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PR-1223-91

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of )  
DEL AMO SUZUKI INC., dba ) Protest No. PR-1223-91  
DEL AMO SUZUKI, )  
 )  
Protestant, )  
 )  
vs. )  
 )  
AMERICAN SUZUKI MOTOR CORPORATION, )  
 )  
Respondent. )

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DECISION

The attached Proposed Decision After Remand 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 THIS 8 day of April, 1992.

By

  
MANNING J. POST  
Vice-President  
New Motor Vehicle Board

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Protestant,  
  
vs.  
  
AMERICAN SUZUKI MOTOR CORPORATION,  
  
Respondent.

Protest No. PR-1223-91  
  
PROPOSED DECISION  
AFTER REMAND

PROCEDURAL BACKGROUND

1. By letter dated March 15, 1991, American Suzuki Motor Corporation, 3251 E. Imperial Highway, Brea, California sent notice to Del Amo Suzuki, Inc., 2001 Artesia Boulevard, Redondo Beach, California of its intent to establish a new Suzuki dealership at 2466 West Sepulveda Boulevard in Torrance, California. A copy of the notice was received by the Board on March 21, 1991.

2. Del Amo Suzuki, Inc. (herein "Del Amo" or "Protestant") received the notice on March 21, 1991, and filed a protest with the Board pursuant to Vehicle Code Section 3062 on April 10, 1991. <sup>1/</sup>

3. American Suzuki Motor Corporation (herein "Suzuki" or "Respondent") filed a motion to dismiss for lack of jurisdiction on May 20, 1991. Hearing on the motion was held on June 11, 1991, whereupon the administrative law judge (ALJ) determined that the protest was timely filed, and the motion to dismiss was denied by order dated June 20, 1991.

4. On June 24, 1991, Respondent filed a motion to disqualify counsel for Protestant alleging that counsel was related to a member of the Board's staff. Hearing on the motion to disqualify opposing counsel was had on July 19, 1991, and the motion was denied by order of the ALJ dated July 22, 1991.

5. A mandatory settlement conference was held on July 19, 1991. On July 25, 1991, Protestant filed a motion to suspend the proceedings, alleging that Respondent failed to comply with section 3050.4 <sup>2/</sup> After hearing on the motion, the ALJ determined that Respondent had violated the mandatory settlement statute and assessed the Board's costs under section 3050.4(c). <sup>3/</sup>

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<sup>1/</sup> All statutory references are to the Vehicle Code except as specifically cited.

<sup>2/</sup> Section 3050.4 authorizes the Board or its hearing officers to impose sanctions for failure of any party to "appear, to be prepared or to have authority to settle the matter..."

<sup>3/</sup> Section 3050.4(c) authorizes the Board or its hearing officers to assess the Board's costs for violation of the settle conference statute.

6. Hearing on the merits of the protest was held on September 25, 1991, before ALJ, Kenneth B. Wilson at the Board's offices in Sacramento, California. Protestants were represented by Richard N. Sieving, Esq., of Kenneth R. Reynolds, Inc., 930 G Street, Suite 101, Sacramento, California. Respondents were represented by Mark Wray, Esq., of Duffern H. Helsing, Inc., 505 North Tustin Avenue, Suite 150, Santa Ana, California.

7. A proposed decision of the ALJ was submitted for consideration by the Board. On October 30, 1991, the proposed decision was remanded to the ALJ for the purpose of taking additional evidence with respect to the factors enumerated in section 3063, in particular those factors contained in subdivisions (b) and (c).

8. On November 27, 1991, Respondent filed another Motion to Dismiss arguing that the Board should have dismissed the protest rather than remanding it. The motion was denied by ruling of the ALJ dated January 3, 1991.

9. Hearing on remand was held on February 12, 1992. Both parties presented additional evidence and testimony. The matter was deemed submitted on March 20, 1992. The present proposed decision is based on the record of the case including the evidence adduced at both hearings.

