

1401 - 21st Street, Suite 407
Sacramento, California 95814
Telephone: (916) 445-1888

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

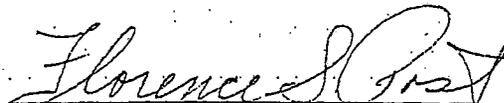
In the Matter of the Petition of)
FRANK I. REDDING,) Petition No. P-47-77
Petitioner,)
vs.)
JOHN LEMME and AMERICAN HONDA)
MOTOR COMPANY, INC.,)
Respondents.)

DECISION

The attached Proposed Decision of the Hearing Officer is hereby adopted by the New Motor Vehicle Board as its Decision in the above entitled matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED this 25th day of September, 1979.



FLORENCE S. POST
President
New Motor Vehicle Board

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JOHN LEMME and AMERICAN HONDA)
MOTOR COMPANY, INC.,)
Protestants.)

PROPOSED DECISION

Procedural Background

1. On September 30, 1977, Petitioner Frank I. Redding filed his petition against respondents, John Lemme and American Honda Motor Company, Inc., pursuant to Vehicle Code section 3050(c).^{1/}

2. A hearing was held on February 19, 1978, before Anthony M. Skrocki, Hearing Officer of the New Motor Vehicle Board, wherein petitioner and respondent John Lemme were in pro per and respondent American Honda Motor Company, Inc., was represented by Arnold P. Sklar, Esq., of Lyon & Lyon; and on March 26, 1979, before Richard C. Wulliger, Hearing Officer of the New Motor Vehicle Board, wherein petitioner was in pro per, respondent

1. All references are to the Vehicle Code unless otherwise indicated.

John Lemme was represented by Stephen C. Stewart, Esq., and respondent American Honda Motor Company, Inc., did not appear. Both hearings were held in Los Angeles, California.

Issues Presented

3. Petitioner contends that:

(a) Respondent John Lemme doing business as Santa Ana Kawasaki at 1850 E. Edinger, Santa Ana, California, and as Huntington Honda at 7911 Warner Avenue, Huntington Beach, California, "has turned his Kawasaki store into a Honda dealership" in violation of Vehicle Code sections 11713, 11713.2, and 320; and

(b) Respondent American Honda Motor Company, Inc., has enfranchised respondent Lemme as a Honda dealer at 1850 E. Edinger, Santa Ana, California, in violation of section 3062.

Findings of Fact

4. Petitioner has been a Honda motorcycle dealer since April 14, 1977, located at 3001 South Main Street, Santa Ana, California.

5. Respondent Lemme has been a Honda motorcycle dealer for several years at Huntington Beach, California, doing business as John Paul's Huntington Honda and has been a Kawasaki Motorcycle dealer since approximately July 1, 1977, located at 1850 E. Edinger, Santa Ana, California, doing business as Santa Ana Kawasaki.^{2/}

2. Evidence was introduced at the March 26, 1979, hearing by the respondent Lemme that escrow is about to close for the sale of Santa Ana Kawasaki.

6. Respondent American Honda Motor Company, Inc., is the franchisor of both the petitioner and respondent Lemme at his Huntington Beach location.

7. Respondent Lemme is not authorized by respondent American Honda Motor Company, Inc., as a Honda dealer at Lemme's Santa Ana location.

8. Respondent American Honda Motor Company, Inc., did not establish respondent Lemme as a Honda franchisee at the Santa Ana location in violation of section 3062, nor has it violated any other code sections, nor has it participated in any of the alleged violations by respondent Lemme.

9. Respondent Lemme has not sold any new Honda motorcycles from the Santa Ana Kawasaki location.

10. Respondent Lemme has not advertised new Honda motorcycles for sale from his Santa Ana Kawasaki store.

11. In the latter part of 1977, respondent Lemme displayed two new Honda motorcycles at his Santa Ana Kawasaki location in order to promote accessories and paintings. They were not for sale at that location; they bore a sign referring to respondent's Huntington Honda location giving its address and telephone number, and were in fact sold at the Huntington Honda location.

12. Respondent Lemme does not perform Honda factory warranty service at his Santa Ana Kawasaki location.

13. Respondent Lemme had the following signs displayed at his Santa Ana Kawasaki location referring to Honda:

- (a) "Discounts Parts Accessories Honda Kawasaki Yamaha"
- (b) "Super Discounts Kawasaki Honda Parts and Accessories"
- (c) "Honda Kawasaki Factory Warranty Service Center"
- (d) "We Service Honda 90 Day Warranty."

