

**Summary of SC89611, *Parktown Imports, Inc. v. Audi of America, Inc.***

Review of an administrative hearing commission decision.

**Attorneys:** Parktown Imports was represented by Edwin G. Harvey and Matthew J. Landwehr of Thompson Coburn LLP in St. Louis, (314) 552-6000. Audi was represented by Randall L. Oyler, James R. Vogler, Rachael M. Trummel and Rebecca Ray of Barack Ferrazzano Kirschbaum Nagelberg LLP in Chicago, (312) 984-3100; David M. Harris, Dawn M. Johnson and Robert L. Duckels of Greensfelder, Hemker & Gale PC in St. Louis, (314) 241-9090; Anthony Soukenik and Keith D. Price of Sandberg, Phoenix & von Gontard PC in St. Louis, (314) 231-3332; and Johnny Richardson and Gregory Mitchell of Brydon Swearngen & England PC in Jefferson City, (573) 635-7166.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** The administrative hearing commission rejected a St. Louis dealership's challenge to an automobile franchisor's decision to establish a third dealership in the area. In a 7-0 decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirmed the commission's decision. The legislature enacted a specific statute that permits a motor vehicle dealership, in a county with a population greater than 100,000, to challenge the establishment of a new franchise within a six-mile radius. Here, the dealer had no authority to challenge the new location because it was more than six miles away.

**Facts:** In September 2004, Audi of America Inc. notified its only two authorized Audi dealers in the St. Louis area – Parktown Imports Inc. and Plaza Motors Inc. – that it had determined, through market research, that St. Louis could support a third dealership and that it was considering opening a new dealership in west St. Louis. Parktown replied that it had no interest in relocating and that it did not believe St. Louis could support a third dealership. Plaza Motors also declined the invitation. In May 2005, Audi indicated that if Parktown built a new stand-alone facility designed by Audi, then Audi would abandon its plans to add a third dealership. At a meeting between the two, Audi also suggested that if Parktown bought Plaza Motors, then Audi would keep the number of Audi dealers in St. Louis at two. Parktown rejected both proposals. Ultimately, in March 2007, Audi notified Parktown that it was awarding Frank Bommarito Oldsmobile a franchise to establish a third Audi dealership in west St. Louis County, approximately 10 miles east of Parktown's location on the same road. Three days later, Parktown filed a complaint with the administrative hearing commission challenging the establishment of the third dealership under section 407.825(1), RSMo Supp. 2007, on the grounds that Audi's decision was a capricious, bad faith or unconscionable retaliation against Parktown for refusing to move its existing facilities. In May 2007, the commission granted Audi's motion to dismiss, concluding the proper statute to challenge the establishment of a new dealership was section 407.817, RSMo Supp. 2007 – not section 407.825(1) – because section 407.817 was enacted later and provides a more specific remedy. Parktown appeals.

**AFFIRMED.**

**Court en banc holds:** The commission correctly determined that section 407.817 is the sole and exclusive authority for challenging the establishment of a new motor vehicle dealership under the motor vehicle franchise practices act. Section 407.825(1), enacted in 1980 as part of the original act, creates a general cause of action against a franchisor for conduct that is “capricious, in bad faith, or unconscionable,” causing damage to a franchisee. Section 407.817, enacted 21 years later, governs this case, as it is the only section of the act that specifically addresses the rights and obligations of franchisors and franchisees with respect to adding new dealerships. From the language used, the legislature’s intent is clear: When a county’s population exceeds 100,000, franchisees within a six-mile radius of a proposed location are entitled to notice of the proposed location and the opportunity to a hearing to determine good cause for opening the new location. Outside that six-mile radius, the legislature intended the open market to govern itself. Attempting to harmonize the two sections – leaving pending the litigation between the parties for a determination by the commission as to whether Parktown can prove Audi here was acting in a “capricious, bad faith, or unconscionable” manner – would be tantamount to judicial sidestepping of the legislature’s clear intent that section 407.817 be the sole mechanism for challenging the establishment of new motor vehicle dealerships. Because its location is more than six miles away from the proposed new dealership, Parktown has no authority to contest the establishment of the third dealership under section 407.817.