#### ISSUES PRESENTED

10. Protestant alleges that good cause exists for not permitting the establishment of a new Suzuki dealership at 2466 West Sepulveda Boulevard in Torrance, California for the following reasons:

(a) Protestant's investments are permanent, and will be adversely affected {Section 3063(a)};

(b) Such establishment will have an adverse affect on the retail motor vehicle business and the consuming public in the relevant market area {Section 3063(b)};

(c) Such establishment will be injurious to the public welfare {Section 3063(c)};

(d) The current Suzuki franchisees in the relevant market area are providing adequate competition and convenient consumer care for the owners of Suzuki vehicles in the market area, including adequate motor vehicle sale and service facilities, equipment, supply of vehicle parts, and qualified service personnel {Section 3063(d)}; and

(e) Such establishment will not increase competition and therefore will not be in the public interest {Section 3063(e)}.

More specifically, Protestant claims that motorcycle sales have declined since 1987 in the Los Angeles region and in virtually all other markets in the country. At the same time, Protestant claims that Suzuki's market share in the Los Angeles region has increased from 14.19% of all major Japanese motorcycle sales in 1987 to 26.3% as of September 1991. Protestant believes that Suzuki should not be permitted to establish the proposed dealership under such market conditions.

11. Respondent denies Protestant's allegations under section 3063. In addition, Respondent claims that until the end of 1988, a Suzuki dealership existed in Lomita, California, some 2 miles from the proposed new franchisee. The Lomita dealership coexisted with the Protestant as well as two other Suzuki

dealerships within 10 miles of the proposed new dealership site. It is Respondent's view that the establishment of the proposed new dealership will merely restore sales and bring competition to the levels that existed prior to the closure of its Lomita dealership.

### FINDINGS OF FACT

#### Findings Relating to Permanency of the Investment (Section 3063(a))

12. Protestant's dealer principals have operated various motorcycle dealerships in southwestern Los Angeles over the past 20 years. <sup>4/</sup> The Del Amo Suzuki dealership was established in 1974, and for the past two years, was located at 2001 Artesia Boulevard in Redondo Beach, California and occupied a 7,000 square foot facility.

13. At the time of the hearing on remand, Protestant had completed the acquisition of a new sales and service facility at 1512 Aviation Boulevard, two blocks from its former facility on Artesia Boulevard. Del Amo Suzuki shares the Artesia Boulevard facility with Yamaha, Kawasaki, Moto Guzi, Ducati and Skidoo franchises. Suzuki occupies about 40% of the display area.

14. Protestant has incurred costs of \$180,000 in adapting the new premises for use as a motorcycle sales and service shop. These include an increase in parking and outdoor display area of 18,000 additional square feet and the installation of carpets and glass, a parts loft, in-ground hoists, an oil disposing

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<sup>4/</sup> Ron Ruffalo and Jon Podegracz, the dealer principals, have operated four different motorcycle businesses in the areas offering seven different line makes.

and recovery system, and service ramps. The total cost of these fixtures will exceed \$200,000 when complete and are not adaptable to non-motorcycle related uses. Protestant has a three-year renewable lease with an option to purchase the property on Aviation Boulevard.

15. Respondent proposes to establish the new Suzuki dealership at the premises now occupied by the dealer-applicant, Cycle Tune, Inc. Cycle Tune is a franchised Vance-Hines motorcycle service facility. <sup>5/</sup> Cycle Tune also sells used motorcycles and is a distributor for Dunlop motorcycles tires. Cycle Tune, Inc., has been in operation since 1980, and its principal partner owner, Mr. Dennis Smith, has been involved in the motorcycle industry for 22 years.

16. The present Cycle Tune facility consists of 4,800 square feet of shop space with a 1,000 square foot outdoor display area and customer parking for about 25 automobiles. The premises are occupied under the terms of a five-year lease.

17. If Cycle Tune becomes a Suzuki dealer, it will relocate its Vance-Hines service center to some other site within one or two miles from the proposed location. The present Cycle Tune facility will be remodeled to accommodate Suzuki sales and service activities. Cycle Tune has made no permanent investment in the proposed Suzuki dealership pending the outcome of this proceeding.

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<sup>5/</sup> Vance-Hines Enterprises franchises motorcycle service centers throughout the Los Angeles area.

