

1 NEW MOTOR VEHICLE BOARD
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8 STATE OF CALIFORNIA
9 NEW MOTOR VEHICLE BOARD
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11 In the Matter of the Protest of

Protest No. PR-2048-07

12 WALKER MANAGEMENT, INC., dba
13 GOOD TIMES KAWASAKI SUZUKI DUCATI,

PROPOSED DECISION

14 Protestant,

15 v.

16 DUCATI NORTH AMERICA, INC.,

17 Respondent.

18 **PROCEDURAL BACKGROUND**

19 **Statement of the Case**

20
21 1. By letter dated April 18, 2007, Ducati North America, Inc., gave notice to Walker
22 Management, Inc., dba Good Times Kawasaki Suzuki Ducati, pursuant to Vehicle Code section 3062¹, of
23 its intention to appoint an additional Ducati franchisee in Roseville, at a location within 10 miles of
24 Walker Management's dealership in Sacramento.² The New Motor Vehicle Board received the notice on
25 April 19, 2007.

26
27 ¹ All statutory references are to the California Vehicle Code unless noted otherwise.

28 ² Such notice is required whenever a franchisor seeks to enter into a franchise establishing an additional motor vehicle dealership within the relevant market area where the same line-make is then represented. [Section 3062(a)(1)] "Relevant market area" is "any area within a radius of 10 miles from the site of a potential new dealership". (Section 507)

1 11. Respondent called the following witnesses: Jason Chinnoek (respondent's National Sales
2 Manager) and Randy Felice (President and Sales Manager of A & S Motorcycle Parts, the proposed
3 franchisee). Respondent's expert witness was Steven Radt (Sales Planning and Operations Director for
4 Ducati North America), who also testified as a percipient witness.

5 Summary of Witnesses' Testimony and Exhibits Introduced at Hearing⁴

6 Protestant's Witnesses' Testimony and Exhibits

7 12. Jeffrey Walker, protestant's Operating Officer, runs the dealership's day-to-day operations.
8 Good Times has been a Ducati franchisee since 1995. It sells and services six brands of motorcycles in
9 addition to Ducati. When he heard of Ducati's proposal to grant a franchise to A & S Motorcycle Parts, a
10 motorcycle dealership seven and a half miles away from the Good Times store, Mr. Walker protested to
11 Ducati that this would be "devastating" to his business. In his opinion, "customers tend to migrate where
12 the newness is, the excitement might be" and that establishing a new franchise such a short distance away
13 would have an adverse impact on both the sales and the service operations of Good Times, since
14 "[t]ypically people get their vehicles serviced where they buy them." He testified that his dealership had
15 experienced difficulty in getting an inventory of popular Ducati models from respondent. (IV: 30-70)⁵

16 13. Thomas C. Taliani, protestant's senior sales representative, testified that Good Times sold
17 ATV's (all-terrain vehicles) and watercraft as well as seven brands of motorcycles. He called Ducati the
18 "Ferrari of motorcycles" which appealed to a unique customer: older, with a higher income---a "Euro"
19 type of person. Younger buyers aged 19 to 26 were more interested in sport model brands like Kawasaki
20 and Suzuki. (I:26-44)

21 14. Sherman Walker, protestant's semi-retired Chief Executive, testified about staffing and
22 financial reports he had prepared concerning Good Times' operations. (IV:71-139; PR-1) In 1987, he
23 bought "Good Times Kawasaki Suzuki" and added the Ducati franchise in 1995. He calculated that, in
24 recent years, sales of Ducati motorcycles have accounted for roughly 7% to 9% of the dealership's total

25
26 ⁴ Since most exhibits were marked for identification by the parties prior to the hearing, they were not offered or introduced in
27 numerical order; also, some pre-marked items may not have been used in the hearing at all, so there may be numerical gaps in
the final Exhibit List, which begins with PR-1 and ends with PR-602. Finally, because of the large number of exhibits, several
single exhibit numbers may contain many different, but related, documents.

28 This Summary does not refer to all exhibits in the record, nor does it include all matters testified to by the witnesses.

⁵ References herein to Roman Numerals are to the transcripts of the proceedings. References to "PR" are to Exhibits.

