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STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

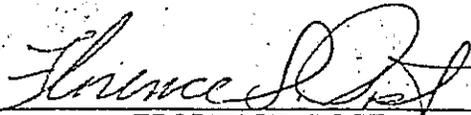
In the Matter of the Protests of)
)
FOSTER KELLY, INC., dba HARRY D.) Protest Nos. PR-168-78
FOSTER MOTORCYCLES,)
)
WILLIAM C. COTTOM, dba CENTURY) PR-169-78
MOTORCYCLES,)
)
NORMAN E. LEE, dba LONG BEACH) PR-170-78
TRIUMPH,)
)
Protestants,)
)
vs.) Filed: July 12, 1978
)
TRIUMPH MOTORCYCLES AMERICA, INC.)
)
Respondent..)
_____)

DECISION

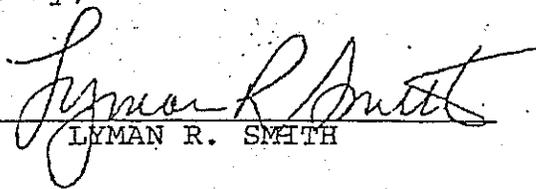
The attached Proposed Decision of the Hearing Officer is hereby adopted by the New Motor Vehicle Board as its Decision in the above entitled matter.

This Decision shall become effective forthwith.

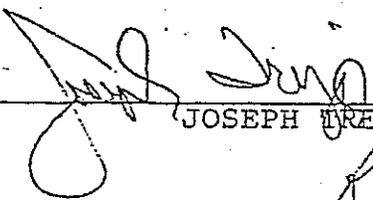
IT IS SO ORDERED this 12th day of July, 1978.



FLORENCE POST

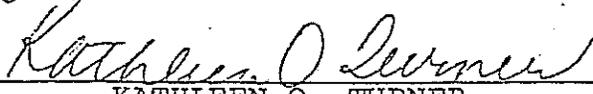


LYMAN R. SMITH



JOSEPH TREJO

JOHN B. OAKLEY



KATHLEEN O. TURNER

Public Members
New Motor Vehicle Board

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In the Matter of the Protests of:)
)
FOSTER KELLY, INC., dba) Protest Nos. PR-168-78
Harry D. Foster Motorcycles,)
WILLIAM C. COTTOM, dba) PR-169-78
Century Motorcycles,)
NORMAN E. LEE, dba) PR-170-78
Long Beach Triumph,)
)
Protestants,)
)
vs.)
)
TRIUMPH MOTORCYCLES AMERICA, INC.)
)
Respondents.)
)

PROPOSED DECISION

Procedural Background

1. Respondent Triumph Motorcycles America, Inc., ("Triumph") gave notice on January 27, 1978, pursuant to Vehicle Code Section 3062,^{1/} of its intention to establish an additional Triumph franchise at Pacific Coast Honda located at 1820 Pacific Coast Highway, Lomita, California 90717. The New Motor Vehicle Board ("Board") received notice on January 31, 1978.

2. Protests were filed with the Board on February 8, 1978 by the following:

1. All references are to the Vehicle Code.

Foster Kelly, Inc.,
dba Harry D. Foster Motorcycles ("Foster"),
16704 Hawthorne Blvd.,
Lawndale, California 90260
(PR-168-78)

William C. Cottom,
dba Century Motorcycles ("Century"),
1640 South Pacific Avenue,
San Pedro, California 90721.
(PR-169-78)

Norman E. Lee,
dba Long Beach Triumph, ("Long Beach Triumph"),
624 West Pacific Coast Highway,
Long Beach, California 90731.
(PR-170-78)

3. Said protests were consolidated. A hearing was held pursuant to Section 3066 before Richard C. Wulliger, Hearing Officer of the Board, in Los Angeles, California, commencing on May 8, 1978. Protestants were represented by A. Albert Spar of Sidney I. Pilot, A Professional Corporation. Respondent was represented by Scott A. Martin of Hillsinger and Costanza, A Professional Corporation.

4. Protestants contend that good cause exists for not permitting such additional dealership for the following reasons:

(a) The additional dealership will jeopardize the permanent investment of Foster, Century, and Long Beach Triumph.

(b) The additional dealership will adversely affect the retail Motor Vehicle business and the consuming public in the relevant market area.

(c) It will be injurious to the public welfare for the additional franchise to be established.

(d) Foster, Century, and Long Beach Triumph are providing adequate competition and convenient consumer care

for Motor Vehicles of the line make in the market area.

(e) The establishment of the additional franchise would not increase competition and therefore will not be in the public interest.

FINDINGS OF FACT

Findings Relating to Permanency of Investment (\$3063(1))

5. Foster has been a franchised Triumph dealer for 30 years and has been located at 16704 Hawthorne Blvd., Lawndale, California for 4 1/2 years.

6. Foster has a substantial permanent investment at the present location valued at over \$157,000 excluding good will.

7. Century has been a franchised Triumph dealer since 1971 or 1972 and has been located at 1640 South Pacific Avenue, San Pedro, California for twelve years.

8. Century has a substantial permanent investment at the present location valued at over \$100,000.

9. Long Beach Triumph has been a franchised Triumph dealer since 1954 and has been located at 624 West Pacific Coast Highway, Long Beach, California since that date.