Facts Pertaining to the Effect on the Retail  
Motor Vehicle Business and the Consumer Public  
in the Relevant Market Area  
(Section 3062(b))

18. There are at present three Suzuki dealerships, including Protestant, within ten miles of the proposed new dealership. The straight-line distances between the existing Suzuki franchises and the proposed new dealership area are as follows:

|                            |         |
|----------------------------|---------|
| Del Amo (Protestant)       | 4.5 mi. |
| Long Beach Suzuki/Kawasaki | 7.6 mi. |
| Suzuki City                | 8.6 mi. |

Suzuki City is situated about 5 miles north of Protestant and Long Beach Suzuki/Kawasaki lies some 12 miles to the southeast.

19. A fourth Suzuki dealership, Pacific Coast Highway Enterprises (PCH), existed in Lomita about two miles southeast of the proposed new dealership and 6 miles from Protestant's location. PCH closed in bankruptcy at the end of 1988.

20. In recent years, motorcycle sales have declined both nationally and in the Los Angeles area. Between 1984 and 1990, motorcycle sales nationally declined from 660,000 vehicles to 400,000; a reduction of 39.4%. During the period 1987 to September 1991, new motorcycle registrations for Suzuki and comparable line-makes in Los Angeles County declined by 51.9% from 15,425 to 7,412. <sup>6/</sup>

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<sup>6/</sup> Comparable line makes include Honda, Kawasaki, and Yamaha Motorcycles.

21. Between 1987 and 1991, Suzuki's market share in Los Angeles County, as indicated by R.L. Polk vehicle registration reports, rose from last place at 14.19% in 1987 to second place at 26.3%, only 2.4% behind the leading line make. <sup>7/</sup>

22. Suzuki's warranty card registration data show the following pattern of sales during 1987 to 1991 for all Suzuki dealers in its Los Angeles-Orange County district compared to the sales by those dealers located in the relevant market area (RMA):<sup>8/</sup>

|   | <u>1987</u> | <u>1988</u> | <u>1989</u> | <u>1990</u> | <u>1991</u> |
|---|-------------|-------------|-------------|-------------|-------------|
| All District Dealers                    | 6276        | 5382        | 4277        | 5184        | 5135        |
| RMA Dealers                             | 1043        | 799         | 471         | 581         | 515         |
| Percent of Total<br>Sold by RMA Dealers | 16.6%       | 14.8%       | 11.0%       | 11.2%       | 10.0%       |

23. The warranty registration data shows that district sales declined by about 18.2% between 1987 and 1991, while sales by RMA dealers declined 50.7% over the same five-year period. Likewise, the percent of total sales contributed by the RMA dealers declined from 16.6% in 1987 to 10% in 1991.

24. The largest year-to-year decrease in sales for both the district and the RMA occurred in 1989 when district sales dropped 21.5% and RMA sales fell 41%. This was the year PCH Enterprises went out of business.

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<sup>7/</sup> The R.L. Polk data presented at the hearing includes only the first nine months of 1991.

<sup>8/</sup> The term "relevant market area" as used throughout, is the area within ten miles of the proposed new dealership as defined in section 507.

25. Warranty registration data for the individual RMA dealers is shown below:

|                      | <u>1987</u> | <u>1988</u> | <u>1989</u> | <u>1990</u> | <u>1991</u> |
|----------------------|-------------|-------------|-------------|-------------|-------------|
| Del Amo (Protestant) | 317         | 199         | 208         | 257         | 290         |
| PCH Enterprises      | 377         | 298         | -0-         | -0-         | -0-         |
| Suzuki City          | 143         | 140         | 109         | 125         | 136         |
| Long Beach           | 206         | 162         | 154         | 199         | 116         |

26. The pattern of RMA dealer performance reveals that both Del Amo Suzuki and Suzuki City performed somewhat better than the district in that sales by these dealers dropped only 8.5% and 4.9% respectively in contrast to the 16.2% drop for the region. Long Beach Suzuki's 1991 sales, however, dropped 43.7%.

