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STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of)
EARTH PLUMBING AND ELECTRIC, INC.,)
dba J & J CYCLES,)
Protestant,) Protest No. PR-135-77
v.) FILED: MAY 13, 1977
CONTRA COSTA CYCLE, INC., dba)
CONTRA COSTA HONDA, AND U. S.)
SUZUKI MOTOR CORPORATION,)
Respondent.)

DECISION

Procedural Background

1. Respondent U. S. Suzuki Motor Corporation ("Suzuki") gave notice pursuant to Section 3062 of the Vehicle Code ^{1/} of its intention to establish a new franchise, Contra Costa Cycle, Inc., dba Contra Costa Honda, at 75 Bliss Avenue, Pittsburg, California ("proposed franchise"). The notice was received by the New Motor Vehicle Board on January 7, 1977 and by the Protestant on January 6, 1977.

1. All references are to the Vehicle Code.

2. A protest was filed with the New Motor Vehicle Board ("Board") by Earth Plumbing & Electric Co., dba J & J Cycles ("J & J Cycles"), 1440 Concord Avenue, Concord, California.

3. A hearing was held pursuant to Section 3066 before Anthony M. Skrocki, Hearing Officer of the New Motor Vehicle Board in Martinez, California, on April 5, 1977. The Protestant was represented by Warren L. Bassett, Esq. The Respondent was represented by Richard S. Rockwell, Esq., Rimel and Helsing, Inc.

Issues Presented

4. J & J Cycles contends that there is good cause to refuse permission to Suzuki to establish Contra Costa Cycle as a Suzuki dealer at the proposed location for the following reasons:

- (a) J & J Cycles is located within the relevant market area of the site of the potential new dealership.
(Sections 3062; 507.)
- (b) The proposed franchise will reduce J & J Cycles' sales and will therefore have an adverse effect upon J & J Cycles' permanent investment. (Section 3063(1).)
- (c) J & J Cycles is providing adequate and convenient customer care for Suzuki owners in the relevant market area. (Section 3063(4).)
- (d) The proposed franchise would not increase competition since it would merely re-distribute the existing

market which does not have a sufficient population density to support two Suzuki dealers. (Section 3063(5).)

Findings of Fact

Facts Relating to Location of J & J Cycles (Sections 3062; 507.)

5. The distance between J & J Cycles and the proposed franchise is 9.7 miles.

6. Concord is separated geographically from Pittsburg by a range of hills which are relatively uninhabited.

Facts Relating to J & J Cycles Permanent Investment (Section 3063(1).)

7. J & J Cycles is owned equally by Gerald Jackson and Jimmy D. Fassio. (Stipulated Exhibit I.)

8. On December 20, 1974, Gerald Jackson purchased Tom's Cycle Center, 1325 Galindo Street, Concord, California, for a total purchase price of \$10,000. (Protestant's Exhibit 1.) Tom's Cycle Center had been a Suzuki dealer; the purchase, however, did not include the Suzuki franchise.

9. Suzuki refused to grant a franchise to J & J Cycles at the 1325 Galindo Street location.

10. J & J Cycles would not have moved their place of business but for the desire to obtain a Suzuki franchise.

11. J & J Cycles, Gerald Jackson and Jimmy Fassio entered into a 10-year lease commencing August 1, 1975 of the premises

situated at 1440 Concord Avenue, Concord, California. The monthly rental is at a base rate of \$1,100 per month with a cost of living escalator and lessee to pay all taxes and insurance. (Protestant's Exhibit 2.)

12. The lessor built, as part of the lease agreement, a building which met the requirements needed to obtain a Suzuki franchise. An additional \$6,000 was spent by J & J Cycles in completing the interior of the newly built structure.

13. A Suzuki franchise was obtained by J & J Cycles in January 1976 and the first Suzuki motorcycles were received in February 1976.

14. During the franchise negotiations J & J Cycles asked that the Pittsburg - Antioch area be included in their "Exclusive Dealer Location" (Stipulated Exhibit II), but Suzuki would not include this area in the franchise.

15. J & J Cycles carries a parts inventory valued at \$8,000 to \$10,000.

16. J & J Cycles sells only Suzuki motorcycles. A portion of the leased premises, however, is used for other business purposes of Earth Plumbing & Electric, Inc.

17. Mr. Jackson and Mr. Fassio spend, respectively, all and half of their time on the motorcycle business conducted by J & J Cycles.

Facts Relating to Facilities for Customer Care (Section 3063(4).)

18. J & J Cycles keeps its service department open Saturday from 9:00 to 5:00; 9:00 to 6:00, Tuesday, Wednesday and Fridays; and from 9:00 to 9:00 on Thursdays.

19. J & J Cycles maintains a staff of four people in the parts department, with at least three at all times behind the parts counters on Saturdays.

20. From December 1974 until January 1976 there were no motorcycle dealers franchised to sell Suzuki motorcycles in Contra Costa County.

21. J & J Cycles' major Suzuki competition is located in Berkeley. J & J Cycles will meet, but not go under, the Berkeley price, emphasizing their service and parts department.

Facts Relating to Competition (Section 3063(5).)

22. From the time J & J Cycles received their first Suzuki motorcycles in February 1976 to the date of the hearing, April 5, 1977, J & J Cycles sold 200 motorcycles and is presently operating at a profit.

23. Although there had been as many as five Suzuki franchises in Contra Costa County in 1974, at present there is only one, J & J Cycles.

24. The proposed franchisee is at present a Honda motorcycle dealer and has an existing facility.

25. In California during 1976 Suzuki accounted for 7.2% of the total motorcycles sold. The Suzuki market share in Contra Costa County for the year ending September 1975 was 4.65% and for the year ending September 1976 it was 2.94%.

26. Twenty percent of J & J's sales to date have been to residents of "East Contra Costa County", the main population centers of which are Pittsburg and Antioch.

27. Thirty percent of J & J sales are from the Concord-Clayton area.

28. The remaining 50% of J & J's sales come from areas outside the two sites involved.

29. The population of Contra Costa County in 1970 was 553,000.

Determination of Issues

1. J & J Cycles is located within a 10-mile radius of the proposed franchisee and thus is within the relevant market area as defined by Section 507. (Paragraph 4(a).)

2. It has not been established that the investment in J & J Cycles will be adversely affected by the proposed franchise. (Paragraph 4(b).)

3. The establishment of the proposed franchise will result in increased consumer convenience. (Paragraph 4(c).)

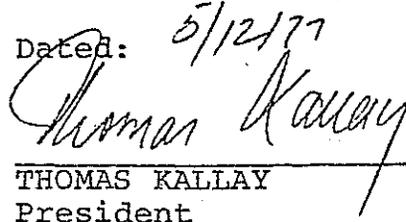
4. J & J Cycles has failed to establish there is an insufficient population density to support two Suzuki dealers. The establishment of the proposed franchise is likely to increase competition and will be in the public interest. (Paragraph 4(d).)

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The protest is overruled. The respondent is entitled to establish the proposed franchise.

The foregoing constitutes
the decision of the NEW
MOTOR VEHICLE BOARD

Dated: 5/12/77


THOMAS KALLAY
President

PR-135-77