

1 NEW MOTOR VEHICLE BOARD
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CERTIFIED MAIL

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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD

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11 In the Matter of the Protest of
12 BURBANK KAWASAKI, INC.,
13 Protestant,
14 v.
15 KAWASAKI MOTORS CORP., U.S.A., a
Corporation,
16 Respondent.

Protest Nos. PR-2328-12 and PR-2333-12

**ORDER REJECTING THE PROPOSED
DECISION DATED MAY 23, 2013, AND
REMANDING THE MATTERS FOR A
SETTLEMENT CONFERENCE AND
FURTHER PROCEEDINGS**

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1 1. At its July 25, 2013, Special Meeting, the Public Members of the Board met and
2 considered the administrative record and Proposed Decision dated May 23, 2013, in the above-entitled
3 protests. After such consideration, the Board rejected the Proposed Decision and remanded the matter for
4 a settlement conference and further proceedings.

5 2. As is the case with other decision-making entities, the Board is sensitive to the policy of
6 the law of avoiding forfeiture if there is an alternative that would protect the interests of the other party
7 (Respondent) and the public. In this case, the Board is mindful of Kawasaki Motor Corp., U.S.A.'s
8 ("Kawasaki") interests in the proper and effective distribution and service of its products through the
9 franchise system as well as the needs of current and prospective owners of Kawasaki products. The
10 legislature has recognized the importance of these concerns by the language in Vehicle Code section
11 3067¹ which permits the Board to impose conditions upon its decisions so long as the conditions are such
12 as to meet the following language:

13 Conditions imposed by the board shall be for the purpose of assuring performance of
14 binding contractual agreements between franchisees and franchisors or otherwise serving
 the purposes of this article.

15 3. Protestant Burbank Kawasaki, Inc. ("Protestant") has been owned by Mr. Leon Bellissimo
16 since 1978, a period of 35 years. During this time Mr. Bellissimo, for the most part, effectively sold and
17 serviced Kawasaki products, provided service to the public, and had a good relationship with Kawasaki
18 representatives. The termination of Protestant's franchises would result not only in the loss of
19 Protestant's contractual rights under the two Kawasaki franchises but likely could also effectively cause
20 the closure of Protestant's long-established business.

21 4. Kawasaki's reasons for seeking termination of the franchises, as stated in its notices, are
22 "...based upon, but not limited to, [Protestant's]: 1) failure to maintain model inventory, 2) failure to
23 meet sales requirements, 3) failure to provide equal representation for Kawasaki products and 4) failure
24 to maintain a wholesale financing line of credit (flooring) in an amount sufficient to permit [Protestant] to
25 purchase an adequate inventory of the full line of Kawasaki products. (Merits Hearing Exhibits R301
26 and R302)

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28 ¹ Unless otherwise indicated, all statutory references are to the California Vehicle Code.

1 5. These are inter-related problems with the first three affected by the fourth. That is the lack
2 of flooring makes it more difficult, if not impossible, for Protestant to “maintain model inventory”, “meet
3 sales requirements” and “provide equal representation for Kawasaki products.”

4 6. Obtaining the flooring needed to comply with the terms of the franchises is the key to
5 Protestant’s ability to cure its failure to meet its other obligations stated above. It is likely that Protestant
6 can avoid the forfeiture that would result if the franchises are terminated and that the interests of
7 Kawasaki and the consuming public can be protected if Protestant obtains the flooring needed to comply
8 with the terms of the franchises.

9 Therefore IT IS HEREBY ORDERED THAT THE PROPOSED DECISION IS REJECTED
10 AND THE MATTER IS REMANDED for a settlement conference and further proceedings as follows.

11 a. Within 30 days of the date of this Order, the parties shall participate in a Mandatory
12 Settlement Conference to attempt to resolve the flooring issue. Resolution shall require addressing both
13 the amount of flooring needed and the time within which the flooring line must be established. The
14 Settlement Conference shall be before an administrative law judge (“settlement conference ALJ”)
15 designated by the Board and shall occur prior to the submission of additional evidence and briefing in the
16 hearing on remand.

17 b. This matter is remanded to the Administrative Law Judge (“merits hearing ALJ”) to
18 consider thereafter additional evidence in the form of briefs with declarations and exhibits and/or
19 testimony, in the ALJ’s discretion, to determine the reasonable amount of flooring required for Protestant
20 to perform its contractual obligations and a reasonable timeframe to secure such flooring.²

21 c. In addition to the flooring issues, the ALJ shall also determine what will be needed for
22 Protestant to meet its franchise obligations to stock a complete line of Kawasaki products as well as the
23 extent of Protestant’s future sales penetration into its SEA (Statistical Evaluation Area), and
24 recommendations as to conditions that would be appropriately within Section 3067.

25 d. Upon receipt of the above information, the Board will be in a better position to determine

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27 ² The merits hearing ALJ may determine both the amount of flooring required and the timeframe for obtaining the flooring
28 based upon an agreement of the parties if such agreement occurred as a result of the settlement conference. If there are no such
agreements, the merits hearing ALJ will need to make determinations of these issues based upon the record and any additional
evidence and arguments submitted, with the usual rules applicable regarding admissibility of settlement negotiations.

1 whether to issue a decision pursuant to Section 3067 which will "... sustain, conditionally sustain,
2 overrule, or conditionally overrule the protest."

3 e. The Board is mindful that the statutes operate to prevent termination of the franchises until
4 the requirements of the statutes are met. As such, time is of the essence in complying with the terms of
5 this order. The Board anticipates this matter being heard and resolved at its November 12, 2013,
6 General Meeting, in Sacramento.

7 f. Nothing outside the administrative record was considered in remanding these protests.

8 SO ORDERED.

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10 DATED: August 6, 2013

NEW MOTOR VEHICLE BOARD

11
12 By 
13 BISMARCK OBANDO
14 President