

1 GREGORY R. OXFORD (S.B. #62333)
2 ISAACS CLOUSE CROSE & OXFORD LLP
3 21515 Hawthorne Boulevard, Suite 950
4 Torrance, California 90503
5 goxford@icclawfirm.com
6 Telephone: (310) 316-1990
7 Facsimile: (310) 316-1330

8 Attorneys for Respondent
9 Polaris Sales, Inc.

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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of
ADRENALINE POWERSPORTS,
Protestant,
v.
POLARIS INDUSTRIES, INC.,
Respondent.

Protest No. PR 2418-15

**REPLY MEMORANDUM IN
SUPPORT OF MOTION TO
DISMISS PROTEST FOR LACK OF
JURISDICTION**

Hearing Date: March 27, 2015
Time: 10:00 a.m.
Hon. Anthony M. Skrocki

Adrenaline's Opposition conflates two separate regulatory schemes: (1) regulation of dealership locations pursuant to Veh. Code § 3062 and (2) occupational licensing. The Opposition also ignores the regulatory sequencing. Before a new dealership can obtain the required DMV license, the manufacturer must first provide notice under section 3062 *if it applies*. Only if another dealer of the same line-make is entitled to receive such notice is it entitled to file a protest. If section 3062 does not apply, as it did not here in November 2014 because amended Veh. Code § 111 had not gone into effect, the manufacturer may enter into the franchise agreement without giving notice, and Polaris did so on November 26, 2014. Because Adrenaline was *not* "required to be given notice" under section 3062 at that time, it had no right – and still has no right – to file a protest.

1 Occupational licensing regulation does not kick in until after the manufacturer
2 certifies on the DMV's Form OL-124 that section 3062 does not apply or that its
3 requirements have been complied with. That occurred in this case when Polaris executed
4 the OL-124 on December 3, 2014. *See* attached Exhibit C. Thus, licensing issues
5 concerning the new dealer, Granite Bay Motorcycle Partners ("GBMP"), have absolutely
6 nothing to do with protest rights under section 3062. Any issues under section 3062 *must*
7 be – and here were – resolved before the dealer is permitted to apply for a license to
8 conduct dealership operations at the designated location.

9 Without more, Adrenaline's protest must be dismissed because the Board lacks
10 jurisdiction. This conclusion is also compelled by Veh. Code § 331(a)(2) which provides
11 that a "franchise" is a "written agreement" in which "[t]he franchisee *is granted the right*
12 to offer for sale or lease, or to sell or lease at retail new motor vehicles or new trailers
13 subject to identification pursuant to Section 5014.1 manufactured or distributed by the
14 franchisor or the right to perform authorized warranty repairs and service, or the right to
15 perform any combination of these activities" (emphasis added). It is the granting of the
16 right to sell and service vehicles at a specified location in the franchise agreement that is
17 the subject of regulation under section 3062, not the actual establishment of dealership
18 operations that, of necessity, must await completed occupational licensing review.

19 Bluntly, the licensing issues attempted to be raised by Adrenaline are *irrelevant*.
20 But since Adrenaline has brought them up, the evidence shows that the case for ignoring
21 these issues is even stronger. As explained in the accompanying Coplen Declaration,
22 GBMP submitted its licensing application in early December 2014. Yet, as the result of a
23 backlog of licensing applications, DMV Occupational Licensing Operations was not able
24 to complete its review of GBMP's application until mid-January 2015. What Adrenaline
25 is really saying, therefore, is that administrative delay, over which Polaris and GBMP
26 obviously had no control whatsoever, somehow created a time warp that permits
27 Adrenaline to reach back into 2014 and claim that Polaris was required at that time to
28 comply with a law that had not yet gone into effect, and that it must now (despite being

1 armed with the appropriate DMV temporary operating permit) cease operations until it
2 complies with section 3062, as modified by the amendment to Veh. Code § 111 that did
3 not become effective until January 1, 2015.

