

A STUDY CONCERNING THE RELATIONSHIPS BETWEEN CERTAIN NEW CAR DEALERS AND THEIR WHOLESALE DISTRIBUTORS

RICHARD F. KAHLE, JR.
Researcher

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FOREWORD

This study on the motor vehicle industry has been prepared in response to Senate Resolution 284, which was adopted during the Regular Session of 1972.

The Resolution expressed concern with the practices and procedures within the motor vehicle industry in Hawaii regarding unfair competition or other abuses which may exist as a result of Hawaii's practice of permitting wholesalers to compete with retailers in the sale of new motor vehicles directly to the consumer. The report includes an analysis of national and local experience with respect to this practice and discusses existing law, both in Hawaii and in other states which have a bearing on possible unfair competitive practices.

To a great extent, this report could not have been completed without the cooperation and assistance of the new car dealers and wholesalers mentioned therein. It is hoped that this report will furnish some insight for the legislature in their consideration of the subject matter.

SAMUEL B. K. CHANG
Director

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SUMMARY

This study of the motor vehicle industry deals with the relationships between new car dealers and their wholesale distributors. The study uncovers several areas in which the relationship between dealer and distributor may lead to conflict. A number of these areas of conflict has caused a certain amount of dissatisfaction and disagreement between the parties.

These areas of disagreement are particularly apparent (1) in the management and use of the cooperative advertising fund, (2) in the area of fleet selling by virtue of the inherent economic advantages the distributor possesses over the franchised dealers, and (3) in the area of alleged distributor favoritism.

The allegations by the retail dealers concerning these areas of dissatisfaction are set forth in the report together with statements of position of the wholesale distributors.

Finally, the report discusses present statutes in the federal and state area which protect dealers from possible unfair competitive practices and presents recommendations and observations concerning the resolution of problems discovered in the conduct of the study.

CHAPTER I

INTRODUCTION

The following report on the motor vehicle industry is submitted in response to Senate Resolution 284, S.D. 1, passed during the 1972 legislative session. Senate Resolution 284, S.D. 1, requested the Legislative Reference Bureau to investigate the practices and procedures within the motor vehicle industry in Hawaii regarding unfair competition or other abuses which may exist as a result of Hawaii's practice of permitting wholesalers to compete with retailers in the sale of new vehicles. The report includes an analysis of national and local experience, existing Hawaii law, and laws in other states which prevent possible unfair competitive practices.

Background

Under general marketing procedures, a new car is built by a manufacturer, then sold directly to a retail dealer franchised by the manufacturer.¹ The dealer, in turn, sells the car to the consumer at retail. An alternative process is for the manufacturer to sell cars to an independent local wholesale distributor (hereinafter referred to as distributor) who, in turn, sells cars to a retail dealer franchised by the distributor. The dealer then sells to the consumer.

No problem of a competitive nature arises where the distributor sells cars only to franchised retail dealers, since the distributor and the franchisee are selling in different markets, i.e., the wholesale and retail markets. When the distributor sells cars to franchised dealers and also to a retail store owned and operated by the distributor, such a situation falls within the ambit of this report. In

the latter instance, the distributor through his retail store and his franchisee are selling at retail in the same market. Where the distributor sells only at wholesale there is no conflict, since the distributor wishes to sell to all his retail outlets and has no reason to favor one retail outlet over another. When the distributor, however, also sells at retail, he may give preferential treatment to his retail store. Thus, the distributor may use unfair or improper methods of competition to further the sales of his retail store as opposed to providing equal services to his franchisees. Such unfair or improper methods of competition may or may not be actionable under the law (refer to Chapter III). The following discussion sets forth examples of possible unfair or improper methods of competition, and it should not be inferred that these methods are being used in Hawaii. Discussion of Hawaii's problems occurs in Chapter II.

Unfair or improper methods of competition can stem from the franchisor-franchisee relationship. The contractual control which the distributor has over his franchisees through the franchise contract places the distributor at an advantage in dealing with his franchisees.²

The franchisor-distributor controls the cars that the franchisees need. The distributor buys all the new cars sold in a specific area from a specific manufacturer and distributes them to his franchisees according to the franchisee's requirements. A franchisee's requirements and the distributor's requirements may conflict. For instance, if the distributor's retail store needs the same model or color of car that his franchise needs and that par-

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ticular car is in great public demand, thus causing demand to exceed supply, the possibility may arise that the distributor will provide his retail store with this particular model before taking care of his franchise. The same problem may occur in the supplying of parts.³

In the automobile industry, the distributor is also the manufacturer's representative in the area served by the distributor. As a manufacturer's representative, he serves as a branch of the manufacturer, although an independent selling arm, and has great control over his franchisees. The distributor in this capacity has the authority to approve all warranty claims submitted to the manufacturer by franchisees. Even though the distributor's money is not involved, he may use this power of approval to coerce the franchisee into reducing warranty claims.⁴ Additionally, the distributor may give priority to warranty claims submitted by his retail store over those of his franchisees. The practical result would be that money required by the distributor to operate his retail store is reimbursed at an earlier date and is available as working capital to the distributor-retailer while the distributor's franchisees may wait longer, three to six months, for reimbursement. Moreover, some warranty work cannot be started until approval is obtained from a manufacturer's representative. As the manufacturer's representative, the distributor has the advantage of being on the spot for his retail store and may be more lenient in approving warranty work for his retail store than for his franchisees.⁵

Selling at both the wholesale and retail levels enhances the distributor's marketing position. The distributor makes a profit at the wholesale level by selling cars to franchisees and to his retail store. The distributor makes a further profit selling cars at retail to the consumer through his retail store. This dual selling position becomes particularly important in making fleet sales, since the fleet buyer wants his cars at the lowest possible cost. The distributor with two profit levels could cut his retail profit substantially and still make a profit on fleet sales due to his wholesale vantage position. The franchisee, however has only one profit level, the retail sales. The franchisee cannot afford to reduce his profit as substantially as the distributor.⁶ Furthermore, the fact that the distributor imports all of one manufacturer's cars into a particular area gives his retail store an advantage in making fleet sales. The distributor's wholesale inventory of cars may be more readily available to the distributor's

retail store, rather than to a franchisee who tries to obtain cars for a large fleet sale. By consistently denying large car orders to his franchisee, the distributor assures fleet sales for his retail store. Additionally, as the importer of cars into an area the distributor may take steps to assure that his retail store receives new car models earlier than the franchisees.⁷

Such practices on the part of the distributors may cause franchisees to receive car models they do not want or cars that were damaged in shipping, thus forcing the franchisee to hold in inventory slow moving vehicles or to spend time and money to correct such damages. Even if the insurance does pay for repairs in cases of damaged goods, the time involved in correcting damages is not recoverable. Moreover, in many cases the costs for processing insurance claims may far exceed the costs for repairs, yet such repairs are necessary before the car can be placed for sale.⁸ Finally, in order to obtain a fast selling model the franchisee may be forced by the distributor to accept slow moving models.

Most distributors and manufacturers require franchisees to file monthly financial statements or other reports, a practice common throughout the new car industry. From these statements and reports the distributor or manufacturer can gather a tremendous amount of information regarding the franchisee's operations, finances, economic stability, etc. (see for example Volkswagen financial statement in Appendix A). This information can help the franchisee by allowing the distributor to compare the franchisee's performance with that of other dealers similarly situated or with a simulated model dealer of equivalent size and market area. This comparison helps the distributor to point out areas in which the franchisee may improve operations to help increase profits or reduce expenses. On the other hand, these statements and reports may be used against the franchisee by comparing the distributor's retail store operation with that of the franchisee's. The distributor can then pay better salaries to obtain better salesmen or he can find other areas in which to undercut the franchisees to make sure that his retail store outsells the franchisees or has the market advantage.⁹

Finally, the distributor generally operates with greater economic leverage than his franchisees. The distributor buys more cars and he sells more cars, particularly at wholesale, but oftentimes at retail. The distributor also may be a subsidiary

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of a larger company or conglomerate which gives the distributor buying and bargaining power unequalled by the franchised car dealer, who generally is involved only in the business of selling cars to consumers. This dominant economic power over franchisees may render this type of distribution and competitive system inherently coercive.¹⁰

National Experience

Activity in Congress. At the congressional level, a Special Subcommittee on Automobile Marketing Practices of the Committee on Commerce of the United States Senate of the 90th Congress held hearings on allegations by automobile dealers concerning unfair competition. The hearings dealt with "factory stores." Factory stores are stores established by car manufacturers to sell at retail in competition with franchised dealers. The stores may or may not be partially financed by a person designated as a dealer, however, the investment generally is less than twenty-five per cent of the total investment.

Factory stores are similar to a distributor's retail store in that both the manufacturer and the distributor are competing at retail with the franchised dealers they should be impartially servicing. At the hearings the manufacturers were accused of the following improper methods of competing with franchised dealers:

1. The continuation of factory stores on a loss basis.
2. Excessive expenditures for advertising and other sales expenses.
3. Manipulation of retail prices and the use of such dealerships to stimulate and lower market prices.
4. Sales to individual or fleet customers at unprofitable, unreasonably low, or predatory prices.
5. The operation of such dealerships at large losses without any reasonable possibility of profitability, where losses were offset by manufacturing profits.
6. Discriminatory treatment afforded such dealerships, i.e., easy approval of warranty claims, choice of cars, etc.¹¹

While the basic purpose of factory stores appears to be market penetration at the expense of other manufacturers, such market penetration also hurts the franchised dealers in the surrounding market area.¹² Complaints number four and six are similar to the unfair methods of competition which may

be practiced by a distributor operating a retail store.

Three bills were introduced during the 90th Congress to correct such possible unfair competition. One would have allowed manufacturers and franchised dealers to establish exclusive areas of representation,¹³ presently a violation of antitrust acts.¹⁴ This bill would have prevented invasions of the retail marketing areas of franchised dealers by their own franchisor now occurring through the use of factory stores. The second bill would have prevented unfair methods of competition within the meaning of the Federal Trade Commission Act.¹⁵

The third bill covered the problem directly by making it an unfair competitive practice for a franchisor (manufacturer or distributor) to sell goods or services unfairly or inequitably at the same level of competition as the franchisee.¹⁶ Two of these bills received hearings,¹⁷ but died in committee.

No further congressional activity in this area has occurred since 1968.

Activity in Other States. Of the forty-four states answering a Legislative Reference Bureau inquiry, ten indicated that factory stores or distributor retail stores existed in their states. The remaining thirty-four states had no knowledge of such activity. Nine of the ten indicating that factory stores or distributor stores operated in the state replied that franchised dealers had complained of improper competitive practices.

In California the Department of Motor Vehicle's New Car Dealers Policy and Appeals Board has authorized the formation of a Joint Committee on Manufacturer/Dealer Legislation. This joint committee is mandated to develop legislation giving retail dealers a stronger position in their relationships with the manufacturer or distributor. Portions of the legislation being developed will have an effect upon factory stores.¹⁸

Massachusetts and Ohio are the only states with legislation directly concerning factory or distributor retail stores. Both states passed such legislation since 1970. The Massachusetts legislation prohibits competition with a franchised dealer in such dealer's relevant market area by a manufacturer or distributor. If, however, at least three years prior to January 1, 1971 a distributor or manufacturer owned and operated a retail store which store is still operating, then such distributor or manufac-

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turer may continue to operate such store.¹⁹ Thus, the Massachusetts statute only prevents a distributor or manufacturer from opening a new retail store in an area in which a franchisee is operating. Ohio prohibits manufacturers from selling motor vehicles in unfair competition with franchised dealers.²⁰

Recently, a federal jury awarded \$5.6 million in antitrust damages to a Ford dealer in Pittsburgh. This case, in effect, found the operational methods

of a factory store owned and operated by Ford Motor Company to be a violation of the antitrust laws. This case is being appealed.²¹

It appears that the situation where a distributor operates a retail store gives rise to a potential of improper methods of competition being used. These unfair methods of competition have been considered at the congressional level and at the state level; however, with the exception of Massachusetts and Ohio very little is presently being done directly to prevent such competition.

