

§1244. Limitations on establishing or relocating dealerships

A new personal sports mobile dealership may not be established nor may a personal sports mobile dealership be relocated, except as follows. [PL 1997, c. 473, §3 (NEW).]

1. Notification. If a manufacturer seeks to enter into a franchise establishing an additional new personal sports mobile dealership or relocating an existing new personal sports mobile dealership, within or into a relevant market area where the same line make is already represented, the manufacturer shall, in writing, first notify each new personal sports mobile dealer in the line make in the relevant market area of the intention to establish an additional dealership or to relocate an existing dealership within or into that market area. The relevant market area is a radius of 15 miles around an existing dealership in the following cities: Augusta, Auburn, Bangor, Biddeford, Brewer, Falmouth, Lewiston, Portland, Saco, South Portland, Waterville and Westbrook. The relevant market area is a radius of 30 miles around all other existing dealerships.

Within 30 days of receiving the notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any such new personal sports mobile dealership may file a complaint in the Superior Court of the county in which the dealership is located, protesting the establishment or relocation of the proposed new personal sports mobile dealership. When such a complaint is filed, the manufacturer may not establish or relocate the proposed new personal sports mobile dealership until a hearing has been held on the merits, nor thereafter if the court determines that there is good cause for not permitting the proposed new personal sports mobile dealership. [PL 1997, c. 473, §3 (NEW).]

2. Good cause. In determining whether good cause has been established for not entering into or relocating an additional dealership for the same line make, the court shall take into consideration the existing circumstances, including, but not limited to:

A. The permanency of the investment of both the existing and proposed new personal sports mobile dealers; [PL 1997, c. 473, §3 (NEW).]

B. The effect on the retail new personal sports mobile business and the consuming public in the relevant market area; [PL 1997, c. 473, §3 (NEW).]

C. Whether it is injurious or beneficial to the public welfare for an additional new personal sports mobile dealership to be established; [PL 1997, c. 473, §3 (NEW).]

D. Whether the new personal sports mobile dealers of the same line make in that relevant market area are providing adequate competition and convenient consumer care for the personal sports mobiles of the line make in the market area, including the adequacy of personal sports mobile sales and service facilities, equipment, supply of personal sports mobile parts and qualified service personnel; [PL 1997, c. 473, §3 (NEW).]

E. Whether the establishment of an additional new personal sports mobile dealership would increase competition and therefore be in the public interest; and [PL 1997, c. 473, §3 (NEW).]

F. The effect on the establishing or relocating dealer as a result of not being permitted to establish or relocate. [PL 1997, c. 473, §3 (NEW).]

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3. Mediation. A franchisee may not bring an action for recovery of damages or for equitable relief under this section until a franchisee has served upon the franchisor a written demand for nonbinding mediation and either the parties have engaged in such mediation in this State with an independent mediator or 60 days have passed from the franchisor's receipt of notice of mediation, whichever occurs sooner. The service of the written notice of mediation tolls the running of any applicable statute of limitations for the subsequent 60-day period. A franchisor may not establish a new personal sports mobile dealership or relocate an existing sports mobile dealership within or into the relevant market

area during this 60-day period. Notwithstanding any agreement or requirement to engage in nonbinding mediation, at the conclusion of the proceedings, the franchisee is entitled to file an action in any court in this State in accordance with section 1250-I. The results of nonbinding mediation are not admissible in the action.

[PL 2001, c. 246, §1 (NEW).]

For the purposes of this section, the reopening in a relevant market area of a new personal sports mobile dealership that has not been in operation for one year or more is deemed the establishment of an additional new personal sports mobile dealership. [PL 1997, c. 473, §3 (NEW).]

SECTION HISTORY

PL 1997, c. 473, §3 (NEW). PL 2001, c. 246, §1 (AMD).

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