STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of VICKERS HONDA, dba VICKERS HONDA, Protestor, vs. KAWASAKI MOTORS CORPORATION, U.S.A., Respondent.	)	Protest No. PR-103-76 N-8489

DECISION

The attached Proposed Decision of the Administrative Law Judge 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 October 13, 1976.

Ann B. Vandenberg

President

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

FILED
New Motor Vehicle Board
Date September 23, 1976
By [signature]

VICKERS HONDA, a sole proprietorship, doing business under the name of VICKERS HONDA, Protestant, vs. KAWASAKI MOTORS CORP., U.S.A., a Delaware corporation, Respondent.	)	Protest No. PR-103-76 N-8489

PROPOSED DECISION

This matter came on regularly for hearing before Charles H. Bobby, an Administrative Law Judge of the Office of Administrative Hearings, on August 9 and 10, 1976, at Sacramento, California.

The Protestant (Franchisee) was represented by Richard E. Crow, Attorney at Law.

The Respondent (Franchisor) was represented by Robert G. Lane, Attorney at Law.

The record was held open to enable the parties to file written briefs and the closing brief being received on September 2, 1976, the matter was thereupon deemed submitted for decision.

FINDINGS OF FACT

I

Vickers Honda, Protestant, Franchisee, has filed a protest against Kawasaki Motors, Corp., U.S.A., Respondent, Franchisor, protesting the relocation of a motorcycle dealership John D's Kawasaki, a franchisee of Respondent.

II

John D's Kawasaki is a sole proprietorship owned by John Derrick. The dealership has been franchised and in operation since July 31, 1974 at 2655 Elkhorn Boulevard, Rio Linda, Sacramento County, California.

III

Protestant is a dual dealership dealing in Honda and Kawasaki motorcycles and products. Protestant's dealership has been operated and located at 3500 Fulton Avenue, Sacramento, California since 1963.

IV

The present locations of John D's and Vickers are approximately 4-1/2 miles straight line, and approximately 6-1/2 miles door to door by public streets.

V

John's present location is situated in a low density population industrial area. It is a high crime rate area. John D's has suffered substantial vandalism damage in recent months.

The lease on the present premises is due to expire soon and there is no probability that an extension can be obtained at a reasonable price.

The primary problem with the present location is that it is not located in a retail sales area.

VI

John D's has found a new location at 7401 Greenback Lane, Citrus Heights, approximately 6-1/2 miles airline and public street distance, east of its present location. The new location is in a retail sales business concentration area which is also a high density population area.

VII

The 7401 Greenback Lane location is approximately 7 miles airline and 8-1/2 miles public street distant from protestant's dealership.

VIII

Presently the west-east freeway (Highway 80) lies between Protestant's and John D's dealerships. The move to 7401 Greenback Lane would place them both on the same side (southerly) of the freeway and in the urban high density population area of North Sacramento County.

Both dealerships have sold motorcycles in this area and have provided service for owners of such vehicles. The evidence clearly establishes that the two dealerships presently share this sales potential area.

IX

The 7401 Greenback Lane location would be more convenient for those living in the Citrus Heights, Fair Oaks Orangevale and Folsom communities who are desirous of patronizing John D's dealership than is the present location on Elkhorn Boulevard.

X

The evidence fails to establish that the move of John D's dealership to 7401 Greenback Lane would be a modification of Protestant's franchise or that it would substantially adversely affect Protestant's dealership.

XII

The evidence establishes that the move is based upon the considerations of greater exposure to larger numbers of passing traffic, more convenience to customers, a nicer facility, and greater perpetuity of leasehold.

DETERMINATION OF ISSUES

I.

Permanency of the Investment:

1. The evidence establishes that Protestant's dealership is a permanent, on going, investment.

2. The evidence establishes that John D's Kawasaki is

a permanent and on going investment.

II

Effect on the Retail Motor Vehicle Business and the Consuming Public in the Relevant Market Area:

1. The move of John D's to 7401 Greenback Lane would not adversely affect the retail motor vehicle business.

2. The move would benefit the consuming public in the Citrus Heights, Fair Oaks, Orangevale and Folsom areas.

III

Whether it is Injurious to the Public Welfare for an Additional Franchise to be Established:

1. No additional franchise is to be established.

2. The net result of the proposed move would be a reduction in the overlap of the areas served by Protestant and John D's.

3. The evidence fails to establish that the proposed move would be injurious to public welfare.

IV

Whether the Franchisees of the Same Line-make in that Relevant Market Area are Providing Adequate Competition and Convenient Consumer Care:

1. Protestant's dealership and John D's are presently within the relevant market areas of each. The facilities of each serve present public demand, although delay in obtaining service and repair does exist as to each.

2. Competition beneficial to the public should result from the proposed move of John D's.

V

Whether the Establishment of an Additional Franchise Would Increase Competion and Therefore be in the Public Interest:

1. No additional franchise is proposed.

2. The relocation of John D's to the more distant location from Protestant's dealership would be in the public interest in that greater convenience would exist for larger numbers of people.

VI

The evidence fails to establish cause to sustain the protest.

VII

The protest should be denied.

ORDER

The protest is denied.

The foregoing constitutes my proposed decision in this matter. I recommend its adoption as the decision of the New Motor Vehicle Board of the State of California.

Dated: September 22, 1976

CHARLES H. BOBBY
Administrative Law Judge
Office of Administrative Hearings