CHAPTER II

HAWAII EXPERIENCE

In Hawaii there are four distributors who sell cars to franchised dealers and to their own retail stores. These distributors are Datsun of Hawaii, a subsidiary of The Hawaii Corporation; Mazda of Hawaii, a subsidiary of Universal Corporation; Servco Pacific, Inc. selling Toyotas, and Volkswagen Pacific, Inc. These four distributors hold both a distributor's license and a retail dealer's license pursuant to Chapter 437 of the Hawaii Revised Statutes.¹ They have in turn franchised or subcontracted with other retail dealers pursuant to the power given them by their contract with their manufacturer.²

The following distributors are responsible for the following retail stores and franchisees:

I. Datsun of Hawaii

- (a) Datsun of Hawaii has five retail stores on Oahu:
 - (1) The main showroom on Kapiolani near town.
 - (2) One showroom in Kailua.
 - (3) One showroom in Kaneohe.
 - (4) One showroom in Waipahu.
 - (5) One showroom in Wahiawa.

There is also a retail store each on the island of Kauai and on Maui.

- (b) Datsun of Hawaii has franchised two dealers:
 - (1) Wheels Airport Datsun.
 - (2) I. Kitagawa and Company, Ltd., in Hilo and Kona, Hawaii.

II. Mazda of Hawaii

- (a) Mazda of Hawaii has two retail stores on

Oahu and one in the planning stage:

- (1) Mazda of Hawaii presently has its main showroom near the Ala Moana Shopping Center.
- (2) Universal Motors Co., Ltd. in Kailua.
- (3) The third retail store is to be the main showroom near Holiday Mart, Honolulu.

- (b) Mazda of Hawaii has franchised three dealers:

- (1) Wholesale Motors, Inc. near the airport on Oahu.
- (2) Economy Motors, Inc. dba Big Island Mazda in Hilo, Hawaii.
- (3) MDG Supply, Inc. dba Maui Mazda on Maui.

III. Servco Pacific, Inc.

- (a) In addition to selling Toyotas through its forklift and used car divisions, Servco Pacific, Inc. has six retail stores on Oahu:
 - (1) Motor Imports, the main showroom in town.
 - (2) Kaimuki Toyota.
 - (3) Kailua Toyota.
 - (4) Service Motors-Wahiawa.
 - (5) Waipahu Toyota.
 - (6) Windward Toyota.

- (b) Servco Pacific, Inc. has franchised four dealers:

- (1) Big Island Motors dba Hilo Toyota in Hilo, Hawaii.
- (2) Mauna Kea Motors in Kamuela, Hawaii.
- (3) Kauai Toyota on Kauai.
- (4) Island Toyota on Maui.

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IV. Volkswagen Pacific, Inc.

- (a) The Volkswagen distributor has only one retail store on Ala Moana Boulevard.
- (b) Volkswagen Pacific, Inc. has franchised seven dealers:
 - (1) Airport Volkswagen on Oahu.
 - (2) Pali Volkswagen on Oahu.
 - (3) Pearl Harbor Volkswagen on Oahu.
 - (4) Windward Volkswagen on Oahu.
 - (5) Volkswagen-Kauai on Kauai.
 - (6) Volkswagen Maui Inc. on Maui.
 - (7) Kamaaina Volkswagen Division of Kitagawa Volkswagen, Inc. on Hawaii.

In the course of this study, the researcher interviewed all distributors and their franchised dealers. These interviews were conducted from July through October, 1972. Pali Volkswagen was not interviewed in depth because of its short period of operations, having opened for business on the first day of July, 1972.

Interviews were made in person and upon completion a summary of the interview was prepared and forwarded to the dealer for his review and signature. The summaries were signed with the understanding that such signed summaries would be kept confidential from all persons unless the dealer states that the summary can be released and to whom it should be given. This procedure was undertaken in order to indicate to the legislature the interest of the dealers in any unfair competitive methods revealed by the report and to preserve the anonymity of the dealers from the distributors to avoid possible retaliation for making complaints. Eleven of the fifteen dealers interviewed in depth returned their signed summary. Not all of the dealers interviewed had a problem with their distributor and not all dealers had the same problem with their respective distributor. For purposes of evaluating and reviewing the allegations concerning improper methods of competition, the information presented pertains to all distributors within a specific problem area, unless otherwise stated.

Predelivery Preparation

Predelivery preparation involves preparing the car received from the factory for sale to the consumer. This requires both servicing and inspecting the car as required by the factory. The cost of this preparation is passed on to the consumer and may vary between \$50 and \$150 depending upon the model and type of car. This cost is reflected in the suggested retail price stamped on the invoice

placed on the window of the car.³

In Hawaii the distributors treat predelivery preparation in two ways. The Datsun and Toyota distributors forward the cars received from the factory to their franchised dealers and retail stores as they receive them without preparation. Volkswagen and Mazda distributors both offer optional predelivery preparation to their franchised dealers and retail stores for which the dealers and stores are charged.⁴ Volkswagen Pacific spokesmen said that their New Vehicle Preparation Department has consistently lost money since its inception.

Two complaints occurred in this area. The first concerned the preparation by the distributor for which the dealer is charged. Two dealers using the distributor's services feel that charging for preparation by the distributor is one method by which the distributor makes money at the dealer's expense. These dealers feel that they can do the job themselves and at a cheaper price. For instance, until four years ago, Volkswagen franchised dealers performed their own predelivery preparation.

The dealers complaining in this area stated that they have the facilities for such preparation under normal circumstances and are able to do it themselves. These dealers, however, are afraid to undertake such preparation as they feel the distributor, in retaliation for losing the money gained by performing this preparation, would send the dealer his quarterly car requirements in one shipment. If such a quantity of cars were sent to a dealer at one time, the dealer would not have the space required to keep such an inventory. Thus, these dealers feel that they must let the distributor perform such preparation.

One dealer stated he could not return a car for correction in predelivery preparation to the distributor, but that he would have to make the correction at his own expense. Another dealer franchised by the same distributor stated that he could return his cars for correction in predelivery preparation whenever necessary without additional cost.

On the other hand, all the other dealers using the distributor's predelivery preparation service made no complaints concerning either the distributor's performance of this service or the manner in which it was executed. One dealer stated that he preferred to have the distributor perform such work, since the distributor could complete the work at a lower cost. That dealer stated that he would have to employ part-time workers which are hard to obtain and install extra equipment and stalls

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in order to perform the work himself. Furthermore, the cost of preparation is passed on to the consumer as part of the price of the car. The price to the consumer is an additional \$25 or more over the cost the dealers pay their distributors. Thus, while the distributor may be making a profit and reducing the dealer's profit on predelivery preparation, yet, the dealer may also be making a profit on such preparation.⁵

The second problem concerns an allegation by some of the dealers that their distributors are being reimbursed by the manufacturer for performing such predelivery preparation, but not passing such reimbursement on to the dealer. Thus, it is felt that the distributor is receiving double the amount on predelivery preparation, i.e. the amount charged to the dealer and the amount reimbursed by the manufacturer.

When asked about such reimbursement, spokesmen for the four distributors stated that they were not being reimbursed by their manufacturer. Reimbursement for performing predelivery preparation was first commenced by General Motors in 1971 and has only recently been adopted by Ford and Chrysler.⁶ Apparently, this policy has not yet been adopted by the foreign manufacturers.

Warranty Policies and Procedures

Claim Approval. The distributor acts as the manufacturer's representative and in this capacity has the authority to approve warranty claims under two situations. The first occurs when certain kinds of car repairs need to be undertaken. These repairs must be approved prior to performing work. There was one complaint that the distributor was approving such work for the customer and doing the work at his retail store.

In doing the work, the retail store inferred that the franchised dealer should have made the repair but was lacking in initiative. Through this action the franchised dealer felt that he was losing customers because of the poor image given him by the retail store. The complainant did state, however, that this practice was no longer occurring.

Pursuant to the warranty, the dealers are reimbursed by the manufacturer for labor done under the warranty.⁷ Claims requesting reimbursement for warranty labor also require approval. To claim reimbursement, dealers fill out the required forms and forward them to the distributor who checks them for accuracy prior to processing the claim to the manufacturer for payment. There were two

complaints by Mazda dealers in this area. One complaint was that the distributor was being overly strict with claims, finding many mistakes, and returning the claims for corrections to the franchised dealer. This resulted in no claims having been paid to the dealer at the time of the interview. Another complaint was made that the distributor had given the dealer no warranty forms and had not told the dealer how to file warranty claims. This dealer also had not been reimbursed by his distributor at the time of the interview. A check of distributor records indicated that neither dealer had been paid for claims prior to August 1972, because, according to the distributor spokesman, neither dealer had submitted any claims which were sent back for correction or otherwise. The dealers when questioned concerning the statement of the distributor either could not or would not substantiate their complaint.

Reimbursement. Once warranty claims have been approved, the distributor sends them to the manufacturer for reimbursement. After approval the manufacturer transmits the reimbursement to the distributor who forwards it to the franchised dealer. This process creates a time lag during which the dealer has incurred expenses for which he has not been reimbursed, except in the case of Volkswagen and Datsun. Volkswagen and more recently Datsun are using a monthly credit advance on warranty labor claims based upon the prior experience of the dealers.

Toyota franchised dealers stated that their reimbursement claims were taking three to six months and in one case eight months to process. The average claim reimbursement time for the State is seventy-two days.⁸ The agent for Toyota confirmed the very slow reimbursement being made by Toyota Motor Co. to all dealers. The agent stated that Servco representatives were leaving for Japan before the end of 1972 to negotiate with Toyota Motor Co. for a credit advance on warranty reimbursement or a reduction in the time required for processing claims. The Toyota spokesman mentioned that when dealer reimbursement claims are improperly completed, they are sent back to the dealer for correction. In most cases claims are promptly resubmitted, but in some instances they are not resubmitted or delayed excessively. When claims are resubmitted they are promptly sent to the manufacturer's claim committee for approval.

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Advertising

In Hawaii as in other states, foreign car dealers are required to join a cooperative advertising fund. In Hawaii the distributors, excepting Datsun, require their franchised dealers to contribute to an advertising fund an amount between \$25 and \$35 for each car they receive. The requirement is part of the franchise or contract between the distributor and his franchisee. The retail store of the distributor also contributes at the same rate to the fund. The money contributed by all dealers is matched by the distributor and in the case of Mazda and Toyota by the manufacturer. The Volkswagen Pacific spokesman indicated that they received no advertising moneys from Volkswagen of America. Instead of moneys, Volkswagen of America prepares advertising for all Volkswagen distributors through a national advertising firm. The advertising is then forwarded to the distributors who place the advertising in newspapers and on television. No advertising money is received from the manufacturers by the franchised dealers including Datsun franchised dealers.

Advertising paid for by the advertising funds of all distributors is concentrated in major media outlets—the Honolulu Advertiser and Star-Bulletin, and on Honolulu television stations. These newspapers circulate throughout the State and the television stations are received on all islands.

Little advertising paid for by the funds is taken in outer island newspapers where outer island franchised dealers are located. Volkswagen, however, will arrange advertising on request for its outer island dealers in the outer island newspapers. In fact the Volkswagen Pacific spokesman indicated that the amount spent on outer island advertising is greater than outer island contributions to the fund. In the case of large promotions, which are few, both Toyota and Mazda will buy advertising in the outer island newspapers. A Mazda spokesman did state that they planned advertising in the Hawaii Herald-Tribune whose circulation on the big island is much larger than either Honolulu papers. The Toyota agent indicated that the distributor sends a promotional team of three to as many as six persons to each island for all large fairs, such as county fairs, to operate a Toyota booth.

In addition to advertising the product and its dealers, the distributors also use the fund to pay for institutional or image advertising. This type of advertising praises the product but not the particular sales outlet of that product. If any dealer wants additional advertising beyond that paid for

by the fund or advertising for himself and his dealership only, he must arrange for his own advertising at his own expense.

