

**Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Putzmeister America, Inc.

Case No: DOT-21-0008

FINAL DECISION

On February 18, 2021, Putzmeister America, Inc. (Putzmeister) submitted a petition for exemption under Wis. Stat. § 218.0121(3m)(c). Administrative Law Judge Kristin P. Fredrick was assigned to the matter and a telephonic prehearing conference was held on March 9, 2021 at which time the matter was set for hearing. Legal counsel for the Department of Transportation (Department) advised via electronic mail on March 8 and 22, 2021 that the Department did not intend to participate in the hearing and did not object to the granting of the petition. The hearing occurred on March 22, 2021 telephonically due to the Covid-19 pandemic. The record in this matter included the digitally recorded hearing, the petition, an affidavit with attached exhibits, as well as correspondence between the Department and the petitioner. The Division of Hearings and Appeals issued a Proposed Decision on April 21, 2021. No objections to the Proposed Decision were received. The Department submitted correspondence in support of the Proposed Decision being made the final decision in this matter. The Proposed Decision is hereby adopted as the Final Decision in this matter.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

Putzmeister America, Inc., (Putzmeister), by

Attorney Steven Nelson
von Briesen & Roper, S.C.
411 East Wisconsin Avenue, Suite 1000
Milwaukee, WI 53202

Wisconsin Department of Transportation (Department)

No appearance

Findings of Fact

The Administrator finds:

1. Putzmeister America, Inc. (“Putzmeister”) is a licensed motor vehicle manufacturer located in Sturtevant, Wisconsin. Putzmeister manufactures customized material handling trucks including truck-mounted concrete pumping trucks (referred to as pumper trucks) and extendable conveyor belt trucks (referred to as telebelt trucks) typically used in construction projects. (Hearing testimony of Craig Olson; Affidavit of Craig Olson, ¶¶ 3, 4 and 14)
2. Putzmeister is considered a final stage manufacturer. It purchases an incomplete vehicle (chassis with motor) from a motor vehicle dealer, such as a Mack or Kenworth brand. Putzmeister may add axles to the incomplete truck chassis depending upon the length of the piping and applicable road weight restrictions required by the State where the truck will be operated. Putzmeister then constructs the pumping or extendable telebelt system, controls and related equipment on the chassis, and paints and details the trucks, per the customer’s specifications. (Olson hearing testimony; Olson Aff. ¶¶ 10, 18, 19 and 21)
3. Putzmeister estimates it sells between 8 and 10 pumper and telebelt trucks per year in Wisconsin. The sales cycle for the large pumper and telebelt trucks is approximately 1 to 2 months from initial contact to a signed sales agreement while the manufacturing process can take up to another 12 months to complete the trucks. The trucks range in price between \$300,000 and \$1,300,000 depending on the size of the truck and the customization desired by the customer. (Olson hearing testimony; Olson Aff. ¶¶ 16, 30-33, and 37)
4. Putzmeister is the direct seller of the pumper or telebelt truck and transfers title to the end-user. (Olson hearing testimony; Olson Aff. ¶¶ 28-29)
5. There are currently no Putzmeister dealerships in operation in the State of Wisconsin and no known Putzmeister dealerships in the United States. (Olson hearing testimony)
6. Considering the investment that would be required to operate a dealership that purchases and re-sells the trucks manufactured by Putzmeister, the lengthy sales process to sell and build the vehicles, the financial burden to hold Putzmeister vehicles in inventory, and the low number of sales in Wisconsin, there is no evidence that there are any prospective independent dealers in Wisconsin available to own and operate a dealership that holds and sells the trucks manufactured by Putzmeister in a manner consistent with the public interest and that meets the reasonable standard and uniformly applied qualifications of Putzmeister. (Olson hearing testimony; Olson Aff. ¶ 42)

Discussion

Under Wis. Stat. § 218.0121(2m), a manufacturer, distributor or importer of motor vehicles, or its respective agents, are not allowed to own or operate a motor vehicle dealership in

the State of Wisconsin. This is commonly referred to as “the Factory Store rule”. There are four exceptions to the Factory Store rule:

(3m) This section does not prohibit any of the following:

(a) A factory from holding an ownership interest in or operating a dealership for a temporary period, not to exceed one year, during the transition from one owner or dealer operator to another.

(b) A factory from holding an ownership interest in a dealership, if all of the following apply:

1. The dealer operator of the dealership is an individual who is not an agent of the factory.

2. The dealer operator of the dealership is unable to acquire full ownership of the dealership with his or her own assets.

3. The dealer operator of the dealership holds not less than 15 percent of the total ownership interests in the dealership within one year from the date that the factory initially acquires any ownership interest in the dealership.