1 “gross sales of new units”, so that, in his opinion, establishing a second Ducati franchise in the same area
2 would be “devastating” to his Ducati business. (IV:88-101; PR-1, pp. 013, 060, 052, 069)

3 15. Kristi Blanchard, Ducati North America’s Network Development Manager, testified that
4 since A & S Motorcycles Parts had not yet been approved as a Ducati dealer, it had not incurred any costs
5 or expenses to set up a new Ducati dealership. (I:45-74)

6 Respondent’s Witnesses’ Testimony and Exhibits

7 16. Steven Radt, Sales Planning and Operations Director for Ducati North America, testified
8 both as a percipient witness and as an expert witness. He described the market segments for motorcycles,
9 the data gathered by the Motorcycle Industry Council (hereinafter referred to as “MIC”), Ducati market
10 areas in California and elsewhere, and the methods by which respondent evaluates the performance of
11 areas in which Ducatis are sold. Good Times is an “underperformer” and “way behind in sales”, with
12 “lost sales opportunities”, according to Ducati’s market data. He opined that Good Times “[does] not do
13 a good job at selling motorcycles in the Roseville and north market area” and concluded that the
14 “Sacramento market” needed another Ducati dealer. (I:75 to III:177, III:47-48; IV:140-144; PR-507-
15 PR-518)

16 17. Jason Chinnock testified that when he became Ducati North America’s National Sales
17 Manager in January 2007, Good Times was “underperforming” and that A & S Motorcycle Parts was
18 already being considered for a Ducati dealership. When he visited Good Times in January 2007, he found
19 the store dirty and disorganized, although he observed that its appearance had improved at the time of a
20 site visit during the merits hearing. (III:178-250)

21 18. Randy Felice is President and Sales Manager of A & S Motorcycle Parts, Inc., the
22 proposed franchisee, and the company’s sole shareholder. His dealership currently sells BMW
23 motorcycles, which he hopes to compliment with the addition of the Ducati line-make. It moved to a
24 modern and spacious new location in 2000, and he has a separate space to devote to retailing Ducati
25 motorcycles, as well as technicians and sales staff. He has made no investment in the Ducati franchise,
26 although he has been interested in acquiring a Ducati franchise for the last three years. (III:250-IV:28)

27 ISSUE PRESENTED

28 19. The following issue is presented in this Protest:

1 Did Protestant Walker Management sustain its burden of proof of showing "good cause" to
2 preclude Respondent from establishing an additional Ducati dealership at the proposed location?

3 20. Under section 3062(a)(1), a franchisor is not permitted to establish an additional motor
4 vehicle dealership, where a timely protest has been filed, until there has been a finding of whether or not
5 good cause exists for not permitting the establishment. Under section 3066(b), the franchisee has the
6 burden of proof to establish that there is good cause not to enter into a franchise establishing an additional
7 motor vehicle dealership.

8 21. In determining whether there is good cause for the establishment of an additional franchise,
9 section 3063 requires the Board to take into consideration the existing circumstances, including, but not
10 limited to, all of the following:

- 11 (a) Permanency of the investment.
- 12 (b) Effect on the retail motor vehicle business and the consuming public in the relevant
13 market area.
- 14 (c) Whether it is injurious to the public welfare for an additional franchise to be
15 established.
- 16 (d) Whether the franchisees of the same line-make in that relevant market area are
17 providing adequate competition and convenient consumer care for the motor
18 vehicles of the line-make in the market area which shall include the adequacy of
19 motor vehicle sales and service facilities, equipment, supply of vehicle parts, and
20 qualified service personnel.
- 21 (e) Whether the establishment of an additional franchise would increase competition
22 and therefore be in the public interest.

23 PROTESTANT'S CONTENTIONS⁶

24 22. Protestant Good Times argues that if A & S Motorcycle Parts---located seven and one-half
25 miles from the Good Times store---is allowed to sell Ducati motorcycles, then respondent Ducati "will
26 have two dealers located closer in proximity than any other dealers anywhere in the United States".

27

28 ⁶ Quotes appearing in this section are found in Protestant's Opening Post-Hearing Brief and Protestant's Closing Post-Hearing Brief.

1 Protestant contends that this would not only be “devastating to [Good Times’] Ducati business”, but
2 would also produce a larger “significant effect” on its revenues “because [Ducati] represents a niche
3 market, which draws people in who may not necessarily be able to afford to purchase a Ducati
4 motorcycle”.

5 23. Good Times contends that it has established the “good cause” factors of Vehicle Code
6 section 3063. It cites the permanency of its investment “for the Ducati business, including parts,
7 inventories, equipment, supplies, working capital, [and] facilities” and argues that “the proposed new
8 dealer, A & S...has absolutely no investment in the Ducati line”. The public welfare, protestant argues,
9 would be harmed by its closure of part of its business because of lower tax revenue and loss of jobs.

10 24. Good Times asserts that it is providing adequate competition and convenient consumer
11 care for the Ducati brand. It disputes the conclusion of Ducati’s market analysis (that there would be
12 increased sales as a result of a new dealer establishment), calling it “fundamentally flawed”. It argues that
13 Ducati is unfamiliar with the “demographics, income levels, [and] customer preferences” of the Roseville
14 market; in reality, protestant asserts, the “typical Ducati customer is affluent, knowledgeable, and more
15 product educated [than buyers of other motorcycles]” and there is therefore a “limited demand” for Ducati
16 products in the Roseville market. The effect of establishing an additional Ducati dealership in this
17 market, protestant contends, would not be to create competition, but would simply be to replace one
18 Ducati dealer for another.