Eight of the twelve franchised dealers questioned the administration of the advertising fund in two areas. First, the franchised dealers were dissatisfied with the fact that the advertising fund was completely controlled by the distributor. These dealers felt that the distributor should consult the dealers concerning advertising and present an accounting to the dealers relating to the disposition of the moneys in the fund. Volkswagen, Mazda, and Toyota do consult with their dealers concerning advertising used, but evidently their franchised dealers do not feel that sufficient consultation is taking place. Additionally, several dealers objected to the requirement in the franchise or contract of paying into the fund.⁹ Concomitantly is the objection that the dealers must pay for additional advertising out of their own funds if they want to create an individualized image for the public.

Secondly, many of the outer island dealers suggested that more advertising should be undertaken in the outer island newspapers. These outer island dealers felt that persons living on the outer islands tend to read the hometown newspaper in addition to or instead of reading a Honolulu newspaper. This assumption has some basis when the circulation of the two Honolulu papers is compared with that of the outer island papers:¹⁰

| | Circulation in 1972 | | |
|---------------------------|---------------------|-------|--------|
| | Hawaii | Kauai | Maui |
| Advertiser | | | |
| Daily | 4,952 | 1,634 | 4,314 |
| Sunday | 8,748 | 5,928 | 9,550 |
| Star-Bulletin | | | |
| Daily | 2,796 | 3,408 | 4,437 |
| Hawaii Tribune-Herald | | | |
| Daily | 13,562 | | |
| Sunday | 13,899 | | |
| Garden Island News | | | |
| Monday/Wednesday | | 7,056 | |
| Maui News | | | |
| Tuesday/Thursday/Saturday | | | 10,136 |

One dealer alleged that the media organizations purchased cars from the distributor's retail store in return for the distributor purchasing advertising space with them. The complaint was that such buying is not prorated between the distributor's retail store and the distributor's franchised dealers.

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In rebuttal to dealer complaints, the distributor's agents state that cooperative advertising furnishes national advertising and more and better local advertising than an individual dealer is able to obtain. Many of the dealers agreed that this is true, however, they wanted more influence on advertising policies of the distributor and information pertaining to how the fund is being used.

The advertising policies of Datsun of Hawaii differ from the other distributors. Datsun of Hawaii does not charge its two franchisees an advertising fee for each car. As a result, Datsun of Hawaii only advertises its own retail stores. The franchised dealers, however, do benefit from Datsun image advertising. Additionally, newspaper advertising and some radio advertising which is prepared for Datsun of Hawaii is offered to its two franchisees for free use, in which case the two franchisees need only to replace the Datsun of Hawaii name with their own names in the advertisement. Nissan Motor Company, Datsun's manufacturer, does allow Datsun of Hawaii advertising moneys, but does not give Datsun of Hawaii's franchised dealers any advertising moneys.

An example of the type of advertising that may indicate distributor favoritism is contained in Appendix B. This advertisement, apparently paid for by Datsun of Hawaii, lists Datsun of Hawaii's retail stores and its franchisee I. Kitagawa and Company's store in Hilo, Hawaii. The advertisement does not mention the I. Kitagawa and Company store in Kona, Hawaii nor does it mention Wheels Airport Datsun. While this is a small advertisement in the classified section of the Sunday Star-Bulletin & Advertiser, many such advertisements might cause the consumer to doubt that Wheels Airport Datsun is an authorized Datsun dealer and might cause Wheels Airport Datsun to lose sales.

When questioned concerning this advertisement the Datsun of Hawaii spokesman stated that it must have been an advertising agency mistake, since an advertisement such as this might be against the law for leaving out Wheels Airport Datsun (see Chapter III).

Fleet Sales

Fleet selling is an area in which seven of the fifteen franchise dealers interviewed in depth wanted and made such sales but felt that the distributor has definite advantages over them. One dealer's contract with the distributor specifically states that he cannot participate in fleet sales. The first advantage

is the ability of the distributor's retail store to sell cars at a lower profit. Secondly, it is felt that the distributor's retail store has easier access to the distributor's wholesale inventory of cars.

The primary advantage of a distributor-retailer over a nondistributor-retailer occurs as a result of the low profit per car in a fleet sale. Fleet sales can be profitable due to quantity sales at the wholesale level. For example, fleet cars sell for approximately \$50 to \$200 per car above the cost to a retail or franchised dealer. The franchised dealer thus obtains a gross retail profit of \$50 to \$200 a car in a fleet sale which is not a large profit margin once expenses relating to the sale are deducted. On the other hand, the distributor with two profit levels—wholesale and retail—can assume a lesser profit at the retail level. Retail profits on fleet sales can be lowered since the corporation as a whole is protected by the wholesale profit. In fact, by virtue of volume, the greater the sales at retail, the larger the total wholesale profit.

Five of the fifteen franchised dealers, however, were not interested in making fleet sales due to the low profit and other problems relating to fleet sales. These dealers had no complaints concerning the fleet sales made by the distributor's retail store. Volkswagen dealers, for example, sell under a quota system because demand exceeds supply.¹¹ Consequently, the Volkswagen dealers reason, to sell on a fleet basis for a small profit is not worth the effort when the dealer can sell to the consumer for a greater profit. This is not to say that all Volkswagen dealers are not interested in fleet sales. Those who were felt competition with the distributor's retail store to be difficult. On the other hand, the Volkswagen Pacific spokesman indicated that their retail store had made only one large fleet sale in the last five years at full retail price and they were not too interested in fleet sales due to the poor condition of fleet cars on the used car market. He felt that such poor condition would reflect on the Volkswagen image in general.

Mazda of Hawaii's agent indicated that fleet sales have been negligible due to Mazda's relatively recent entry into the Hawaiian new car market. The agent did state that fleet sales would be promoted in order to have Mazda cars on the road for purposes of consumer identification and recognition and in the hope that a consumer who drives a Mazda rent-a-car may purchase one at a later date.

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The Toyota distributor representative pointed out that the franchised dealers on the other islands generally handle their own fleet sales, although some fleet buyers come to Oahu and Toyota retail stores for their cars. Toyota dealers all felt that the distributor had an advantage in being able to sell cars for fleets at the low price a prospective fleet owner demanded. The Toyota agent further indicated that fleet sold cars are generally sold back to Toyota dealers to protect the dealers from overflowing the used car market. Many of the used fleet cars are shipped to the mainland for sale.

The spokesman for Datsun of Hawaii stated that Datsun of Hawaii performs most of the fleet selling of Datsuns in the State. Their franchised dealer on Hawaii is not particularly interested in making fleet sales and Wheels Airport Datsun cannot participate in fleet selling pursuant to their franchise. Datsun of Hawaii's spokesman indicated Wheels Airport Datsun was excluded from fleet selling under the franchise they were granted. I. Kitagawa on Hawaii was not excluded from making fleet sales due to the known lack of interest in making such sales. The reason given for the restriction on Wheels concerning fleet sales was that Datsun of Hawaii wanted to control fleet sales in order to prevent possible flooding of the market with Datsuns and to control servicing so that the Datsun image would be maintained at a high level.

Datsuns sold for fleets are generally sold back to Datsun of Hawaii which in turn sends the cars to the mainland for resale. The cars are shipped to the mainland in order to prevent a lowering of the resale value of Datsuns in Hawaii which would result from the oversupply of Datsuns on the used car market. On Oahu, fleet servicing is performed by Datsun of Hawaii while on Hawaii, I. Kitagawa performs fleet servicing for which it is paid \$50 a car by Datsun of Hawaii.

Fleet servicing places an additional burden on all dealers particularly under the warranty. Warranty work is reimbursable at cost to the dealer, but there is doubt in the dealers' minds that total reimbursement is occurring.¹² Thus, fleet selling for the foreign car dealer has numerous drawbacks, particularly for the franchised dealer who cannot match the economic advantage of the distributor.

Distributor Profit

The amount of distributor profit or wholesale profit which results from selling a car to the retail

or franchised dealer is unknown to the franchised dealers and not generally available. The gross profit per car may be estimated between \$50 and \$200 per car. From this profit, of course, expenses at the wholesale level must be subtracted.

The distributor's expenses include the salaries and fringe benefits of personnel maintaining his wholesale operation, advertising costs, both direct and institutional advertising, overhead, the wholesale parts and car inventory, security for maintaining the inventory, functioning as a manufacturer's representative which requires sending personnel to dealers for training purposes, etc. For example, Volkswagen Pacific's wholesale operation maintains a parts inventory of \$3.5 million and a quarterly inventory of between 1,000 and 1,500 cars valued at \$2 to \$2.5 million. Both the part and car inventories must be stored and financed.

Many of the franchised dealers maintain that the distributor's profit gives the distributor's retail store an undue advantage, such as that found in fleet sales. Although the advantage does exist, the new car industry is not the only industry in which a distributor sells at both wholesale and retail.¹³ Additionally, the economic advantage of the distributor is a normal result of his operation.

Financial Statements

Interviews indicate that only Volkswagen Pacific at present is requiring its franchised dealers to forward a financial statement each month. Both Mazda and Datsun of Hawaii presently require a monthly statement of units sold; however, their representatives revealed plans to require their franchised dealers to complete financial statements upon renewal of the franchisee's contract. The agent for Servco said there were no plans in the immediate foreseeable future to require its franchised dealer to file a financial statement.

As can be observed from the Volkswagen financial statement in Appendix A, the information contained therein is quite complete. This statement is filed once a month with the distributor. The distributor places the information in a computer which furnishes the dealer a report comparing his performance with his forecast and his performance against a composite dealer of his size. This comparison is to assist the dealer in reaching his forecast and operating as well or better than the composite dealer.

Only one of the seven Volkswagen dealers voiced an objection to this practice. That dealer felt that

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it was unfair for the distributor to know his profit structure, salesmen's salaries, etc., when he did not have similar information concerning the distributor's retail store. Similar objections may be anticipated when the plans of Mazda and Datsun of Hawaii to require financial statements are implemented. However it should be noted that the requirement of filing financial statements is common throughout the domestic new car industry.

The Volkswagen Pacific agent stated that there is no way of determining any individual's pay from the financial statements submitted to them. The agent also indicated that Volkswagen Pacific is constantly advising its franchised dealers of what Volkswagen Pacific's pay scales are, including salesmen's commission plans.

Distributor Favoritism

Eight franchised dealers stated they had no trouble obtaining car models and parts from their distributor. Seven of the franchised dealers, however, allege that the distributor's retail store receives first choice in obtaining popular models of cars and hard-to-obtain parts. These dealers suggested that the retail store, being closer to and part of the distributor, has the advantage of knowing what the distributor's new car inventory contains. This arrangement enables the retail dealers to send their order in prior to the orders of the franchised dealers.

Several of the franchised dealers stated that parts were hard to obtain. They gave the example of a hard-to-obtain part of which the distributor had only two in stock. It was alleged that the distributor would save that particular part for his retail stores rather than letting his franchised dealers obtain the part (they state that they have been told this by the distributor's parts salesman). One dealer asserted that he has had damaged cars forced upon him and more than one dealer said that they have had to buy an unpopular model of car from the distributor in order to obtain the popular car model they wanted for sale to the public.

The distributors, on the other hand, state that the dealers, retail and franchised, draw from the wholesale inventory on a first come, first served basis and that notification of stock in the inventory is released to both retail stores and franchised dealers at the same time. A check of the sales figures of the distributor at the wholesale level to determine if the distributor's retail store was receiving an in-

ordinate number of popular car models was inconclusive due to the different markets involved for each dealer. The main retail store of all distributors is located in downtown Honolulu, which is probably the best market in the State. In all instances the downtown retail store of the distributors was outselling both franchised dealers and the distributor's other retail stores. Generally, the sales of the franchisees compared favorably with those of the distributor's retail stores located outside of downtown Honolulu.

Volkswagen Pacific spokesmen stated that their store and franchised dealers were on a quota system because of the great demand for their cars. Additionally, the quota is determined through formulas relating to the size of the service department, i.e. the larger the service department the larger the quota. Volkswagen Pacific furnished sales figures to its retail store and figures for total sales, but would not furnish the number of sales to franchised dealers as they felt these to be confidential to the dealers. Figures furnished by dealers compared to Volkswagen Pacific's retail store were inconclusive.