4 Adrenaline's position is absurd. The language of section 3062 is very clear. It
5 does not require actual establishment of a dealership to trigger the manufacturer's notice
6 obligations. Instead, those obligations are triggered by the manufacturer "seek[ing]," *i.e.*,
7 proposing, "**to enter into**," *i.e.*, execute, a "franchise establishing an additional motor
8 vehicle dealership." Here, prior to the required licensing review that was necessary before
9 GBMP could commence operations, Polaris "entered into" a franchise agreement with
10 GBMP. When the new law went into effect, Polaris was not "seek[ing] to enter into a
11 franchise," but instead had already lawfully done so. The fact that occupational licensing
12 review was delayed has absolutely nothing to do with the unambiguous language of
13 section 3062 which focuses on "enter[ing] into" the franchise as the trigger for notice
14 obligations and protest rights.

15 Simply put, the delays in obtaining licensing approval to sell and service Polaris
16 Vehicles until January 16, 2015, and in obtaining municipal approval for permanent
17 Polaris signage,¹ have nothing to do with regulation under section 3062. There is,
18 accordingly, no reason to allow Protestant "to conduct discovery as to the status of the
19 'establishment' of the dealership...." Opposition, p. 4.

22 ¹ As Mr. Coplen explains, the City of Roseville has a sign ordinance that requires pre-
23 installation review, including an on-site inspection, that has delayed GBMP's ordering
24 Polaris signage until after it is determined what size signs the City will approve.
25 Certainly, the regulation of dealer locations under section 3062 cannot rationally be
26 argued to depend on the vagaries of municipal sign regulations any more than they depend
27 on administrative delay within the DMV. As Mr. Coplen further explains, the dealership
28 with the knowledge of the DMV has erected a large Polaris banner that is easily readable
from a distance pending installation of permanent signage. *See* Coplen Decl., Exhibit D.
Careful comparison shows that this banner is installed in a position behind and to the right
of the position from which Mr. Sieving took the second of the photographs attached to his
declaration as Exhibit B.

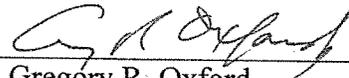
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CONCLUSION

Under the express terms of Veh. Code § 3062(a)(1), Protestant was not “required to be given” any notice of the intended establishment of the GBMP dealership in 2014. Section 3062(a)(1) gives the right to protest only to a franchisee that is “required to be given the notice” by the franchisor. Because Protestant was *not* “required to be given the notice” by Polaris it also has no right to protest. The Board therefore lacks jurisdiction, and the instant purported protest must be dismissed.

Dated: March 23, 2015

ISAACS CLOUSE CROSE & OXFORD LLP

By: 
Gregory R. Oxford
Attorneys for Respondent
Polaris Sales, Inc.



Sean L. Coplen

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PROOF OF SERVICE

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 21515 Hawthorne Blvd., Suite 950, Torrance, California 90503.

- ✓ **VIA ELECTRONIC MAIL** on March 23, 2015 I served the foregoing documents described as **REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PROTEST FOR LACK OF JURISDICTION** on the parties in this action by electronic mail to the electronic mailing addresses listed below.
- ✓ **VIA FEDERAL EXPRESS OVERNIGHT DELIVERY** on March 23, 2015, I served the foregoing document described as **REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PROTEST FOR LACK OF JURISDICTION** on the parties in this action by, by placing a true copy thereof enclosed in an envelope or package designated by the express service carrier for overnight delivery with delivery fees provided for, and deposited in a box or other facility regularly maintained by the express service carrier on March 23, 2015, which envelope or package was addressed as follows:

Michael Sieving, Esq.
8865 La Riviera Dr Unit B
Sacramento, CA 95826
msievinglaw@att.net

Executed on March 23, 2015 at Torrance, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


Gwendolyn Oxford



LICENSING OPERATIONS DIVISION

CERTIFICATE OF PROPOSED FRANCHISE

DMV USE ONLY
DEALER LICENSE NUMBER

Instructions:

- This form must be completed by a licensed Manufacturer or Distributor.
- The licensed dealer is responsible for submitting this form to the Department of Motor Vehicles with the appropriate application form(s).
- This form will **NOT** be accepted if modified or altered and must contain an original signature.

