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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protests of )  
FUN BIKE CENTER, INC., and ) Protest Nos. PR-157-77  
GEORGE ARRUES, dba KON TIKI ) PR-158-77  
MOTORCYCLES, )  
Protestants, )  
vs. ) Filed: April 18, 1978.  
KAWASAKI MOTORS CORPORATION, )  
U.S.A., )  
Respondent. )

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DECISION

The attached Proposed Decision of the Hearing Officer is hereby adopted as modified by the New Motor Vehicle Board as its Decision in the above-entitled matters. The following paragraphs are modified to read:

6. Kon Tiki is a one-line dealership, handling only Kawasaki Motorcycles. Kon Tiki has a small permanent investment, in an amount unsubstantiated by proof at the hearing.

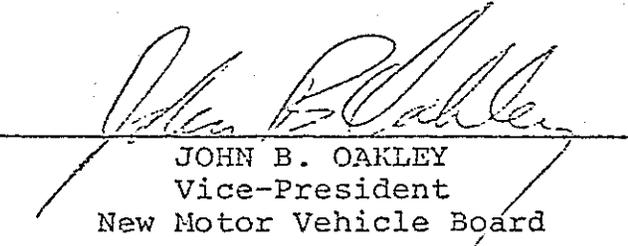
10. The investment in Fun Bike Center is approximately 1.5 million dollars and is therefore substantial.

30. Kawasaki considers the facilities of Kon Tiki to be substandard and has made this known to Kon Tiki.

31. Kon Tiki does specialized crank shaft rewelding work; and is one of only four dealers in the State of California to do this crank shaft rewelding and is interested primarily in service, not sales.

This Decision shall become effective forthwith.

IT IS SO ORDERED this 18th day of April, 1978.



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JOHN B. OAKLEY  
Vice-President  
New Motor Vehicle Board

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PROPOSED DECISION

Procedural Background

1. Respondent, Kawasaki Motor Corporation ("Kawasaki") gave notice on December 15, 1977, pursuant to Section 3062 of the Vehicle Code of its intention to establish an additional motor vehicle franchise at 3444 Midway Drive, San Diego, California. The proposed franchise is to be operated by San Diego Kawasaki, an already existing Kawasaki franchisee.

2. Protests were filed with the New Motor Vehicle Board on December 24, 1977, by Kon Tiki Motorcycles ("Kon Tiki"),

of 1335 Garnet Avenue, Pacific Beach, California, and Fun Bike Center, ("Fun Bike") of 4689 Convoy Street, San Diego, California. A hearing was held pursuant to Section 3066 before Richard C. Wulliger, Hearing Officer of the New Motor Vehicle Board, in San Diego, California, commencing on March 1, 1978. Protestants were represented by Sidney I. Pilot, Esq. Respondent was represented by Robert G. Lane, Esq., of Paul, Hastings, Janofsky and Walker.

#### Issues Presented

4. Protestants contend that good cause exists for not establishing the proposed franchise for the following reasons:
  - a. The additional franchise would jeopardize the permanent investment of protestants. (§3063(1))
  - b. The additional franchise will have an adverse effect on the retail motor vehicle business and the consuming public in the relevant market area. (§3063(2)).
  - c. It will be injurious to the public welfare for an additional franchise to be established. (§3063(3))
  - d. Franchisees of the same line make in the relevant market area are providing adequate competition and convenient customer care for Kawasaki motorcycles. (§3063(4))
  - e. The establishment of a new dealership would be injurious to the public interest in that it will result in division and redistribution of the present

San Diego market and over dealerization and would not increase competition. (§3063(5))

Findings of Fact

Facts Relating to Permancy of Investment (§3063(1))

5. Kon Tiki is owned and operated by Mr. George Arrues. Kon Tiki has been a Kawasaki dealer for 11 years and is the sole source of income for Mr. Arrues.