27. Respondent introduced Exhibits 37, 38 and 39 and late filed Exhibit 42 showing the distribution of sales by the RMA dealers in zip code clusters which divide the RMA into four roughly circular areas bounding the prior PCH Enterprises location. Exhibit R-38 consists of a map showing the zip code clusters. Sales to customers living in area "A", where PCH Enterprises was located, were dominated by PCH until its demise at the end of 1988. PCH Enterprises accounted for 65% of the 188 units sold in area A during 1987 and 1988. After PCH Enterprises closed, sales in area A dropped to 33 in 1989, 39 units in 1990 and 53 units in 1991.<sup>9/</sup> Exhibit 39 shows that Del Amo's sales in area A

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<sup>9/</sup> As introduced, Exhibit R-39 shows sales of 26 cycles in 1990. Respondent's witness testified that the figure is an accounting anomaly and probably should be taken to represent PCH sales in 1988. Late filed Exhibit 42 was filed jointly by the parties in response to the ALJ's request for clarification of discrepancies between Protestant's Exhibit P-21 and Respondent's Exhibits R-37 and R-39.

remained fairly constant at 19-25 units until 1991 when Del Amo sold 39 units. Del Amo sales in area A have never amounted to more than 10% of its total annual sales. Area A sales by Long Beach Suzuki and Suzuki City have been slightly less than during the years when PCH Enterprises was active.

28. The loss of PCH Enterprises as the fourth Suzuki dealer in the RMA accounts to some degree for the decline in percentage of total district sales produced in the RMA. If the RMA dealers had maintained their 1988 share of regional sales, they would have sold some 760 units in 1991 rather than the 515 shown in Exhibits P-23, P-24 and P-25.<sup>10/</sup> If the three remaining dealers had also retained the same percentage share of the 760 units as they had during 1987-88 when a fourth dealer existed, their 1991 sales would be as shown below:

|                      | <u>1987-88 Share</u> | <u>x760 Units</u> | <u>Actual<br/>1991 Sales</u> |
|----------------------|----------------------|-------------------|------------------------------|
| Del Amo (Protestant) | 28                   | 213               | 290                          |
| PCH (Share)          | 37                   | 281               | -0-                          |
| Suzuki City          | 15                   | 114               | 109                          |
| Long Beach           | 20                   | 152               | 116                          |
|                      | <u>100%</u>          | <u>760</u>        | <u>515</u>                   |

29. When compared to the actual 1991 RMA dealer sales, the figures immediately above reveal that Del Amo performed better in 1991 than would be expected, while both Suzuki City and Long Beach fell short. It is also clear that as a group, RMA dealers have not filled the gap left by PCH, even taking into account the overall decline in Suzuki district sales.

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<sup>10/</sup> The calculation is based on the RMA share of 14.8 in 1988 times the district regional sales of 5135 for 1991.

30. The analysis in paragraph 28, above, indicates that a considerable untapped market for Suzuki Motorcycles exists in the RMA. The difference between the actual sales of 515 and the expected sales of 760 suggests that as many as 245 additional sales could be made if the RMA dealers were performing at the level of the district as a whole.

31. Cycle Tune estimates that its Suzuki sales will be 200 units per year. This figure is close to the average number of vehicles sold per dealers in the district, or 214. 11/

32. Even if Cycle Tune were to reach its objective of 200 units per year, it is unlikely that any of the existing RMA dealers would be negatively affected because there is a surplus of 245 potential sales over the current RMA dealers' level of performance.

33. Neither Protestant nor Respondent offered financial evidence such as profit and loss statements tending to show whether or not the Protestant would continue to be a viable Suzuki dealer if the proposed new dealership is established. 12/

Facts Pertaining to the Public Welfare  
(Section 3060(c))

34. Del Amo Suzuki generates sales tax revenue on gross

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11/ Exhibit R-39 shows that 24 Suzuki Dealers in the district sold 5135 vehicles or 214 vehicles per dealers.

12/ Protestant's witness Winslett gave oral testimony that Del Amo's profitability was "good" in 1987, "adequate" in 1988, "tough" in 1989, "fair" in 1990, and "flat" in 1991. Such characterizations are not sufficient to show that an additional dealership would place Del Amo in financial jeopardy.

sales of approximately \$4 million annually and is one of the top ten percent sources of retail sales tax for the City of Redondo Beach.