Miscellaneous Problems

Kickback Allowance. Several dealers raised questions concerning the use of a kickback or hold-back allowance. The kickback allowance is a method used by domestic car manufacturers allowing domestic car dealers to sell the cars left from the old model year at a clearance price. The kickback is a monetary allowance provided by the manufacturer.

The franchised dealers questioned whether their distributor might be receiving a kickback allowance from the manufacturer and keeping the allowance instead of passing it on to the franchisees. Discussions with distributor spokesmen indicated that none of the foreign manufacturers are providing such allowances for their distributors or dealers.

High Prices. A number of franchised dealers, other than Volkswagen franchised dealers, commented on the fact that car and part prices are higher in Hawaii than on the West Coast. Volkswagen prices are the same in Hawaii as on the West Coast due to an agreement with the west coast distributor to take a quarterly supply of cars in one shipment. Additionally, west coast dealers pay transportation fees to transport cars from the dock to their dealerships, whereas Volkswagen dealers on Oahu do not pay such fees. Neighbor

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island dealers, of course, pay for transportation from Oahu to the neighbor island.

The agents for other distributors stated that prices are higher due to the fact that they do not bring into the State a full shipload of cars with each order. A less than shipload order of cars costs more to transport than a full shipload due to shipping costs. The volume of cars sold in the State, however, does not justify bringing in a full shipload of cars at one time. The distributors also cited the fact that ships do not stop in Hawaii unless required to in order to deliver cars, whereas such ships normally go directly to the West Coast. Thus, Hawaii has the disadvantage of higher shipping prices.

Additionally, Hawaii distributors must maintain a ninety to one-hundred twenty-day inventory of cars compared to a thirty-day inventory on the mainland. A larger inventory of parts is also required. The Servco spokesman stated that the cars

ordered by Servco had specifications not required by dealers on the West Coast, such as heavy duty batteries, radio and white sidewall tires.

Therefore, the distributor's spokesmen indicated that higher car and parts prices are not without justification.

Summary

In summary, there are several areas in which dealer and distributor relationships may contain stress. In a number of these areas such stress has caused a certain amount of friction.

These stress conditions are particularly apparent (1) in the management and use of the cooperative advertising fund, (2) in the area of fleet selling resulting from the inherent economic advantages the distributor retains over the franchised dealers, and (3) in the area of distributor favoritism where distributor sales figures do not substantiate dealer complaints.

CHAPTER III

DEALER PROTECTION, POSSIBLE PROTECTION, CONCLUSIONS, AND RECOMMENDATIONS

In reviewing the problems set forth in this report, the researcher found no instance where all of the franchised dealers or all of the franchised dealers of one distributor agreed that the distributor was acting unfairly toward them. One dealer made the point that these distributor problems were arising during a period of relative prosperity in the new car market and thus did not result in substantial economic disruption of the independent retailers' positions in the new car market. It was pointed out, however, that should a period of recession occur in the new car market, then similar action on the part of the distributor in pressing his economic advantage might produce more severe economic consequences. With this possibility in mind, Chapter III will explore present dealers' protections under the federal and Hawaii law. This chapter will also present laws in other states which could further protect the franchised dealers in Hawaii.

Present Federal Statutes

A number of dealer complaints could possibly be found to be in violation of the federal antitrust laws,¹ the Federal Trade Commission Act,² or the federal Dealer's Day in Court Act.³ All federal acts require that the violation involve interstate commerce.⁴

Antitrust Statutes. The Sherman Act provides that any monopolization or attempt to monopolize, or any conspiracy or combination to monopolize trade is unlawful.⁵ This provision of the Sherman Act may come into play through the anticompetitive effect of forward integration. Forward integration occurs when a wholesaler discontinues selling

to independent retailers and enters the retail market through his own subsidiaries. For example, Wheels Airport Datsun is the only franchised Datsun dealer on Oahu, all other Datsun dealers being part of Datsun of Hawaii. If Datsun of Hawaii terminated the franchise of Wheels Airport Datsun in order to totally control the Datsun retail market on Oahu, the action might result in a charge of monopolization under the Sherman Act⁶ The charge would result from the lessening of intra-brand competition due to forward integration by Datsun of Hawaii. Similarly, an attempt by Datsun of Hawaii to place a retail store of their own near Wheels Airport Datsun indirectly forcing Wheels Airport Datsun to terminate their franchise, may result in the same monopolization charge.⁷

The Sherman Act also proscribes price-fixing while the Robinson-Patman Act⁸ proscribes price discrimination in the sale of commodities. Although the practice is not presently occurring, if the distributors charged their retail stores less for cars and parts than their franchised dealers, such practice might result in a violation of the antitrust acts.⁹ Charges might also be brought if there were obvious discrimination in the paying of warranty reimbursement claims or in the furnishing of particularly popular car models only in large quantities to the distributor's retail store. Discrimination in these areas may amount to merchandising aid or financial aid in the case of warranty reimbursements. A prerequisite under the Robinson-Patman Act to any complaint concerning these discriminatory practices would be an allegation that such merchandising or financial aid constituted the sale

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of commodities to the retail store.¹⁰

Federal Trade Commission Act. The Federal Trade Commission Act¹¹ created the Federal Trade Commission as an independent administrative agency with multiple functions. The Commission's principal role is to aid in the enforcement of the antitrust laws through cease and desist orders enforceable through the courts.¹² The Act governing the Federal Trade Commission provides that "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are declared unlawful."¹³ The Commission has the power to arrest trade restraints in their incipency without proof that they amount to an outright violation of the Clayton Act or other provisions of the antitrust laws.¹⁴

Thus, proof that a distributor forced a franchised dealer to take insurance damaged cars or cars that had been in storage for long periods of time, or required an unpopular model to be taken in order to obtain a popular model, or misused a dealer's financial statement might result in an order that these practices be stopped as unfair methods of competition.¹⁵

Dealer's Day in Court Act. The federal Dealer's Day in Court Act was specifically passed by Congress to aid dealers against manufacturers.¹⁶ To fall within the protection of this Act, franchised dealers would have to show that a distributor acted for and was under the control of the manufacturer of the vehicle line handled by the distributor.¹⁷ As the distributors in Hawaii appear to be independent from the manufacturers this proof requirement may be impossible.

If the franchised dealers could prove the distributor acted for the manufacturer, then they must prove that the distributor acted in bad faith.¹⁸ Such bad faith may be shown by proving coercion, intimidation, or threat of either.¹⁹

If the franchised dealers can meet the problems of proof, then an action might be successful concerning any instance involving a distributor forcing acceptance of an unpopular car model in return for filling the dealer's order for a popular car model.²⁰ Other areas of coercion or intimidation may also be covered by the provisions of this act, although dealer success under the act has not been encouraging.²¹

Thus, the federal statutes may protect the franchised dealers when unfair methods of competition arise, if the franchised dealers can qualify under

the provisions of the statutes and if they can prove their allegations, although no such proof was found to be available in completing this report. Although this protection does exist, a dealer is in a difficult position when he resorts to litigation while a contractual relationship is still in existence particularly when he wants the relationship to continue during and after the litigation. Additionally, suits under these statutes are quite lengthy and very costly, with expenses over \$100,000 being common.²²

Hawaii Statutes

Antitrust Statutes. Chapter 480 of the Hawaii Revised Statutes codifies antitrust provisions similar to those contained in the federal antitrust statutes. In applying the proscriptions against unfair methods of competition and unfair or deceptive acts in the conduct of commerce, the courts are to be guided by the interpretations given similar provisions by the Federal Trade Commission and the federal courts.²³

Consequently, any causes of action available to franchised dealers pursuant to federal antitrust statutes or the Federal Trade Commission Act would be available under Hawaii law. If a franchised dealer should bring a suit in this area, he may be awarded not less than \$1,000 or three-fold damages, whichever is the greater, including reasonable attorney's fees and costs of suit.²⁴ He may also request an injunction.²⁵

Additionally, the state attorney general or county attorneys are able to bring suits for damages or injunction in any instance in which the State or county is injured through actions forbidden by Chapter 480.²⁶ Finally, the attorney general's office may investigate practices which may be unlawful under Chapter 480 pursuant to complaint or on its own initiative.²⁷

Therefore, pursuant to Chapter 480 any franchised dealer who feels that he has some evidence of a violation of state antitrust laws may bring suit or request an investigation by the attorney general. In making an investigation the franchised dealer's identity is kept confidential.²⁸

Motor Vehicle Industry Licensing Act. The Hawaii Motor Vehicle Industry Licensing Act, Chapter 437, Hawaii Revised Statutes, was promulgated in order to control the relationships of manufacturers, distributors, and dealers for the benefit of the public. Pursuant to Chapter 437, the actions of a distributor are controlled in certain areas.²⁹

DEALER PROTECTION, POSSIBLE PROTECTION, CONCLUSIONS, AND RECOMMENDATIONS

A distributor is required to deliver a vehicle once ordered within a reasonable time after receipt of the written order from the dealer. If the distributor delivers to another dealer a vehicle of the same model and similarly equipped as the vehicle ordered by the franchised dealer who had not received delivery of his order and who placed his order prior to the dealer to which the vehicle was delivered, this shall be prima facie evidence of delay of delivery.³⁰ Thus, a franchised dealer who stated that the distributor allows his retail store to have first choice of cars in the distributor's inventory may receive protection under this statute if he has evidence to show that his order was given first, yet the distributor's retail store received its order ahead of him.

A second provision in the statute states that a distributor cannot require a dealer to accept as a condition of sale special features, appliances, accessories, or equipment not requested by the dealer.³¹ While no complaints were received concerning this practice, it does occur in other states and may have been prevented in Hawaii as a result of this provision.

Chapter 437 provides that either the Motor Vehicle Industry Licensing Board or a franchised dealer may seek an injunction for violations of the chapter. The chapter also provides that the violator may be fined for violations and the board may suspend or revoke a violator's license to do business.³²

The two provisions of Chapter 437 which apply to the distributor were part of Act 87, Session Laws of Hawaii, 1970. The provisions of Act 87 have been enjoined from enforcement since their enactment, pending decision of a court case.³³ Settlement of the case in the near future is anticipated by the office of the attorney general.

Statutes in Other States

Many other states control manufacturer, distributor, and dealer relationships through their equivalence of the Hawaii Motor Vehicle Industry Licensing Act. Some of these state statutes offer franchised dealers protection which Hawaii may wish to consider.

Sales at Less Than Dealer Price. At least three states provide that no manufacturer or distributor may sell a new motor vehicle to a motor vehicle dealer at a lower actual price than the actual price charged to any other motor vehicle dealer

for the same model similarly equipped.³⁴ Hawaii had a provision similar to this in its statutes until it was repealed by the 1972 Legislature.³⁵

A fear voiced by several franchised dealers concerning this matter is that the distributor may sell cars to their retail stores for a price less than that charged to the franchised dealers. Thus, the franchised dealer who has an already difficult time competing for fleet sales would find such sales impossible. The antitrust laws, however, would apparently prevent such practices.

The Hawaii statute that was repealed provided that the manufacturer or distributor could not sell to a *person* in this State at a lower actual price than the actual price charged to a dealer in this State. The Massachusetts statute is similar.³⁶ Among several arguments advanced against the Hawaii statute, the primary one appeared to be that the statute applied to all new car sales to all persons living in the State whether or not the sale was completed in the State and applied to sales to car and truck rental companies. For the purposes of the franchised dealers, the statute need only apply to sales to motor vehicle dealers such as the provision of the South Carolina statute which provides in part:

[No manufacturer or distributor shall] offer to sell or sell any new motor vehicle to any motor vehicle dealer at a lower actual price therefor than the actual price offered to any other motor vehicle dealer for the same model vehicle similarly equipped . . .³⁷

Under this type of provision, the franchised dealers would have the needed protection, while the car and truck rental companies would not be directly covered by the provisions of the statute.

