



DECISION COVER SHEET

ACTION BY: Public Members Only

ACTION BY: All Members

To : BOARD MEMBERS

Date: May 28, 2015

From : ADMINISTRATIVE LAW JUDGE: Anthony M. Skrocki

CASE: ADRENALINE POWERSPORTS v. POLARIS INDUSTRIES, INC.
Protest No. PR-2418-15

TYPE: Vehicle Code section 3062 Establishment

PROCEDURE SUMMARY:

- FILED ON CALENDAR: January 22, 2015
- MOTIONS FILED: Respondent's Motion to Dismiss Protest for Lack of Jurisdiction
- COUNSEL FOR PROTESTANT: Michael Sieving, Esq.
Attorney at Law
- COUNSEL FOR RESPONDENT: Gregory R. Oxford, Esq.
Isaacs Clouse Crose & Oxford LLP

EFFECT OF PROPOSED ORDER: Adoption of the Proposed Order would result in the dismissal of the protest

SUMMARY OF PROPOSED ORDER:

- There are two types of vehicles involved in the franchises at issue. One is a Polaris Ranger that comes within the definition of a "utility-terrain vehicle" (UTV) as stated in Vehicle Code section 531. The other is a Polaris LSV that may or may not come within the definition of a "recreational off-highway vehicle" (ROHV) as stated in Vehicle Code section 500.¹ Neither of these types of vehicles was subject to the Board's statutes until January 1, 2015.
- On November 26, 2014, Polaris Sales, Inc. (PSI) executed a Dealer Agreement with Granite Bay Motorcycle Partners (GBMP) for both types of vehicles. At that time, Protestant, Adrenaline Powersports (Adrenaline) was an existing dealer for both of these vehicles and located within the relevant market area of GBMP. However, because neither of these vehicles was subject to the Board's statutes at that time, PSI did not provide

¹ The Proposed Order includes a discussion as to why the LSVs may not be ROHVs and, if not, the Board's statutes would likely not be applicable to them even after the January 1, 2015 amendment to Section 111 that brought ROHVs within the Board's statutes.

notices to Adrenaline or the Board.

- Effective January 1, 2015, Section 111 of the Vehicle Code was amended with the result being that both UTVs and ROHVs came within the Board's statutes.
- Adrenaline filed its protest on January 22, 2015, alleging that GBMP had not been established as a Polaris franchisee until sometime after the January 1, 2015 amendment to Section 111, thus making Section 3062 applicable to the establishment of GBMP.
- The ALJ found that:
 - The Board's statutes do not apply to all "franchises", but only those that include the parties and vehicles needed so that the parties become a "franchisor" per Section 331.2 and a "franchisee" per Section 331.1.
 - Section 3051 limits the Board's jurisdiction not only as to parties but also as to vehicles, with one class of vehicles being "all-terrain vehicles" (ATVs) as defined in Section 111.
 - Sections 331.2 and 331.1, the definitions of "franchisor" and "franchisee", also include "all-terrain vehicles" as defined in Section 111, but UTVs and ROHVs are not mentioned.
 - There was a "franchise" (Section 331) between PSI and Adrenaline prior to January 1, 2015 for the Ranger and LSV vehicles but because the vehicles did not come within the Board's statutes, PSI was not a "franchisor" and Adrenaline was not a "franchisee" prior to January 1, 2015.
 - There was also a "franchise" between PSI and GBMP effective as of November 26, 2014 but because the vehicles were not within the Board's statutes at that time, that franchise did not result in PSI being a "franchisor" or GBMP being a "franchisee" until January 1, 2015.
 - UTVs (Rangers) and ROHVs (LSVs) were not included in the definition of "all-terrain vehicles" as defined in Section 111 until January 1, 2015. Therefore the "franchises" did not result in PSI being a "franchisor" (Section 331.2) or Adrenaline and GBMP being a "franchisee" (Section 331.1) until Section 111 was amended effective January 1, 2015, at which time Section 3051 would effectively extend the Board's jurisdiction to UTVs and ROHVs.
 - The ALJ concluded that prior to January 1, 2015, PSI was not a "franchisor" required to give notice pursuant to Section 3062 and that Adrenaline was not a "franchisee" entitled to file a protest pursuant to Section 3062.
 - Post January 1, 2015, PSI was not obligated to provide notice of its intention to enter into a franchise that would result in the establishment of an additional dealership as the franchise already existed, as of November 26, 2014. And, Adrenaline had no right to file a protest post January 1, 2015 under Section 3062 as the "franchise" between PSI and GBMP had already been legally entered into as of November 26, 2014.

RELATED MATTERS:

- Related Case Law: There are no published court decisions applicable to this case.
- Applicable Statutes and Regulations: Vehicle Code sections 111, 331, 331.1, 331.2, 415, 500, 507, 531, 3050, 3051 and 3062