6. Kon Tiki is a one line dealership, handling only Kawasaki Motorcycles. Kon Tiki has a small permanent investment.

7. George Arrues of Kon Tiki intends to maintain his machine shop at its present location even if he does not sell Kawasaki motorcycles.

8. Fun Bike purchased the Kawasaki franchise previously operated as Kearny Mesa Kawasaki on February 19, 1975.

9. Fun Bike is a multiple line dealership handling Honda, Suzuki, Kawasaki and BMW motorcycles.

10. The investment in Fun Bike Center is approximately 1.5 million dollars.

11. The proposed franchise is to be operated by San Diego Kawasaki, an already existing Kawasaki dealer, and would be located approximately seven miles from Fun Bike and four and one-half miles from Kon Tiki. The proposed location is

approximately eight miles from San Diego Kawasaki's existing location.

12. San Diego Kawasaki has a substantial permanent investment in its present location and proposes a substantial permanent investment at its proposed additional location.

Facts Relating to the Effect on the Retail Motorcycle Business and the Consuming Public in the Relevant Market Area. (§3063(2))

13. At present there are seven Kawasaki motorcycle dealers in the metropolitan San Diego area. There are nine Kawasaki motorcycle dealers in San Diego County.

14. In the State of California, the motorcycle sales ranking and their percentages in decreasing order are:

- (a) Honda 45%
- (b) Yamaha 18%
- (c) Kawasaki 12% or 13%
- (d) Suzuki 7% or 8%

15. In 1974 Kawasaki accounted for 20% of the motorcycle market in San Diego. In 1977, this penetration had decreased to 12.13%.

16. Kawasaki Motors considers a dealer's primary area of market penetration responsibility to be within five miles of the dealer location.

17. For the calendar year 1977, through September 30 of 1977 (the latest dates available) Fun Bike accounted for

23.7% of the Kawasakis sold within five miles of the dealership, only 2.5% of all motorcycles of any make sold within five miles of the dealership, 9.7% of the Kawasakis sold within five to ten miles of the dealership, 1.3% of all motorcycles of any make sold within five to ten miles of the dealership and 1.8% of all motorcycles of any make within ten miles of the dealership.

18. Fun Bike is a multi-line dealer and of the 1700 units it sold in 1977, only 159 were Kawasaki.

19. In the period January 1, to September 30, 1977, Kon Tiki accounted for 14.3% of the Kawasakis sold within five miles of its dealership and only 1.3% of all motorcycles sold within five miles of its dealership. In the range five to ten miles from its location Kon Tiki sold only 1.1% of the Kawasakis registered in that area and only .2% of all motorcycles sold within five to ten miles. Kon Tiki sold .8% of all motorcycles sold within ten miles.

20. Prior to 1975 Kawasaki had dealer representation in the area, called the downtown San Diego area by Kawasaki, in which the proposed dealer is to be located. That dealership went out of business in 1975, but Kawasaki has desired since that time to reopen a dealership in that area.

21. Total sales of motorcycles have increased in San Diego during the period 1976 to 1977. Kawasaki sales in San Diego have, however, increased only very slightly if at all in the same time frame.

22. From January 1, to September 30, 1977, San Diego Kawasaki sold 62.3% of Kawasakis sold within five miles of its dealership; 7.7% of all motorcycles sold within five miles; 25.8% of Kawasakis sold within five to ten miles; 3.3% of all motorcycles sold within five to ten miles and 5% of all motorcycles sold within ten miles of its dealership.

23. Fun Bike Center and Kon Tiki sell primarily in the growing North and East area, directions opposite from the proposed new dealership, mainly out of the relevant market area.

Facts Relating to the Effect on Public Welfare. (§3063(3))

24. San Diego Kawasaki, the proposed franchisee for the downtown San Diego area, is an established single-line Kawasaki dealership whose sales and service record indicate that it would enhance Kawasaki representation, facilities, sales and customer convenience. There is presently no Kawasaki dealership in the downtown area.