4. There is a bona fide written agreement in effect between the factory and the dealer operator of the dealership under which the dealer operator will acquire all of the ownership interest in the dealership held by the factory on reasonable terms specified in the agreement.

5. The written agreement described in subd. 4. provides that the dealer operator will make reasonable progress toward acquiring all of the ownership interest in the dealership, and the dealer is making reasonable progress toward acquiring all of the ownership interest in the dealership.

6. Not more than eight years have elapsed since the factory initially acquired its ownership interest in the dealership, unless the department, upon petition by the dealer operator, determines that there is good cause to allow the dealer operator a longer period to complete his or her acquisition of all of the ownership interest in the dealership held by the factory and the longer period determined by the department has not yet elapsed.

(c) The ownership, operation or control of a dealership by a factory that does not meet the conditions under par. (a) or (b), if the division of hearings and appeals determines, after a hearing on the matter at the request of any party, that there is no prospective independent dealer available to own and operate the dealership in a manner consistent with the public interest and that meets the reasonable standard and uniformly applied qualifications of the factory.

(d) The holding or acquisition, solely for investment purposes, of an ownership interest in a publicly traded corporation by an employee benefit plan that is sponsored by a factory.

Wis. Stat. § 218.0121(3m).

Over the last 27 years, the petitioner in the present matter, Putzmeister America, Inc., has manufactured and sold specialized concrete pumper and telebelt conveyor trucks for use in the construction industry from its location in Sturtevant, Wisconsin. (Olson hearing testimony; Olson Aff. ¶¶ 4-5). Putzmeister is considered a final stage manufacturer as they purchase an incomplete truck chassis from another entity, install their specialized equipment to the truck chassis per customer specifications, and then sell directly to the end-user. (Olson hearing testimony; Olson Aff. ¶¶ 10, 14-22, and 29) Although Putzmeister customers may come from across the country and worldwide, it typically only sells 8-10 vehicles per year in Wisconsin. (Olson hearing testimony; Olson Aff. ¶ 37) The customer base for these specialized trucks is thus very small. Further, the vehicles take up to a year to build and can cost upwards of \$1.3 million. (Olson hearing testimony; Olson Aff. ¶¶ 16-17 and 32-34)

Putzmeister filed a petition seeking exemption after the Department of Transportation (Department) informed Putzmeister that it would be required to hold a motor vehicle dealer's license to sell its trucks to end-user customers. Further, because it was considered a manufacturer, the Department informed Putzmeister that it could not obtain a dealer license absent an exemption under Wis. Stat. § 218.0121(3m)(c). (Olson hearing testimony; Olson Aff. ¶¶ 7 and 12) The Department chose not to participate in this hearing. However, per a March 8, 2021 email from the Department's Office of General Counsel, the Department advised that it believed the petitioner meets the criteria for exemption under Wis. Stat. § 218.0121(3m)(c) and thus, the Department did not object to the granting of the petition.

At the hearing Putzmeister presented testimony and evidence establishing that there is no prospective independent dealer available to own and operate a dealership for Putzmeister in a manner consistent with the public interest and that meets the reasonable standards and uniformly applied qualifications of Putzmeister. Moreover, it is unlikely that an independent dealership would be financially viable due to the costly and lengthy manufacturing process and low number of vehicle sales. Therefore, based upon the evidence, Putzmeister has satisfied its burden to establish it is entitled to an exemption of the Factory Store rule under Wis. Stat. § 218.0121(3m)(c).

Conclusions of Law

The Administrator concludes:

1. Putzmeister America, Inc. has satisfied the burden of showing that no prospective independent dealers are available in Wisconsin to own and operate a dealership for the sale and service of the specialty trucks manufactured by Putzmeister in a manner consistent with the public interest and that meets the reasonable standards and uniformly applied qualifications of Putzmeister.
2. The Division of Hearings and Appeals has authority pursuant to Wis. Stat. § 218.0121(3m)(c) to issue the following order.

Order

The Administrator orders:

Based on the evidence in the record, no prospective independent dealers are available to own and operate a dealership for the sale and service of vehicles manufactured by Putzmeister America, Inc. in Wisconsin. Putzmeister America, Inc. should be allowed to own and operate a dealership in Wisconsin selling and servicing the products it manufactures and is hereby granted an exemption from the factory store rule pursuant to Wis. Stat. § 218.0121(3m)(c).

Dated at Madison, Wisconsin on May 12, 2021.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: 

Brian K. Hayes
Division Administrator

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to ensure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be served and filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. The Division of Hearings and Appeals shall be served with a copy of the petition either personally or by certified mail. The address for service is:

DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53 to insure strict compliance with all its requirements.