Participation in Advertising Fund. Two states prevent manufacturers from coercing their dealers to participate in or contribute to any local or national advertising fund controlled directly or indirectly by the manufacturer.³⁸

While the distributors, excepting Datsun of Hawaii, require their franchisees to join in contributing to a cooperative advertising fund, only two of the franchised dealers objected to such a requirement. Many of the franchised dealers did indicate general dissatisfaction with the fact that they had little influence as to the manner in which the funds were used and how they were administered. They were interested in actively participating in the fund, in an accounting of the moneys used by the

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funds, and more advertising in outer island newspapers paid for by the fund.

Since the primary concern of retail dealers is focused upon a change in the administration of the fund rather than the requirement of participation in an advertising fund per se, perhaps a voluntary change on the part of the distributors with respect to advertising administration to deal with the objections voiced by dealers should be attempted rather than enactment of legislation compelling this result.

Additional Franchises and Retail Stores. Six states prevent manufacturers and distributors from granting a franchise in a market area in which a previously granted franchisee is operating.³⁹ The determination of the market area is subject to equitable principles.

There were no complaints that a distributor had granted a franchise in a market area already occupied by a franchised dealer. In certain instances, however, such action might occur. The action might occur because it is extremely difficult to terminate a franchise. Thus, placing a retail store or another franchised dealer within the market area of an existing franchised dealer may result in the desired termination of the franchise. For example, if the granting of the Pali Volkswagen franchise was an attempt to force Windward Volkswagen out of business, the granting of the franchise would be a violation of this type of statute.

Two states have recently passed statutes which disallow competition by a retail store of a manufacturer or distributor with a franchised dealer.⁴⁰

Massachusetts does not allow a manufacturer or distributor to compete with a motor vehicle dealer operating under a franchise from the manufacturer or distributor in the same relevant market area. Such relevant market area is to be determined exclusively by equitable principles. A retail store operated by a distributor for three years prior to the passage of the statute is not included within the provisions of the statute.⁴¹

Ohio prohibits manufacturers and affiliates, divisions, or subsidiaries of such manufacturers from selling motor vehicles in unfair competition with a franchised dealer.⁴²

As indicated earlier in this chapter, the granting of a franchise or the opening of a retail store in another's market area may be an antitrust violation. However, consideration of legislation limiting the granting of new franchises or opening new re-

tail stores in an area where a franchisee presently operates should be balanced against the public policy of encouraging competition for the benefit of the customer.

Delivery of Unordered Motor Vehicles, Parts, etc. Eight states protect dealers from being forced to accept unordered motor vehicles, parts, accessories, or other unordered merchandise.⁴³

In Hawaii some dealers voiced a fear that if they took the option of performing their own predelivery preparation, they would be forced to accept a large number of cars at one time. This type of statute could protect the franchised dealers in this area.

Fleet Sales

Almost half of the franchised dealers indicated that they had problems in competing with their distributor's retail store in making fleet sales. The problem arises from the distributor's being able to sell at a small profit at the retail level and still make a full profit at the wholesale level.

Protection to the franchised dealers could be obtained by forbidding distributor retail stores from making fleet sales. Legislation proposing such a ban, however, might have constitutional objections as violating the equal protection clause of the Fourteenth Amendment to the United States Constitution and being a restraint in interstate commerce.⁴⁴ Assuming constitutional difficulties are surmounted, it would not prevent fleet buyers from buying from other states and importing such cars into Hawaii, if the prices at which franchised dealers wished to sell to fleet dealers were too high.

An alternative method of protecting the franchised dealers in this area is to enact provisions to supervise the pricing policies of the new car industry in a manner similar to controls on public utilities or the sale of intoxicating liquor. A public utility is a business which regularly supplies the public with some commodity the nature of which is of a public character and of public consequence and concern.⁴⁵ Intoxicating liquor laws are generally promulgated in order to protect the public health, safety, and welfare.⁴⁶ A statute passed to protect franchised dealers in their effort to compete at profitable levels in one area of their business, however, would not appear to fall within the usual reasons for passing protective legislation of this nature.

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Conclusions and Recommendations

A distributor may use a dual distribution system based on both franchised dealers and distributor-connected retail stores.⁴⁷ Few of the franchised dealers interviewed questioned this as a legitimate business method. Many of the franchised dealers, however, felt that the distributor should concentrate on treating both his retail stores and franchised dealers as equals.

In completing this report many areas in which a distributor may favor his retail store were discussed. Not all of the complaints concerning possible types of favoritism were apparently based on fact, since some of the complaints could not be substantiated. It should be noted, however, that a potential conflict of interest situation is inherent in the distributor-retail store operation.

The following recommendations and observations are made pursuant to Senate Resolution 284, S.D.1:

1. In order to prevent the distributor from being in conflict with his franchised dealers, such dealers may need protection from the unordered delivery of cars where no protection presently exists. Such legislation would protect dealers who wish to perform their own predelivery preparation, but are presently reluctant to get into this area because of the possible distributor's reaction of delivering unordered cars.
2. In the area of warranty claims and the time lapse involved between the submittal of a claim and its payment, the problem appears to be capable of solving itself. This is being done through the adoption of the credit advance used throughout the domestic new car industry and which has been adopted by

Volkswagen nationally and by Datsun at the local level. Toyota is bargaining for this type of benefit or a shorter time lapse. Mazda is also interested in obtaining a credit advance from their manufacturer. Those Mazda franchised dealers not filing claims for warranty reimbursement, now that such nonfiling has been revealed, may receive further instruction in making claims from the distributor. The Mazda franchised dealers also appear to be protected under the antitrust laws.

3. Antitrust laws also seem to protect franchised dealers from distributors attempting to sell at different prices to their retail stores and franchised dealers.
4. Changes in the administration of the cooperative advertising funds have already been suggested. This again is an area capable of industry solution.
5. The inherent advantage that the distributor has in making fleet sales and in obtaining a distributor profit are economic advantages which do not appear to be amenable to statutory solution.

In summary, it appears that the franchised dealers are reasonably protected by antitrust laws and the Hawaii Motor Vehicle Industry Licensing Law. Except for legislation concerning delivery of unordered cars, it appears that the problems that may exist between franchised dealers and their distributor are capable of solution within the industry. These observations should be qualified, however, by the fact they are made in the context of a relatively prosperous new car market. Should economic conditions change in an adverse manner, the distribution methods and administrative procedures then practiced by the distributors may well be reexamined.

FOOTNOTES

Chapter I

1. See *Hawaii Rev. Stat.*, Sec. 437-1.1 for definition of franchise.
2. U.S. Congress, Senate, Committee on the Judiciary, Subcommittee on Antitrust and Monopoly, *Franchise Legislation, Hearings pursuant to S. Res. 26 on S. 2507 and S. 2321*, 90th Cong., 1st Sess., 1967, pp. 234, 250, 343, 356, 361, but see manufacturer's viewpoint at pp. 331, 333, 343; Kamenshine, "Competition versus Fairness in Franchising," 40 *Geo. Wash. L. Rev.* 197, 202-204 (1971); Brown, "Franchising—A Fiduciary Relationship," 49 *Texas L. Rev.* 650, 662-663.
3. U.S. Congress, Senate, Committee on Commerce, Special Subcommittee on Automobile Marketing Practices, *Unfair Competition and Discriminatory Automobile Marketing Practices, Hearings*, 90th Cong., 2nd Sess., 1968, pp. 9-10.
4. *Ibid.*, pp. 9, 17.
5. *Ibid.*, p. 9.
6. *Ibid.*, pp. 5-9.
7. *Ibid.*, p. 9.
8. Richard F. Kahle, Jr., *New Car Warranties*, University of Hawaii Legislative Reference Bureau, Report No. 1 (Honolulu: University of Hawaii, 1972), p. 28.
9. Brown, "A Bill of Rights for Auto Dealers," 12 *B.C. Ind. & Com. L. Rev.* 757, 771-772 (1971).
10. *F.T.C. v. Texaco, Inc.*, 393 U.S. 223 (1968); Morton Mintz and Jerry S. Cohen, *America, Inc.* (New York: Dell Publishing Co., Inc., 1971), p. 189.
11. U.S. Congress, Senate, Committee on the Judiciary, Subcommittee on Antitrust and Monopoly, *Franchise Legislation*; U.S. Congress, Senate, Committee on Commerce, Special Subcommittee on Automobile Marketing Practices, *Unfair Competition*; see also, Practising Law Institute, *Automobile Dealers-Business and Legal Problems* (New York: 1968); The Hawaii Automobile Dealers Association knows of no factory stores in Hawaii.
12. Brown, "A Bill of Rights for Auto Dealers," 12 *B.C. Ind. & Com. L. Rev.* 757, 770-771 n. 45 (1971).
13. H.R. 974, 90th Cong., 1st Sess. (1967).
14. *U.S. v. Arnold Schwinn & Co., et al.*, 388 U.S. 365 (1967).
15. S. 2321, 90th Cong., 1st Sess. (1967).
16. S. 2507, 90th Cong., 1st Sess. (1967).
17. U.S. Congress, Senate, Committee on the Judiciary,

Subcommittee on Antitrust and Monopoly, *Franchise Legislation*.

18. Letter from Mr. Harry Towne, Executive Secretary of the California New Car Dealers Policy and Appeals Board to Richard F. Kahle, Jr., August 2, 1972.
19. *Mass Gen. Laws Ann.*, ch. 93B, sec. 4(3)(k).
20. *Baldwins Ohio Rev. Code and Rules Service*, 1971, Act 5114, sec. 1 (1333.72 (F)).
21. *Rea v. Ford Motor Co.*, 1972 T.C., par. 74,015 (W.D. Penn. 1972); see also *Madsen v. Chrysler Corp.*, 261 F. Supp. 488 (N.D. Ill. 1966), vacated as moot, 375 F. 2d 773 (7th Cir. 1967) and *Mt. Lebanon Motors, Inc. v. Chrysler Corp.*, 283 F. Supp. 453 (W.D. Penn. 1968); but see *England v. Chrysler Corp.*, 1971 T.C., par. 73,668 (N.D. Cal. 1971).

Chapter II

1. See *Hawaii Rev. Stat.*, sec. 437-1.1(6), (7), and (12).
2. See *Hawaii Rev. Stat.*, sec. 437-1.1 (12).
3. Richard F. Kahle, Jr., *New Car Warranties*, University of Hawaii Legislative Reference Bureau, Report No. 1 (Honolulu: University of Hawaii, 1972), p. 9.
4. Predelivery preparation is also being offered on an optional basis at certain area centers by Ford Motor Company and Chrysler Corporation.
5. Kahle, pp. 14, 28.
6. Interview with Mr. Robert W. Maxey, Jr., President and General Manager, Honolulu Ford Auto Center, September 1972. Mr. Maxey stated that Ford Motor Company had adopted such a policy of reimbursement in approximately April 1972, almost a year later than General Motors. Thus, it would seem that this idea is slow to catch on in the industry and it may be some time before the foreign manufacturers adopt such reimbursement policies.
7. Kahle, p. 9.
8. *Ibid.*, p. 30.
9. This requirement is legal, *Miller Motors, Inc. v. Ford Motor Co.*, 252 F. 2d 441 (4th Cir. 1958); *Sunrise Toyota, Ltd. v. Toyota Motor Co., Ltd.*, 1972 T.C., par. 74,092 (S.D. N.Y. 1972).
10. *N.W. Ayer & Son's Directory of Newspapers and Periodicals*, 1972 and *Editor and Publisher International Yearbook*, 1972.
11. This is no longer true due to a decline in demand occurring in 1972 as a result of the change in United States policies.

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12. Kahle, p. 30.
13. For example the motorcycle sales industry in Hawaii, see also, U.S. Congress, Senate, Committee on the Judiciary, Subcommittee on Antitrust and Monopoly, *Franchise Legislation, Hearings pursuant to S. Res. 26 on S. 2507 and S. 2331*, 90th Cong., 1st Sess., 1967.