The location is a Permanent Location
 Temporary Branch Location (must be 30 days or less)
 Date(s) of Event: From: _____ To: _____

I/We
 MANUFACTURER/DISTRIBUTOR NAME: Polaris Sales Inc. LICENSE NUMBER: _____

hereby certify that:

- Written notification to the New Motor Vehicle Board and each franchisee is not required pursuant to Vehicle Code section 3062(b) or 3072(b), or there are no other franchised dealers within the same line-make located within the relevant market area.
- Written notification has been provided to the Board and each franchisee of this line-make of the intent to establish an additional motor vehicle dealership or relocate an existing motor vehicle dealership within the relevant market area, and no protests have been filed. (A change in ownership of an existing established location shall not be construed as establishing an additional location.) Enter date of notification below.

MAKE OF VEHICLE(S), MOTORHOME(S), OR RECREATIONAL TRAILER(S): Polaris RGR & LSV
 DATE THE NEW MOTOR VEHICLE BOARD AND DEALER(S) WERE NOTIFIED, IF APPLICABLE: _____

PROPOSED FRANCHISEE NAME (AS IT APPEARS ON LICENSE OR APPLICATION FOR LICENSE)	DEALER LICENSE NUMBER (IF APPLICABLE)		
Granite Bay Motorcycle Partners, Inc., dba Roseville Yamaha Kawasaki			
ADDRESS (AS SHOWN ON LICENSE OR APPLICATION FOR LICENSE)	CITY	STATE	ZIP CODE
2014 Taylor Road	Roseville	CA	95678
AUTHORIZED SIGNATURE (OWNER OF RECORD OR LICENSED REPRESENTATIVE)	DATE		
<i>Michael Malone</i>	12/03/2014		
PRINT OR TYPE NAME	OWNER OR REPRESENTATIVE LICENSE NUMBER		
Michael Malone	CFO		

CALIFORNIA VEHICLE CODE (CVC) - Sections 3062 or 3072*, states in part:

Establishing or Relocating Dealerships

3062. (a) (1) Except as otherwise provided in subdivision (b), if a franchisor seeks to enter into a franchise establishing an additional motor vehicle dealership within a relevant market area where the same line-make is then represented, or seeks to relocate an existing motor vehicle dealership, the franchisor shall, in writing, first notify the board and each franchisee in that line-make in the relevant market area of the franchisor's intention to establish an additional dealership or to relocate an existing dealership within or into that market area. Within 20 days of receiving that notice or within 20 days after the end of any appeal procedure provided by the franchisor, any such franchisee may file with the board a protest to the establishing or relocating of the dealership. If, within this time a franchisee files with the board a request for additional time to file a protest, the board or its Executive Director, upon a showing of good cause, may grant an additional 10 days to file the protest. When such a protest is filed, the board shall inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor shall not establish or relocate the proposed dealership until the board has held a hearing as provided in Section 3066, nor thereafter, if the board has determined that there is good cause for not permitting the dealership. In the event of multiple protests, hearings may be consolidated to expedite the disposition of the issue.

(b) Subdivision (a) does not apply to either of the following:

(1) The relocation of an existing dealership to any location that is both within the same city as, and is within one mile from, the existing dealership location.

(2) The establishment at any location that is both within the same city as, and is within one-quarter mile from, the location of a dealership of the same line-make that has been out of operation for less than 90 days.

*Section 3072, pertaining to Recreational Vehicles, contains virtually identical provisions, however, there are additional exemptions not listed above. Recreational Vehicle Manufacturers are encouraged to review the entire California Vehicle Code Section.



