providing consumer protection and fair trade. See Section 320.605, Florida Statutes. In light of these goals, the proposed relocation is consistent with the purposes of Section 320.642, Florida Statutes.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, the evidence of record, and the candor and demeanor of the witnesses, it is

RECOMMENDED that the Department of Highway Safety and Motor Vehicles issue a final order approving American Honda's application to relocate Acura of South Florida.

DONE AND ENTERED this 25th day of October, 2006, in Tallahassee, Leon County, Florida.

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FLORENCE SNYDER RIVAS  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 25th day of October, 2006.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.