Chapter III

1. Including the Sherman Act, 15 U.S.C.A. secs. 1-7 (1963); the Clayton Act, 15 U.S.C.A. secs. 12-22, 27 (1963); the Robinson-Patman Act, 15 U.S.C.A. secs. 13, 13(a) to (c), 21(a) (1963).
2. 15 U.S.C.A. secs. 41-58 (1963).
3. 15 U.S.C.A. secs. 1221-1225 (1963).
4. See footnotes 1 to 3; *Mt. Lebanon Motors, Inc. v. Chrysler Corp.*, 283 F. Supp. 453 (W.D. Penn. 1968) finding interstate commerce involvement.
5. 15 U.S.C.A. secs. 1, 2 (1963).
6. Ross, "Antitrust Law and the New Industrial State: An Application to Automobile Distribution Practices," 4 U. San Francisco L. Rev. 78, 111-114; *Mt. Lebanon Motors, Inc. v. Chrysler Corp.*, 283 F. Supp. 453 (W.D. Penn. 1968).
7. *Rea v. Ford Motor Co.*, 1972 T.C., par. 74,015 (N.D. Penn. 1972); Practising Law Institute, *Automobile Dealers-Business and Legal Problems* (New York: 1968), p. 62.
8. 15 U.S.C.A. sec. 13(a) (1963).
9. *Mt. Lebanon Motors, Inc. v. Chrysler Corp.*, 283 F. Supp. 453 (W.D. Penn. 1968); see also, *Miss. Petroleum Inc. v. Vermont Gas Systems, Inc.*, 1972 T.C., par. 73,843 (S.D. Miss. 1972).
10. 15 U.S.C.A. sec. 13(a); Practising Law Institute, *Automobile Dealers-Business and Legal Problems* (New York: 1968), pp. 42, 59.
11. 15 U.S.C.A. secs. 41-58 (1963).
12. 15 U.S.C.A. sec. 45(b) (1963).
13. 15 U.S.C.A. sec. 45 (a)(1) (1963).
14. See, for example, *F.T.C. v. Brown Shoe Co.*, 384 U.S. 316 (1966).
15. See *F.T.C. v. Texaco, Inc.*, 393 U.S. 223 (1968).
16. 15 U.S.C.A. secs. 1221(d), 1222 (1963).
17. 15 U.S.C.A. sec. 1221(a) (1963); see *Sunrise Toyota, Ltd. v. Toyota Motor Co., Ltd.*, 1972 T.C., par. 74,092 (S.D. N.Y. 1972).
18. 15 U.S.C.A. secs. 1221(e), 1222 (1963).
19. *Milos v. Ford Motor Co.*, 317 F. 2d 712 (3rd Cir. 1963).
20. *American Motor Sales Corp. v. Semke*, 384 F. 2d 192 (10th Cir. 1967).
21. Brown, "A Bill of Rights for Auto Dealers," 12 B.C. Ind. & Com. L. Rev. 757, 791-792.
22. *Ibid.*, p. 775; Brown, "Franchising—A Fiduciary Relationship," 49 Texas L. Rev. 650, 662-663.
23. *Hawaii Rev. Stat.*, secs. 480-2, 3.
24. *Hawaii Rev. Stat.*, sec. 480-13.
25. *Ibid.*
26. *Hawaii Rev. Stat.*, secs. 480-14, 15.
27. *Hawaii Rev. Stat.* sec. 480-18; see, for example, *State v. Wahiawa Transport Systems*, Criminal No. 44306 (1st Cir. 1972), charging conspiracy to rig bidding for a bus system.
28. *Hawaii Rev. Stat.*, sec. 480-18(k).
29. *Hawaii Rev. Stat.*, sec. 437-28(b)(22).
30. *Hawaii Rev. Stat.*, sec. 437-28(b)(22)(D).
31. *Hawaii Rev. Stat.*, sec. 437-28(b)(22)(G).
32. *Hawaii Rev. Stat.*, secs. 437-28, 38, 39.
33. *G.M. Corp. v. Burns*, 316 F. Supp. 803 (Hawaii D. 1970).
34. *Mass. Gen. Laws Ann.*, ch. 93B, sec. 4(3)(e); *Miss. Code Ann.*, sec. 8071.7-05(e) to (g); *South Carolina, Act 1237*, sec. 5(3)(e), 1972 legislative session.
35. *Hawaii Rev. Stat.*, 437-28(b)(22)(E) (1972), repealed by Act 195, Sess. Laws of Hawaii, 1972.
36. *Mass. Gen. Laws Ann.*, ch. 93B, sec. 4(3)(f).
37. *South Carolina, Act 1237*, sec. 5(3)(e), 1972 legislative session.
38. *Okla. Stat. Ann.*, Title 47, ch. 62, sec. 571(b); *Baldwins Ohio Rev. Code and Rules Service*, 1971, Act 5114, sec. 1 (1333.72(F)).
39. *Florida Stat. Ann.*, sec. 320.642; *Mass. Gen. Laws Ann.*, ch. 93B, sec. 4(3)(1); *Laws of Nebraska*, 82nd Leg., 1st Sess., 1971, Leg. Bill 786, sec. 22; *Baldwins Ohio Rev. Code and Rules Service*, 1971, Act 5114, sec. 1 (1333.72(H)); *Tenn. Code Ann.*, sec. 59-1714(j); *Wis. Stat. Ann.*, sec. 218.01(3)(f) const. *Forest Home Dodge, Inc. v. Karns*, 138 N.W. 2d 214 (1965).
40. *Mass. Gen. Laws Ann.*, ch. 93B, sec. 4(3)(k); *Baldwins Ohio Rev. Code and Rules Service*, 1971, Act 5114, sec. 1 (1333.72(E)).
41. *Mass. Gen. Laws Ann.*, ch. 93B, sec. 4(3)(k).
42. *Baldwins Ohio Rev. Code and Rules Service*, 1971, Act 5114, sec. 1 (1333.72(E)).
43. *Florida Stat. Ann.*, sec. 320.64(5); *Louisiana Stat. Ann.*, sec. 1254(3)(a); *Mass. Gen. Laws Ann.*, ch. 93B, sec. 4(2)(a); *Baldwins Ohio Rev. Code and Rules Service*, 1971, Act 5114, sec. 1 (1333.72(F)); *Okla. Stat. Ann.*, Title 47, ch. 62, sec. 565(i)(1); *South Carolina, Act 1237*, sec. 5(2)(a), 1972 legislative session; *Tenn. Code Ann.*, sec. 59-1714(g)(1); *Wis. Stat. Ann.*, sec. 218.01(3)(a)(15).
44. *G.M. Corp. v. Burns*, 316 F. Supp. 803 (Hawaii D. 1970).
45. 73 C.J.S. *Public Utilities*, secs. 1, 2 (1951).
46. Patricia K. Putman, *Intoxicating Liquor Laws in Hawaii and the Industry*, University of Hawaii Legislative Reference Bureau, Report No. 2 (Honolulu: University of Hawaii, 1969), pp. 33-70.
47. *England v. Chrysler Corp.*, 1971 T.C., par. 73,668 (N.D. Cal. 1971).



APPENDIX A
VOLKSWAGEN DEALER FINANCIAL STATEMENT
BALANCE SHEET

| DEALER NAME AND ADDRESS | | DEALER NO | FOR DISTRIBUTOR'S USE ONLY | | | STATEMENT PERIOD | |
|--|--|---------------------|--|---------|-----------|------------------|------------------------|
| | | | DISTRICT GROUP | | B M GROUP | | |
| | | | SALES | SERVICE | PARTS | | |
| ASSETS | | AMOUNT | LIABILITIES AND OWNERS' EQUITY | | | | AMOUNT |
| CURRENT ASSETS: | | | CURRENT LIABILITIES: | | | | |
| CASH AND EQUIVALENT: | | | NOTES PAYABLE: | | | | |
| CASH (1102-1188) | | | NEW VEHICLE FINANCING (2101) | | | | |
| IN TRUST (1142) \$ | | | DEMONS FINANCED \$ | | | | |
| CONTRACTS IN TRANSIT (1202) | | | USED VEHICLE FINANCING (2103) | | | | |
| MARKETABLE SECURITIES, AT COST (1212) | | | BANKS AND FINANCE COMPANIES (2111) | | | | |
| MARKET VALUE \$ | | | OWNERS (2121) | | | | |
| TOTAL CASH AND EQUIVALENT (LINES 3-5) | | | OTHER (2131) | | | | |
| RECEIVABLES: | | | CURRENT PORTION OF LONG-TERM DEBT | | | | |
| CUSTOMERS - VEHICLES (1302) | | | MORTGAGES \$ | | | | |
| CUSTOMERS - SP&A (1304) | | | TOTAL NOTES PAYABLE (LINES 3-8) | | | | |
| CLAIMS - WARRANTY (1332) | | | ACCOUNTS PAYABLE: | | | | |
| CLAIMS - TRANSPORTATION DAMAGES (1334) | | | TRADE (2201) | | | | |
| OTHER RECEIVABLES FROM DISTRIBUTOR (1352) | | | SALES AND USE TAXES PAYABLE (2221) | | | | |
| RECEIVABLES FROM DEALERSHIPS (1362) | | | DIVIDENDS PAYABLE (2251) | | | | |
| TOTAL RECEIVABLES (LINES 8-13) | | | OTHER (2281-2291) | | | | |
| LESS - ALLOWANCE FOR DOUBTFUL RECEIVABLES (1399) | | | TOTAL ACCOUNTS PAYABLE (LINES 11-14) | | | | |
| NET RECEIVABLES (LINE 14 MINUS 15) | | | PAYROLL DEDUCTIONS AND ACCRUALS: | | | | |
| INVENTORIES: | | | FEDERAL TAXES WITHHELD AND ACCRUED (2301-2305) | | | | |
| UNITS | | | STATE AND LOCAL TAXES WITHHELD & ACCRUED (2311, 2313) | | | | |
| DESCRIPTION PSGR KARM FB-3 SB-3 SW-2 TK-2 OTHER TOTAL | | | OTHER PAYROLL DEDUCTIONS (2331) | | | | |
| NEW VEHICLES (1402) | | | TOTAL PAYROLL DEDUCTIONS & ACCRUALS (LINES 17-19) | | | | |
| USED VEH. - VW (1412) | | | CUSTOMER SALES DEPOSITS IN TRUST (2401) | | | | |
| OVER 30 DAYS (MEMO) | | | NUMBER- | | | | |
| USED VEH. - O.W. (1412) | | | ACCRUED LIABILITIES: | | | | |
| OVER 30 DAYS (MEMO) | | | ACCRUED COMPENSATION (2501-2509) | | | | |
| WRECKS & JUNKS (1418) | | | ACCRUED PENSION PLAN (2511) | | | | |
| DEMONSTRATORS - NET (1422 MINUS 1423) | | | ACCRUED TAXES OTHER THAN PAYROLL (2531, 2533) | | | | |
| USED VEHICLE INVENTORIES - { OVER 30 DAYS (DOLLARS) (MEMO) } VW O.M. | | | OTHER ACCRUED LIABILITIES (2561-2569) | | | | |
| DESCRIPTION ACCT. COST OR MARKET ACCT. (INV. ADJ.) | | | TOTAL ACCRUED LIABILITIES (LINES 23-27) | | | | |
| NEW PARTS - VOLKSWAGEN 1442 1443 | | | FED'L STATE & LOCAL INC. TAXES (2601-2605) PRIOR YEARS \$ | | | | |
| NEW ACCESS. - VOLKSWAGEN 1444 1445 | | | TOTAL CURRENT LIABILITIES (LINES 9, 15, 20, 21, 28 & 29) | | | | |
| OTHER PARTS AND ACCESSORIES 1448 1449 | | | LONG-TERM LIABILITIES: | | | | |
| TOTALS (LINES 31-33) | | | NOTES PAYABLE - BANKS AND FINANCE COMPANIES (2801, LESS CURRENT PORTION) | | | | |
| WORK IN PROCESS - LABOR (1472) | | | NOTES PAYABLE - OWNERS (2803, LESS CURRENT PORTION) | | | | |
| SUBLET INVENTORY (1474) | | | NOTES PAYABLE - OTHER (2805, LESS CURRENT PORTION) | | | | |
| MISCELLANEOUS INVENTORIES (1492-1498) | | | MORTGAGE LOANS PAYABLE (2811, LESS CURRENT PORTION) | | | | |
| TOTAL INVENTORIES (LINES 19-27, 34-37) | | | TOTAL LONG-TERM LIABILITIES (LINES 32-35) | | | | |
| PREPAID EXPENSES: | | | OWNERS' EQUITY: | | | | |
| PREPAID CO-OPERATIVE REGIONAL ADVERTISING (1502) | | | CAPITAL STOCK OUTSTANDING: | | | | |
| PREPAID INSURANCE (1522) | | | PREFERRED (3001) | | | | |
| PREPAID RENT (1542) | | | COMMON (3007) | | | | |
| OTHER PREPAID EXPENSES (1552-1592) | | | TOTAL CAPITAL STOCK OUTSTANDING (LINES 39-40) | | | | |
| TOTAL PREPAID EXPENSES (LINES 40-43) | | | ADDITIONAL PAID-IN CAPITAL (3101) | | | | |
| TOTAL CURRENT ASSETS (LINES 6, 16, 38 & 44) | | | RETAINED EARNINGS (3201) | | | | |
| CAPITAL ASSETS: | | | DIVIDENDS DECLARED - CURRENT YEAR (3208) | | | | |
| DESCRIPTION ACCT. COST ACCT. ACC DEP N AMON | | | PROPRIETOR'S OR PARTNERS' INVESTMENTS (3401) | | | | |
| LAND 1702 | | | PROPRIETOR'S OR PARTNERS' WITHDRAWALS - CURRENT YEAR (3422) | | | | |
| CONSTRUCTION IN PROGRESS 1712 | | | CURRENT EARNINGS - BEFORE INCOME TAXES: | | | | |
| BUILDINGS & IMPROVEMENTS 1722 1723 | | | UNITS SOLD | | | | |
| LEASEHOLD IMPROVEMENTS 1732 1733 | | | NEW USED RETAIL USED WHOLE | | | | |
| MACHINERY & EQUIPMENT 1742 1743 | | | AMOUNT | | | | |
| FURNITURE & FIXTURES 1762 1763 | | | JANUARY | | | | |
| COMPANY VEHICLES 1772 1773 | | | FEBRUARY | | | | |
| OTHER DEPRECIABLE ASSETS 1792 1793 | | | MARCH | | | | |
| TOTALS (LINES 48-55) | | | APRIL | | | | |
| OTHER ASSETS: | | | MAY | | | | |
| LONG-TERM NOTES RECEIVABLE - CUSTOMERS (1802) | | | JUNE | | | | |
| RECEIVABLES - OWNERS, EMPLOYEES AND OTHER (1804) | | | JULY | | | | |
| FINANCE RECEIVABLES (1812) | | | AUGUST | | | | |
| INSURANCE RECEIVABLES (1814) | | | SEPTEMBER | | | | |
| LEASE VEHICLES - NET (1832 MINUS 1833) | | | OCTOBER | | | | |
| INVESTMENTS & ADVANCES - OTHER THAN AUTO BUSINESS (1842) | | | NOVEMBER | | | | |
| INVESTMENTS & ADVANCES - SUBSIDIARY & AFFILIATED COMPANIES (1846) | | | DECEMBER | | | | |
| CASH SURRENDER VALUE OF LIFE INSURANCE (1852) | | | TOTAL | | | | |
| OTHER (1882, 1892) | | | PROVISION FOR INCOME TAXES | | | | |
| TOTAL OTHER ASSETS (LINES 58-66) | | | NET EARNINGS OR (LOSS) (LINE 62 MINUS 63) | | | | |
| TOTAL ASSETS (LINES 45, 56 & 67) | | | TOTAL (LINES 41-47 & 64) | | | | |
| | | | LESS TREASURY STOCK (3302-3308) | | | | |
| | | | TOTAL OWNERS' EQUITY (LINE 65 MINUS 66) | | | | |
| | | | TOTAL LIABILITIES AND OWNERS' EQUITY (LINES 30, 38 & 67) | | | | |
| OWNERS' EQUITY | | NET WORKING CAPITAL | STATEMENT PREPARED BY | | | | STATEMENT APPROVED BY: |
| MIN. REQ. \$ | | ACT. \$ | DATE POSTMARKED | | | | DATE RECEIVED |
| SERVICE - CUST. LABOR RATE | | MIN. REQ. \$ | | | | | |

