

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

In the Matter of Beton America, LLC

Case No: DOT-21-0009

FINAL DECISION

On February 24, 2021, Beton America, LLC (Beton) submitted a request for hearing seeking an 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 26, 2021 telephonically due to the Covid-19 pandemic. The record in this matter includes the digitally recorded hearing, the request for hearing and correspondence between the Department and the petitioner. The Division of Hearings and Appeals issued a Proposed Decision on April 30, 2021. No objections to the Proposed Decision were received. 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:

Beton America, LLC, (Beton), by

Randy Ziarek, President
516 Technology Way
Saukville, WI 53080

Wisconsin Department of Transportation (Department)

No appearance

Findings of Fact

The Administrator finds:

1. Beton America, LLC (“Beton”) is a Wisconsin company located in Saukville, Wisconsin. Beton is the exclusive U.S. and Canadian distributor of concrete pump equipment manufactured by Betonstar, a foreign company located in Turkey. (Hearing testimony of Randy Ziarek)
2. Beton purchases the Betonstar concrete pumps and resells them to consumers to be mounted on a truck chassis for use in the construction and concrete industry. Beton mounts

the concrete pump equipment onto the truck frame, installs an electrical connection between the vehicle and the concrete pump, completes the installation per each customer's specifications, provides in-service safety training on the use of the concrete pump, and provides post-market service and parts to Beton customers. (Ziarek hearing testimony)

3. Beton sold nine concrete pumps in the U.S. and Canada last year. It takes approximately twelve to fourteen weeks to complete the installation process and the typical cost for the pump, truck and installation is around \$475,000 depending on the size of the pump and the customization desired by the customer. (Ziarek hearing testimony)
4. There are currently no Beton dealerships in operation in the State of Wisconsin, United States or Canada. (Ziarek hearing testimony)
5. Beton is the only company in the U.S. or Canada available to provide warranty service work on Betonstar concrete pumps. (Ziarek hearing testimony)
6. Considering the investment that would be required to operate a dealership that purchases and re-sells Beton products and trucks installed with Betonstar concrete pumps, the lengthy process to sell and build the vehicles, the financial burden to hold Beton equipment and/or vehicles in inventory, and the low volume 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 trucks installed with Betonstar concrete pumps in a manner consistent with the public interest and that meets the reasonable standard and uniformly applied qualifications of Beton. (Ziarek hearing testimony)

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).

The petitioner in the present matter is the exclusive distributor of Betonstar concrete pumps, which are manufactured overseas and then resold to customers in the U.S. and Canada from the Beton facility located in Saukville, Wisconsin. (Ziarek hearing testimony) The Betonstar concrete pumps are mounted to a truck chassis for use in the construction and concrete industry. (Ziarek hearing testimony). In the last year Beton sold only nine Betonstar concrete pumps that were mounted on a specialized truck chassis per each customer's specifications. (Ziarek hearing testimony) The installation process takes approximately twelve to fourteen weeks and the end product can cost nearly a half million dollars. (Ziarek hearing testimony)

Beton requested a hearing seeking exemption after the Department of Transportation (Department) informed Beton 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 a distributor, the Department informed Beton that it could not obtain a dealer license absent an exemption under Wis. Stat. § 218.0121(3m)(c). (Ziarek hearing testimony) 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 Beton presented testimony and evidence establishing that there is no prospective independent dealer available to own and operate a dealership to sell Beton concrete pumps or vehicles installed with Beton concrete pumps in a manner consistent with the public interest and that meets the reasonable standards and uniformly applied qualifications of Beton. Moreover, it is unlikely that an independent dealership would be financially viable due to the costly and lengthy installation process and low volume of sales. Therefore, based upon the evidence, Beton 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. Beton America, LLC 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 installed with Betonstar concrete pumps by Beton America, LLC in a manner consistent with the public interest and that meets the reasonable standards and uniformly applied qualifications of Beton.
2. The Division of Hearings and Appeals has authority pursuant to Wis. Stat. § 218.0121(3m)(c) to issue the following order.

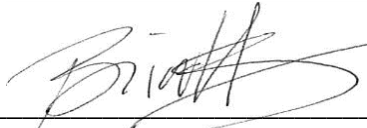
Order

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 installed with Betonstar concrete pumps by Beton America, LLC in Wisconsin. Beton America, LLC should be allowed to own and operate a dealership in Wisconsin selling and servicing its products and vehicles 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 19, 2021.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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Telephone: (608) 266-7709
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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.