The first two (a & b) and last (d) were not false or misleading, but the third (c) may have been. All signs except the last (d) which now reads "We service Honda", were removed by respondent in late 1977.

14. Respondent Lemme sells Honda parts and services Honda motorcycles at his Santa Ana location, and he advertises that fact and desires to promote these activities.

15. Respondent Lemme's Bulletin no. 110 stating "Second Location Service Only, Santa Ana Kawasaki, 1850 E. Edinger, Santa Ana, California 92705" is not misleading or false as to Honda at the Santa Ana location and does not constitute acting as or holding himself out as a Honda dealer at that location. This bulletin was apparently discontinued in late 1977.

16. Respondent Lemme used the words "factory trained" in his newspaper advertisements in the Santa Ana Register on July 3, 1977, and his circular from John Paul's Cycle West, Inc.

17. Respondent Lemme is licensed as a dealer only.

18. Respondent Lemme made no statement that would lead the public to believe that he conducted a Honda dealership at the Santa Ana Kawasaki location nor did he in fact conduct a Honda dealership at that location.

Conclusions of Law

19. Lemme's newspaper advertisement appearing in the Santa Ana Register on July 31, 1977, referring to "Honda" is at worst ambiguous but is not false or misleading with respect to Honda at the Santa Ana Kawasaki location. This advertisement has apparently been discontinued.

20. The displaying of two Honda motorcycles at his Santa Ana Kawasaki location for the purpose of promoting accessories and paintings did not constitute operating as or holding himself out as a Honda dealer at the Santa Ana location on the part of respondent Lemme.

21. The fact that the sign on the two Honda motorcycles displayed at the Santa Ana Kawasaki location referred to the Huntington Honda location does not constitute advertising or offering for sale "any vehicle not actually for sale at the premises of such dealer or available to such dealer from the manufacturer or distributor . . . at the time of the advertisement or offer . . ." under section 11713(b).

22. Respondent Lemme's newspaper advertisement appearing July 3, 1977, in the Santa Ana Register referring to warranty

work is at worst ambiguous but is not false or misleading with respect to Honda at the Santa Ana Kawasaki location. In any event, the advertisement has apparently been discontinued.

23. The selling of Honda parts and the servicing of Honda motorcycles at the Santa Ana location and the advertising and promoting of these activities do not constitute acting as a Honda dealer or holding oneself out to be a Honda dealer at the Santa Ana location.

24. The use of the words "factory trained" in the newspaper advertisement in the Santa Ana Register on July 3, 1977, and in the circular from John Paul Cycle West, Inc., is at worst ambiguous and is not misleading or false as to Honda at the Santa Ana Kawasaki location, and does not constitute acting as or holding oneself out to be a Honda dealer at the Santa Ana Kawasaki location. The use of these words was apparently discontinued in late 1977.

25. Section 11713.2 prohibits conduct by manufacturers, manufacturer branches, distributors, and distributor branches only.

26. The prohibition of section 320 applies only if there is more than one type of business conducted by a licensee at his place of business. Respondent Lemme carries on only a motorcycle dealership at the Santa Ana location.

Determination of Issues

27. Petitioner has failed to establish that:

(a) Respondent John Lemme has turned his Santa Ana Kawasaki store into a Honda dealership in violation of sections 11713, 11713.2, and 320; and

(b) Respondent American Honda Motor Company, Inc., has enfranchised respondent Lemme as a Honda dealer at 1850 E. Edinger,

Santa Ana, California, in violation of section 3062.

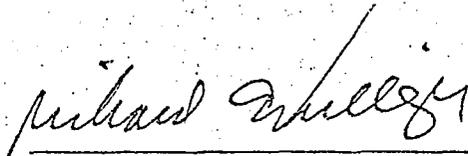
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The following proposed decision is respectfully submitted:

The petition is denied. The respondents have not violated the specified Vehicle Code sections.

I hereby submit the foregoing which constitutes my proposed decision in the above entitled matter as a result of a hearing had before me on the above dates at Los Angeles, California, and recommend its adoption as the decision of the New Motor Vehicle Board.

Dated: August 24, 1979



RICHARD C. WULLIGER
Hearing Officer
New Motor Vehicle Board