| LINE NO. | ACCT NO. | TOTAL | | | | NEW VEHICLE | | | | USED VEHICLE | | | |
|----------|----------|---|---|--------------|---|---------------|---|--------------|---|---------------|---|--------------|---|
| | | CURRENT MONTH | % | YEAR-TO-DATE | % | CURRENT MONTH | % | YEAR-TO-DATE | % | CURRENT MONTH | % | YEAR-TO-DATE | % |
| 1 | | SALES | | | | | | | | | | | |
| 2 | | GROSS PROFIT | | | | | | | | | | | |
| 3 | 9161 | | | | | | | | | | | | |
| 4 | 9163 | | | | | | | | | | | | |
| 5 | 9165 | | | | | | | | | | | | |
| 6 | 9167 | | | | | | | | | | | | |
| 7 | 9462 | | | | | | | | | | | | |
| 8 | 9464 | | | | | | | | | | | | |
| 9 | 9171 | | | | | | | | | | | | |
| 10 | | OPERATING INCOME (LINES 2-8) | | | | | | | | | | | |
| 11 | | SELLING EXPENSES: | | | | | | | | | | | |
| 12 | 01 | | | | | | | | | | | | |
| 13 | 04 | | | | | | | | | | | | |
| 14 | 06 | | | | | | | | | | | | |
| 15 | 07 | | | | | | | | | | | | |
| 16 | 08 | | | | | | | | | | | | |
| 17 | 11 | | | | | | | | | | | | |
| 18 | 12 | | | | | | | | | | | | |
| 19 | 14 | | | | | | | | | | | | |
| 20 | 15 | | | | | | | | | | | | |
| 21 | 18 | | | | | | | | | | | | |
| 22 | 19 | | | | | | | | | | | | |
| 23 | 21 | | | | | | | | | | | | |
| 24 | 22 | | | | | | | | | | | | |
| 25 | 23 | | | | | | | | | | | | |
| 26 | 24 | | | | | | | | | | | | |
| 27 | 25 | | | | | | | | | | | | |
| 28 | 26 | | | | | | | | | | | | |
| 29 | 29 | | | | | | | | | | | | |
| 30 | 31 | | | | | | | | | | | | |
| 31 | 32 | | | | | | | | | | | | |
| 32 | 33 | | | | | | | | | | | | |
| 33 | 41 | | | | | | | | | | | | |
| 34 | 42 | | | | | | | | | | | | |
| 35 | 43 | | | | | | | | | | | | |
| 36 | 44 | | | | | | | | | | | | |
| 37 | 45 | | | | | | | | | | | | |
| 38 | 46 | | | | | | | | | | | | |
| 39 | 47 | | | | | | | | | | | | |
| 40 | 51 | | | | | | | | | | | | |
| 41 | 52 | | | | | | | | | | | | |
| 42 | 53 | | | | | | | | | | | | |
| 43 | 54 | | | | | | | | | | | | |
| 44 | 55 | | | | | | | | | | | | |
| 45 | 59 | | | | | | | | | | | | |
| 46 | | TOTAL SEMI-FIXED EXP. (LINES 33-45) | | | | | | | | | | | |
| 47 | | FIXED EXPENSES: | | | | | | | | | | | |
| 48 | 61 | | | | | | | | | | | | |
| 49 | 62 | | | | | | | | | | | | |
| 50 | 63 | | | | | | | | | | | | |
| 51 | | TOTAL FIXED EXP. (LINES 48-50) | | | | | | | | | | | |
| 52 | | TOTAL DIRECT DEPT'L EXPENSE (LINES 18, 31, 46 & 51) | | | | | | | | | | | |
| 53 | | OCCUPANCY | | | | | | | | | | | |
| 54 | | UNDISTRIBUTED OPERATING EXPENSES | | | | | | | | | | | |
| 55 | | TOTAL OPER. EXP. (LINES 52-54) | | | | | | | | | | | |
| 56 | | DEDUCT ADMINISTRATIVE EXPENSES | | | | | | | | | | | |
| 57 | | TOTAL DEPT'L EXPENSES (LINE 55 MINUS 56) | | | | | | | | | | | |
| 58 | | DEPT'L OPERATING PROFIT (LINE 57 MINUS 57) | | | | | | | | | | | |
| 59 | | PERCENT OF DEPT'L OPERATING PROFIT | | | | | | | | | | | |
| 60 | | DEDUCT ADMINISTRATIVE EXPENSES | | | | | | | | | | | |
| 61 | | NET OPERATING PROFIT (LINE 58 MINUS 60) | | | | | | | | | | | |
| 62 | | OTHER INCOME AND DEDUCTIONS: NET | | | | | | | | | | | |
| 63 | | TOTAL (LINE 61 PLUS OR MINUS 62) | | | | | | | | | | | |
| 64 | 9502 | OWNERS' BONUSES | | | | | | | | | | | |
| 65 | 9504 | OWNERS' LIFE INSURANCE PREMIUMS | | | | | | | | | | | |
| 66 | 9522 | EMPLOYEES' BONUSES | | | | | | | | | | | |
| 67 | | TOTAL OTHER COMP. & LIFE INS. (LINES 64-66) | | | | | | | | | | | |
| 68 | | PROFIT BEFORE TAXES (LINE 63 MINUS 67) | | | | | | | | | | | |
| 69 | 9702 | PROVISION FOR FEDERAL, STATE AND LOCAL INCOME TAXES - CURRENT YEAR | | | | | | | | | | | |
| 70 | | NET PROFIT (LINE 68 MINUS 69) | | | | | | | | | | | |
| 71 | | REPOSSESSIONS (UNITS) | | | | | | | | | | | |
| 72 | | NEW VEHICLES | | | | | | | | | | | |
| 73 | | USED VEHICLES | | | | | | | | | | | |
| 74 | | RETAIL SELLING RATIO - USED RETAIL NEW SOLD | | | | | | | | | | | |
| 75 | | WHOLESALE RATIO - USED WHOLE TOTAL USED SOLD | | | | | | | | | | | |
| 76 | | CURRENT MONTH ____ TO 1 YEAR TO DATE ____ TO 1 | | | | | | | | | | | |
| 77 | | USED VOLKSWAGEN VEHICLES | | | | | | | | | | | |
| 78 | | USED OTHER MAKE VEHICLES | | | | | | | | | | | |
| 79 | | DAYS SUPPLY | | | | | | | | | | | |
| 80 | | NEW PARTS - VOLKSWAGEN | | | | | | | | | | | |
| 81 | | MONTHS SUPPLY | | | | | | | | | | | |
| 82 | | PERSONNEL EMPLOYED | | | | | | | | | | | |
| 83 | | OWNERS | | | | | | | | | | | |
| 84 | | GENERAL MANAGER | | | | | | | | | | | |
| 85 | | DEPARTMENT MANAGERS | | | | | | | | | | | |
| 86 | | SALESMEN - NEW | | | | | | | | | | | |
| 87 | | SALESMEN - USED | | | | | | | | | | | |
| 88 | | COMB. SALESMEN - NEW & USED | | | | | | | | | | | |
| 89 | | TOTAL SALESMEN - NEW & USED | | | | | | | | | | | |
| 90 | | FOREMEN | | | | | | | | | | | |
| 91 | | DISPATCHER | | | | | | | | | | | |
| 92 | | SERVICE ADVISERS, ASST. BODY SHOP MGR. & OTHER SPECIALISTS | | | | | | | | | | | |
| 93 | | PRODUCTIVE EMPLOYEES, MECHANICS, APPRENTICES, TRAINERS, & OTHERS | | | | | | | | | | | |
| 94 | | BODYMEN & PAINTERS | | | | | | | | | | | |
| 95 | | APPRENTICES, TRAINERS | | | | | | | | | | | |
| 96 | | APPRENTICES - MENO | | | | | | | | | | | |
| 97 | | CAR WASHERS, APPEARANCE RECONDITIONERS, PORTERS | | | | | | | | | | | |
| 98 | | PARTS HELPERS | | | | | | | | | | | |
| 99 | | OTHER TRAINERS | | | | | | | | | | | |
| 100 | | BOOKKEEPERS | | | | | | | | | | | |
| 101 | | CLERICAL PERSONNEL | | | | | | | | | | | |
| 102 | | TOTAL | | | | | | | | | | | |

