

HAND DELIVERED

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AUG 15 2014  
NEW MOTOR VEHICLE BOARD

1 **CALLAHAN, THOMPSON, SHERMAN & CAUDILL, LLP**  
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8 Attorneys for Protestant

FILED  
NEW MOTOR VEHICLE BOARD  
DATE 8-15-14  
BY sl

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

CTSC law  
CALLAHAN THOMPSON SHERMAN & CAUDILL LLP

10 FUN BIKE CENTER

11 Protestant,

12 v.

13 BOMBARDIER RECREATIONAL  
14 PRODUCTS, INC. ; BRP US INC.,

15 Respondents.

Protest No.: PR- 2405-14

**PROTEST**

[Vehicle Code Section 3060]

17 Protestant, FUN BIKE CENTER, ("Protestant") through its attorney, files this protest  
18 under the provisions of California Vehicle Code section 3060 and alleges as follows:

19 1. Protestant is a new motor vehicle dealer selling and servicing Bombardier brand  
20 motor vehicles, and is located at 5755 Kearny Villa Road, San Diego, California 92123.  
21 Protestant's telephone number is 858-278-6635.

22 2. Respondents BOMBARDIER RECREATIONAL PRODUCTS, INC. and BRP  
23 US INC. ("Respondent") distribute Bombardier brand products and are the franchisor of  
24 Protestant.

25 3. Protestant is represented in this matter by Callahan, Thompson, Sherman &  
26 Caudill, LLP, and Michael M. Sieving, whose address is 1545 River Park Drive, Sacramento,  
27 California 95815, and telephone number is 916-649-3500.

28 4. By letter dated July 28, 2014, Respondent notified Protestant of Respondent's

1 intention to modify the Primary Market Area assigned to Protestant.

2 5. Protestant protests the proposed modification, as it would substantially affect  
3 Protestant's sales and service obligations and investment in the franchise.

4 6. Protestant asserts that good cause does not exist for permitting Respondent to  
5 undertake the proposed action on the following grounds:

6 (a) Protestant has transacted and is transacting an adequate amount of Bombardier  
7 business compared to the business available to it.

8 (b) Protestant has made all necessary investments and incurred all necessary  
9 obligations to perform its part of the franchise.

10 (c) Protestant has made a substantial and permanent investment in the dealership.

11 (d) It would be injurious to the public welfare for the franchise to be modified.

12 (e) Protestant has adequate motor vehicle sales and service facilities, equipment,  
13 vehicle parts, and qualified service personnel to reasonably provide for the needs of Bombardier  
14 consumers and owners in the market area and is rendering adequate services to the public.

15 (f) Protestant has fulfilled the warranty obligations to be performed by it.

16 (g) The Protestant has not failed to comply with the terms of the franchise. Any  
17 alleged failure of Protestant to comply with the terms of the franchise agreement is immaterial.

18 7. Protestant and its attorney desire to appear before the Board and estimate that the  
19 hearing in this matter will take 10 days to complete.

20 8. A Pre-Hearing Conference is requested.

21 WHEREFORE, Protestant prays as follows:

22 1. That the Board sustain this protest and order that Respondent not make the  
23 proposed alteration to Protestant's Primary Market Area

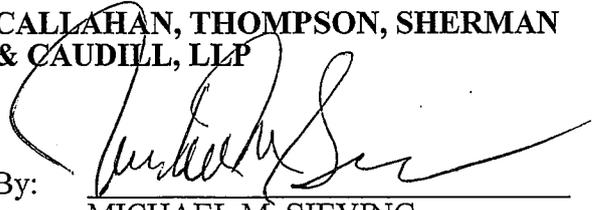
24 2. That pending the hearing in this matter as mandated by Vehicle Code Section  
25 3066, the Board or its authorized representative immediately order Respondent not modify  
26 Protestant's franchise until such time as Respondent has established good cause for such action  
27 under the provisions of Vehicle Code sections 3060, 3061 and 3066.

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DATED: August 15, 2014

**CALLAHAN, THOMPSON, SHERMAN  
& CAUDILL, LLP**

By: 

MICHAEL M. SIEVING  
Attorneys for Protestant

**CTSC** | law  
CALLAHAN THOMPSON SHERMAN & CAUDILL LLP

PROOF OF SERVICE

STATE OF CALIFORNIA )  
COUNTY OF SACRAMENTO )

I am employed in the County of Sacramento, State of California, I am over the age of 18 years and not a party to the within action; my business address is 1545 River Park Drive, Suite 405, Sacramento, California.

On this date, August 15, 2014, I served the foregoing documents described as:

3060 PROTEST

I enclosed a true copy of said documents in a sealed envelope or package addressed to the persons noted below.

x (By United States Mail) I placed the envelope for collection and mailing, following our firm's ordinary business practices. I am familiar with our firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

(By overnight delivery) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

(By messenger service) I served the documents by placing them in an envelope or package addressed to the persons at the addresses below and providing them to a professional messenger service for service.

(By fax transmission) Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

(By electronic service) Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below.

(By personal service) I served the documents by delivering the envelope, by hand, to the persons listed below.

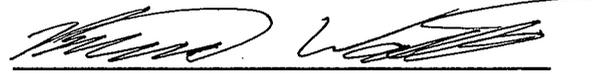
(By [Insert Electronic Service Provider]) I caused the above-entitled documents to be served through [Insert Electronic Service Provider] addressed to all parties appearing on the [Insert Electronic Service Provider] electronic service list for the above-entitled case. The file transmission was reported as completed and a copy of the [Insert Name of Electronic Service Filing Receipt] pages will be maintained with the original documents in our office. Service will be deemed effective as provided for in the Electronic Case Management Order. I have complied

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1 with California Rules of Court, Rule 2.257(a) and the original, signed Proof of Service is  
2 available for review and copying at the request of the court or any party.

3 Executed on August 15, 2014, at Sacramento, California.

4 I declare under penalty of perjury under the laws of the State of California that the above is true  
5 and correct. I further declare that I am employed in the office of a member of the bar of this  
6 court at whose direction the service was made.



BRIAN WAIBEL, paralegal

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10 **SERVICE LIST**

11  
12 Frederic Audet  
13 Bombardier Recreational Products, Inc.  
14 565 Rue de la Montagne  
15 Valcourt, Quebec, Canada J0E 2L0  
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