10. Long Beach Triumph has a substantial permanent investment at its present location valued at \$150,000.

11. The proposed new dealer, Pacific Coast Honda, is located at 1820 Pacific Coast Highway, Lomita California.

12. Pacific Coast Honda has a substantial permanent investment at its present location.

13. Foster is a multi-line dealer selling Yamahas as well as Triumphs.

14. Century is a multi-line dealer, selling Kawasakis as well as Triumphs.

15. Long Beach Triumph is a multi-line dealer selling Kawasakis and others as well as Triumphs.

16. Pacific Coast Honda is a multi-line dealer selling Hondas and Maicos.

17. Even if Pacific Coast Honda is established as a Triumph dealer in Lomita, Foster plans to continue as a Triumph dealer.

Findings Relating to the Effect on the
Retail Motor Vehicle Business and the
Consuming Public in the Relevant Market Area
(\$3063(2))

18. The proposed new dealer has hired a Triumph factory trained mechanic and its service manager has experience servicing Triumphs.

19. It is as easy for a new dealer to obtain parts as it is for an established dealer. The availability of parts to the established dealers would not be affected by the new dealer.

20. In 1977 new Triumph motorcycles were more readily available to the dealers than in the past. Foster lost no sales of Triumph motorcycles in 1977 due to lack of availability.

21. Foster obtained as many new Triumph motorcycles as it could sell in the second half of 1977 and can get as many new Triumph motorcycles as it can sell in 1978.

22. In 1977, 17 of the 19 new Triumph motorcycles sold by Foster were sold to consumers residing closer to Foster's location than to the location of the proposed new dealer. Of the 19, 13 were sold to consumers residing north of Foster's location, whereas the proposed new franchise is to the south of Foster.

23. From 1974 to date, 46 of the 54 new Triumph motorcycles sold by Long Beach Triumph were sold to consumers residing closer to Long Beach Triumph's location than to the location of the proposed new dealer.

24. From 1975 to date, 20 of the 30 new Triumph motorcycles sold by Century were sold to consumers residing closer to Century than to the location of the proposed new dealer, although the ocean is to the south and the harbor is to the east of Century.

Findings Related to the
Effect on the Public Welfare
(§3063(3))

25. Triumph needs greater sales results than previously produced by Foster, Century, and Long Beach Triumph in order to remain in business.

Findings Related to Adequate
Competition and Convenient Consumer Care
(§3063(4))

26. Foster's sales of new Triumph motorcycles were as follows:

1975	19
1976	10
1977	19
1978	3 to date of hearing.

27. Of 376 motorcycles sold by Foster in 1977 only 19 were Triumphs. Foster's gross receipts for this period total \$548,000. Triumph accounted for \$78,000 of this sum.

28. Century sales of motorcycles for the given years were as follows:

<u>Triumph</u>		<u>Kawasaki</u>	
1975	3	1975	76
1976	9	1976	40
1977	9	1977	41
1978	9 to date		

29. Long Beach Triumph sales of Triumph motorcycles were as follows:

1974	15
1975	20
1976	14
1977	5 (out of a total of 104 new motorcycles sold in 1977)

30. The 10 or 11 Los Angeles County Triumph franchises sold approximately 100 new Triumph motorcycles in Los Angeles County in 1977.

31. Foster does little or no advertising of Triumphs while the proposed franchisee intends to advertise Triumphs.

32. Foster, Century, and Long Beach are providing adequate repair and parts service.

Findings Relating to Increased
Competition and the Public Interest
(\$3063(5))

33. Triumph motorcycles sales in the United States have been as follows:

1967	14,791	1972	20,983
1968	25,624	1973	27,678
1969	26,087	1974	6,854
1970	29,695	1975	3,801
1971	24,167	1976	7,063
		1977	5,516

34. Triumph sold .90 percent of industry in 1976 and .65 percent of industry in 1977 in the United States, ranking in each year seventh among motorcycle manufacturers.

35. In 1977 California led all other states in sales of motorcycles, but California is not Triumph's leading state. Triumph has a .41 percent penetration in California as against a .65 percent nationally.

36. Triumph must sell 8,500 new motorcycles in 1978 in the United States in order to break even. They have sold almost 4,000 to date of hearing.

37. Foster, Century, and Long Beach Triumph believe that Triumph motorcycles have limited sales appeal while the proposed new dealer does not believe that Triumph is so limited.

38. Century, Foster, and Long Beach Triumph have not experienced and do not anticipate substantial Triumph motorcycle sales in the Palos Verdes area. The proposed franchisee, which is adjacent to that area, expects that Palos Verdes will account for approximately one-half of his Triumph motorcycles sales.

Determination of Issues

Foster, Century, and Long Beach Triumph have failed to establish that good cause exists for not permitting the establishment of the additional dealership for the following reasons:

(a) All three are multi-line dealers and Triumph sales account for only a small percentage of their total sales volume. In addition, protestants should benefit from

increased advertising and exposure of Triumph products which would result from establishment of the proposed franchise.

(b) The additional dealership will not adversely affect the retail motor vehicle business and the consuming public in the relevant market area. With increased availability of product Century, Long Beach, and Foster should be able to increase their sales in their areas.

(c) It will not be injurious to the public welfare to establish the additional franchise. The additional franchise should result in additional Triumph sales which are critical to the continued existence of Triumph.

(d) Protestants have failed to show that they are providing adequate competition in the relevant market area.

(e) The establishment of the additional franchise will increase the competition and therefore be in the public interest. The new dealer can increase the sales of Triumphs.

* * * * *

The following proposed decision is respectfully submitted:

The protests are overruled. The respondent is entitled to establish the additional Triumph dealership at the proposed location.

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

Dated: June 29, 1978.



RICHARD C. WULLIGER
Hearing Officer
New Motor Vehicle Board