25. The primary consumers in the area of the proposed new franchise are military personnel and the proposed location is within walking distance for many of them.

Facts Relating to Adequate Competition and Convenient Customer Care. (§3063(4))

26. The following chart indicates Kawasaki sales of the two protesting dealers and the present dealership operated

by the proposed franchisee:

	<u>Kawasaki Sales</u>		
	<u>Kon Tiki</u>	<u>Fun Bike</u>	<u>San Diego Kawasaki</u>
1974	63	146*	**
1975	33	250	94
1976	31	163	255
1977	42	156	384

\*The Kawasaki franchise presently operated by Fun Bike was owned and operated by Kearny Mesa Kawasaki until February 19, 1975.

\*\*San Diego Kawasaki was owned and operated by Floyd Emde until February 19, 1975.

27. In fiscal year 1976-1977, San Diego Kawasaki sold 29.15% of all Kawasakis in San Diego County; Fun Bike Center sold 11.94% and Kon Tiki sold 3.21%. Of seven dealers in the San Diego Metropolitan area San Diego Kawasaki ranked 1st in sales, Fun Bike Center 4th, and Kon Tiki 7th.

28. San Diego Kawasaki is the number one dealer in sales to the downtown San Diego area, which is the site of the proposed new franchise.

29. In 1977 Kon Tiki made four sales in the area of the proposed new dealership. Fun Bike made 14 sales in that area and San Diego Kawasaki made 27 to 30 sales in that area.

30. Kon Tiki facilities are mediocre and Kawasaki considers the facilities of Kon Tiki to be substandard and has

made this known to Kon Tiki

31. Kon Tiki does specialized crank shaft rewelding work; is one of only three other dealers in the State of California to do this crank shaft rewelding and is interested primarily in service, not sales.

32. The proposed location of the new franchise would be more convenient for military personnel in the area.

33. San Diego Kawasaki has consistently increased its number and percentage of Kawasakis sold in San Diego County over the past three years. Fun Bike has substantially decreased the number and percentage of Kawasakis sold in the San Diego area in the same time frame and Kon Tiki's sales have remained fairly stable. San Diego Kawasaki is aggressive in its sales of Kawasakis, while Fun Bike Center and Kon Tiki are not.

Facts Relating to the Effect Upon Competition and  
the Public Interest. (§3063(5))

34. Kawasaki market penetration has decreased over the past three years while motorcycle sales overall in the San Diego area have increased.

35. No Kawasaki dealer is now in the downtown area of the proposed new dealership where other line makes are represented.

### Determination of Issues

1. Protestants have failed to established that good cause exists for not establishing the proposed franchisee for the following reasons:

a. The establishment of the additional franchise will not jeopardize the permanent investment of protestants. (§ 4(a)); and

b. The establishment of the additional franchise will not adversely affect the retail motorcycle business. The proposed franchisee presently operating as San Diego Kawasaki already accounts for the majority of the sales in the area of the proposed franchise. (§ 4(b)); and

c. There will be a beneficial effect on the public welfare through the establishment of the proposed franchise in the increased convenience and availability of Kawasaki sales and service facilities in the downtown San Diego area. (§ 4(c));

d. Franchisees for the same line make in the relevant market area are not providing adequate competition and convenient customer care for Kawasaki motorcycles. Kawasaki market penetration has declined during the same period that overall motorcycles sales have increased. (§ 4(d));

e. The establishment of the additional franchise will promote Kawasaki competition with other manufacturers in the

downtown San Diego market and therefore will be in the public interest. (¶ 4(e))

\* \* \* \* \*

The following proposed decision is respectfully submitted:

The protest is overruled. The respondent is entitled to establish the additional Kawasaki dealership in the proposed area.

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 San Diego, California and recommend its adoption as the decision of the New Motor Vehicle Board.

Dated: April 10, 1978.

  
Richard C. Wulliger  
NEW MOTOR VEHICLE BOARD