35. No evidence was presented tending to show that the addition of a fourth Suzuki dealership in the area would result in a reduction of retail sales tax revenue to Redondo Beach. To the degree that sales in the RMA would be increased by a fourth dealer, the likely result would be an increase in sales tax revenue collected by the cities within the RMA.

36. Protestant currently employs 18 persons. If Cycle Tune becomes a Suzuki dealer it will add at least three employees to its current staff of 5.

37. Prior to the hearing on February 12, 1992, Cycle Tune surveyed 583 of its existing customers who own Suzukis by direct mail questionnaire. The survey asked the subjects whether the establishment of Cycle Tune as a Suzuki dealership "would be good for" them, "not good for" them or whether "it doesn't matter to" them. One hundred and fifty seven responses were received by self addressed stamped envelopes. Of those, 135 stated they believed the establishment would be good for them, 21 indicated that it did not matter and only one believed it would not be good for them.

38. Protestant's claim that the addition of a new Suzuki dealership in the area would result in adverse public opinion as to Japan is not based on substantial evidence. Even if some individual members of the public might react negatively to Japanese products in the market place, there is no evidence that the public

welfare would be adversely affected by the proposed dealership.

Facts Relating to the Adequacy of Existing  
Suzuki Franchises in Providing Competition  
and Convenient Consumer Care  
(Section 3063(d))

39. Travel times from the existing Suzuki dealerships in the relevant market area to the location of the proposed new dealership range from 12 to 25 minutes.

40. Travel times between the location of the former PCH Enterprises and Del Amo Suzuki range from 24-31 minutes. Travel time between PCH Enterprises and the proposed new dealership is about 5 minutes.

41. Travel time between the proposed new dealership and competing Honda, Yamaha and Kawasaki franchises near Lomita is 4-11 minutes. The travel time between Protestant's location and these franchises is 20-30 minutes.

42. In addition to the three existing Suzuki franchises there are also Suzuki dealerships in Bellflower and South Gate, approximately one mile beyond the limit of the relevant market area.

43. There are 12 independent motorcycle repair facilities in the relevant market area which offer non-warranty maintenance and repairs for Suzuki vehicles.

44. The establishment of the proposed dealership would result in increased convenience to consumers, particularly in the Lomita, San Pedro and the Palos Verdes areas.

Facts Pertaining to Whether the Establishment of an  
Additional Franchise Would Increase Competition  
and Therefore be in the Public Interest  
(Section 3063(c))

45. The findings in paragraphs 22-32 above show that the establishment of an additional franchise would increase competition and would be in the public interest insofar as there is potential for increased Suzuki sales in the RMA.

46. The establishment of the proposed Suzuki franchise would increase inter-brand competition with Honda, Yamaha and Kawasaki dealerships located near the proposed franchise site.

### DETERMINATION OF ISSUES

Based on the evidence presented, Protestant has failed to prove that there is good cause for not establishing the proposed new Suzuki dealership at 2466 West Sepulveda Boulevard in Torrance in that:

1. Protestant established that its investment is permanent but failed to establish that the investment would be adversely affected {Section 3063(a)};
2. Protestant failed to prove that the establishment would have an adverse affect on the retail motor vehicle business and the consuming public in the relevant market area {Section 3063(b)};
3. Protestant failed to prove that the establishment would be injurious to the public welfare {Section 3063(c)};
4. Protestant failed to prove that there is adequate competition and convenient consumer care in terms of sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel for Suzuki vehicles in the RMA {Section 3063(d)}; and
5. Protestant failed to prove that the establishment would not increase competition and, therefore will not be in the public interest {Section 3063(e)}.

PROPOSED DECISION

THEREFORE, the following proposed decision is respectfully submitted:

The protest is overruled. American Suzuki Motor Corporation shall be permitted to establish the proposed dealership at 2466 West Sepulveda Boulevard in Torrance, California.

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

DATED: March 30, 1992

By Kenneth B. Wilson  
KENNETH B. WILSON  
Administrative Law Judge