INCOME AND EXPENSE

| ACCT No | SERVICE - GENERAL | | | | SERVICE - PAINT AND BODY | | | | PARTS AND ACCESSORIES | | | | ADMINISTRATIVE | | | | | |
|------------|-------------------------------------|-----|--------------|-----|--------------------------|-----|--------------|-----|-----------------------|-----------------------------------|--------------|-----|----------------|------|--------------|---|--|--|
| | CURRENT MONTH | % | YEAR TO DATE | % | CURRENT MONTH | % | YEAR TO DATE | % | CURRENT MONTH | % | YEAR TO DATE | % | CURRENT MONTH | % | YEAR TO DATE | % | | |
| 9161 | | 100 | | 100 | | 100 | | 100 | | 100 | | 100 | | | | | | |
| 9163 | | | | | | | | | | | | | | | | | | |
| 9165 | | | | | | | | | | | | | | | | | | |
| 9167 | | | | | | | | | | | | | | | | | | |
| 9169 | | | | | | | | | | | | | | | | | | |
| 9171 | | | | | | | | | | | | | | | | | | |
| 01 | | | | | | | | | | | | | | | | | | |
| 04 | | | | | | | | | | | | | | | | | | |
| 06 | | | | | | | | | | | | | | | | | | |
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| 08 | | | | | | | | | | | | | | | | | | |
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| 46 | | | | | | | | | | | | | | | | | | |
| 47 | | | | | | | | | | | | | | | | | | |
| 51 | | | | | | | | | | | | | | | | | | |
| 52 | | | | | | | | | | | | | | | | | | |
| 53 | | | | | | | | | | | | | | | | | | |
| 54 | | | | | | | | | | | | | | | | | | |
| 55 | | | | | | | | | | | | | | | | | | |
| 59 | | | | | | | | | | | | | | | | | | |
| 61 | | | | | | | | | | | | | | | | | | |
| 62 | | | | | | | | | | | | | | | | | | |
| 63 | | | | | | | | | | | | | | | | | | |
| 64 | | | | | | | | | | | | | | | | | | |
| 65 | | | | | | | | | | | | | | | | | | |
| 66 | | | | | | | | | | | | | | | | | | |
| 67 | | | | | | | | | | | | | | | | | | |
| 68 | | | | | | | | | | | | | | | | | | |
| 69 | TOTAL (LINES 61-68) | | | | | | | | TOTAL (LINES 61-68) | | | | | | | | | |
| 70 | OTHER DEDUCTIONS: | | | | | | | | TOTAL (LINES 61-69) | | | | | | | | | |
| 71 | INTEREST EXPENSE | | | | 9402 | | | | | UNDISTRIBUTED OPERATING EXPENSES: | | | | | | | | |
| 72 | LOSS ON DISPOSAL OF ASSETS | | | | 9412 | | | | | DEALER GOODWILL | | | | 8191 | | | | |
| 73 | CASH DISCOUNTS ALLOWED | | | | 9412 | | | | | INSURANCE - OTHER | | | | 8192 | | | | |
| 74 | AMORTIZATION - ORGANIZATION EXPENSE | | | | 9452 | | | | | TAXES - OTHER | | | | 8193 | | | | |
| 75 | LEASE VEHICLES | | | | 9482 | | | | | PROFESSIONAL FEES | | | | 8194 | | | | |
| 76 | MISCELLANEOUS DEDUCTIONS | | | | 9492 | | | | | CONTRIBUTIONS | | | | 8195 | | | | |
| 77 | | | | | | | | | | BAD DEBTS | | | | 8196 | | | | |
| 78 | TOTAL (LINES 71-77) | | | | | | | | TOTAL (LINES 72-78) | | | | | | | | | |
| 79 | NET (LINE 69 MINUS 78) | | | | | | | | | | | | | | | | | |

CURRENT MONTH

GROSS PROFIT ANALYSIS

YEAR-TO-DATE

| LINE | SALES | COST OF SALES | GROSS PROFIT | ACCT NO S | UNITS | DESCRIPTION | UNITS | SALES | COST OF SALES | GROSS PROFIT |
|------|-------|---------------|--------------|----------------|-------------------------------------|---------------------------------------|------------------------------------|-------|---------------|--------------|
| 1 | | | | SALES | COST | NEW VEHICLES | | | | |
| 2 | | | | 4101 4102 | 5101 | VW PASSENGER - TYPE 1 | | | | |
| 3 | | | | 4105 4106 | 5105 | VW PASSENGER - KARMANN | | | | |
| 4 | | | | 4117 4112m | 5117 | VW FASTBACK - TYPE 3 | | | | |
| 5 | | | | 4115 4116 | 5115 | VW SQUAREBACK - TYPE 3 | | | | |
| 6 | | | | 4121 4122 | 5121 | VW STATION WAGON - TYPE 2 | | | | |
| 7 | | | | 4141 4142 | 5141 | VW TRUCK - TYPE 2 | | | | |
| 8 | | | | 4161 4162 | 5161 | VW FLEET AND EMPLOYEE | | | | |
| 9 | | | | | UNITS VW FLEET & EMP MONTH | P1 K P3 P1 K P3 | UNITS VW FLEET & EMP YEAR | | | |
| 10 | | | | | S3 SW T S3 SW T | | | | | |
| 11 | | | | 4171 (4172) | 5171 | VW DEMONSTRATORS | | | | |
| 12 | | | | | UNITS VW DEMO MONTH | P1 K P3 P1 K P3 | UNITS VW DEMO YEAR | | | |
| 13 | | | | | S3 SW T S3 SW T | | | | | |
| 14 | | | | 4181 4182 | 5181 | DEMO OTHER MAKES DEMO | | | | |
| 15 | | | | 4191 | 5192 | DEALER INSTALLED ACCESS - ACCESS | | | | |
| 16 | | | | | 5194 | DEALER INSTALLED ACCESS - LABOR | | | | |
| 17 | | | | | | TOTAL | | | | |
| 18 | | | | | | USED VEHICLES | | | | |
| 19 | | | | 4201 | 5201 | VW RETAIL | | | | |
| 20 | | | | | 5203 | VW - RETAIL RECONDITIONING | | | | |
| 21 | | | | 4261 | 5261 | OTHER MAKES - RETAIL | | | | |
| 22 | | | | | 5263 | OTHER MAKES - RETAIL RECONDITIONING | | | | |
| 23 | | | | 4281 | 5281 | VW CM WHOLESALE VW CM | | | | |
| 24 | | | | | 5292 | INVENTORY ADJUSTMENTS | | | | |
| 25 | | | | | | TOTAL | | | | |
| 26 | | | | | | TOTAL NEW AND USED | | | | |
| 27 | | | | | R.O. | SERVICE - GENERAL | | | | |
| 28 | | | | 4401 | MEMO | MECH. LABOR - CUSTOMER SALES | MEMO | | | |
| 29 | | | | 4403 | | MECH. LABOR - FACTORY WTY SALES | | | | |
| 30 | | | | 4405 | | MECH. LABOR - INTERNAL SALES | | | | |
| 31 | | | | | 5408 | TOTAL MECHANICAL | | | | |
| 32 | | | | 4421 | | OTHER SHOP LAB & MATL. CUST. SALES | | | | |
| 33 | | | | 4425 | | OTHER SHOP LAB & MATL. INTL. SALES | | | | |
| 34 | | | | | 5428 | TOTAL OTHER SHOP | | | | |
| 35 | | | | 4451 | 5451 | GAS OIL AND GREASE | | | | |
| 36 | | | | 4491 | 5491 | SUBLET REPAIRS - GENERAL | | | | |
| 37 | | | | | | TOTAL | | | | |
| 38 | | | | | R.O. | SERVICE - PAINT & BODY | | | | |
| 39 | | | | 4501 | MEMO | LABOR - CUSTOMER SALES | MEMO | | | |
| 40 | | | | 4503 | | LABOR - FACTORY WARRANTY SALES | | | | |
| 41 | | | | 4505 | | LABOR - INTERNAL SALES | | | | |
| 42 | | | | | 5508 | TOTAL PAINT & BODY | | | | |
| 43 | | | | 4551 | 5551 | PAINT COMPOUNDS & OTHER MATERIAL | | | | |
| 44 | | | | 4591 | 5591 | SUBLET REPAIRS - PAINT & BODY | | | | |
| 45 | | | | | | TOTAL | | | | |
| 46 | | | | | | TOTAL SERV-GEN'L & P.&B | | | | |
| 47 | | | | | | PARTS & ACCESSORIES | | | | |
| 48 | | | | 4701 | 5701 | VW PARTS - GENERAL R.O. - CUSTOMER | | | | |
| 49 | | | | 4703 | 5703 | VW PARTS - GENERAL R.O. - FACTORY WTY | | | | |
| 50 | | | | 4705 | 5705 | VW PARTS - GENERAL R.O. - INTERNAL | | | | |
| 51 | | | | 4711 | 5711 | VW ACCESSORIES - GENERAL R.O. | | | | |
| 52 | | | | 4721 | 5721 | OTHER PARTS & ACCESS. - GENERAL R.O. | | | | |
| 53 | | | | | | TOTAL - GENERAL | | | | |
| 54 | | | | 4731 | 5731 | VW PTS. - P.&B. R.O. - CUSTOMER | | | | |
| 55 | | | | 4733 | 5733 | VW PTS. - P.&B. R.O. - FACTORY WTY | | | | |
| 56 | | | | 4735 | 5735 | VW PTS. - P.&B. R.O. - INTERNAL | | | | |
| 57 | | | | 4741 | 5741 | VW ACCESSORIES - P.&B. R.O. | | | | |
| 58 | | | | 4751 | 5751 | OTHER PARTS & ACCESS. - P.&B. R.O. | | | | |
| 59 | | | | | | TOTAL - PAINT & BODY | | | | |
| 60 | | | | | | VW PARTS COUNTER - RETAIL | | | | |
| 61 | | | | 4761 | 5761 | | | | | |
| 62 | | | | 4763 | 5763 | VW PARTS CTR. - TO WHOLESALE TRADE | | | | |
| 63 | | | | 4765 | 5765 | VW PARTS CTR. - TO P.&B. SHOPS | | | | |
| 64 | | | | 4771 | 5771 | VW ACCESSORIES - COUNTER | | | | |
| 65 | | | | 4781 | 5781 | OTHER PARTS & ACCESS. - COUNTER | | | | |
| 66 | | | | | | TOTAL - COUNTER | | | | |
| 67 | | | | | 5792 | INV. ADJ. - NEW PARTS - VW | | | | |
| 68 | | | | | 5794 | INV. ADJ. - NEW ACCESSORIES - VW | | | | |
| 69 | | | | | 5796 | INV. ADJ. - OTHER PARTS & ACCESS | | | | |
| 70 | | | | | | TOTAL PARTS & ACCESS. | | | | |
| 71 | | | | | | TOTAL SERV. PTS. & ACCESS. | | | | |
| 72 | | | | | | GRAND TOTAL | | | | |

SERVICE MANAGEMENT DATA

| DESCRIPTION | SERVICE GENERAL | DESCRIPTION | SERVICE GENERAL | PAINT & BODY |
|---|-----------------|----------------------|-----------------|--------------|
| 78 NUMBER OF CUSTOMERS ON RECORD | | TOTAL AVAILABLE TIME | | |
| 79 NUMBER OF INACTIVE CUSTOMERS | | TOTAL ACTUAL TIME | | |
| 80 NUMBER OF MAINTENANCE TEAMS IN OPERATION | | TOTAL W-TIME | | |
| 81 NUMBER OF REGULAR SHOP HOURS PER WEEK | | TOTAL FLAT RATE TIME | | |

APPENDIX B
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*December 26, 1972, p. D-24.