19 RESPONDENT’S CONTENTIONS⁷

20 25. Respondent Ducati contends that protestant Good Times has failed meet its burden of
21 proof in establishing “good cause” to preclude the establishment of an additional Ducati franchise at the
22 proposed location.

23 26. Respondent argues that the testimony of the owners of Good Times of the “devastating”
24 financial effect of a competitor selling Ducati motorcycles seven and one-half miles away is unsupported
25 by an expert opinion.

26 27. Good Times’ market performance has been “unacceptable”, according to respondent, and

27 _____
28 ⁷ Quotes appearing in this section are found in Prehearing Brief by Respondent Ducati North America, Inc.; Respondent Ducati North America, Inc.’s Brief in Support of its Proposed Findings; and Proposed Findings of Respondent Ducati North America, Inc.

1 the dealership has failed to provide adequate competition. Since 2003, Good Times has been shown to be
2 “underperforming” in Ducati sales. Nationally, respondent notes, Ducati has experienced “phenomenal
3 growth”, doubling its sales in the last four years, while Good Times’ market share has remained stagnant.
4 In addition to lost sales, Good Times fails to provide adequate competition for Ducati products, describing
5 the store as a “haphazard and intermingled display of Ducati motorcycles, apparel, accessories and
6 fixtures with other brands”.

7 28. There is a need for a second Ducati dealer in the “Sacramento market”, according to
8 Ducati. It asserts that its position is supported by comparisons of the sales performance of the
9 “Sacramento market” with those of three other areas: “California represented”, “California” and “San
10 Francisco CBSA” (Core Based Statistical Area).

11 29. Ducati urges that A & S Motorcycle Parts would be an ideal showcase for Ducati
12 motorcycles, with its anticipated separate showroom and salesperson devoted exclusively to Ducati bikes
13 and accessories. Moreover, since protestant is not doing a good job selling Ducatis “in the Roseville and
14 north market area”, Ducati contends that the prospective franchisee, A & S Motorcycle Parts, would be
15 well-positioned to capture this underserved market.

16 30. Finally, respondent contends that Good Times has failed to establish permanency of its
17 investment.

18 **FINDINGS OF FACT**⁸

19 **Preliminary Findings**

20 31. A motorcycle is a motor vehicle which has a seat or saddle for the use of the rider,
21 designed to travel on not more than three wheels in contact with the ground and weighing less than 1,500
22 pounds. [Vehicle Code section 400(a)] Ducati motorcycles are “on-highway” motor vehicles. (I:92)

23 32. Ducati motorcycles are manufactured in Bologna, Italy. Ducati is a “small manufacturer”.
24 It anticipates selling around 10,000 motorcycles in the United States in 2007, which is less than one
25 percent of total United States motorcycle sales. Although this is a “low market share overall compared to
26 the industry”, Ducati has representation (dealerships) in only 40 states and has a larger market share in
27

28 ⁸ References herein to testimony, exhibits, or other parts of the record are examples of evidence relied upon to reach a finding,
and are not intended to be all-inclusive.

1 states (such as California) where Ducatis are sold. (I:109-110)

2 33. Ducatis are considered the “Ferrari of motorcycles”, a “prestigious product” appealing
3 to a “niche” market: an older, more knowledgeable male buyer willing to pay a higher price for the Ducati
4 brand than for other brands. (I:34; IV:105)

5 34. There are 144 Ducati dealers in the United States (in 40 states) and approximately 20
6 Ducati dealers in California. Most, but not all, Ducati dealers offer for sale other brands of motorcycles
7 as well; the Ducati store in Modesto, California, is one of eight dealerships nationwide selling Ducati
8 motorcycles exclusively from a “freestanding” location. (I:112; II:26)

9 35. In California and in the United States, retail sales of Ducati motorcycles have been the
10 following: (II:8, 29, 30; PR-534)

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>To 6/30/07</u>
All Models – Ducati Sales in California	1159	1413	1611	1734	1174
All Models – Ducati Sales in the United States (including California)	4645	5278	6566	7459	5050

16 36. In 1997, a venture capital company acquired the assets of Ducati Motorcycles and set up
17 respondent Ducati North America, Inc., as a distributor of Ducati motorcycles in the United States and
18 Canada; its predecessor was a company called Cagiva. Respondent assumed existing dealer contracts
19 from Cagiva, one of which was Cagiva’s 1995 dealer agreement with protestant. (I:78-79; PR-592)

20 37. Ducati competes in three segments⁹ of the motorcycle market: sport, touring, and
21 traditional bikes. Ducati defines these three segments as the “Ducati Relevant Market” (“DRM”). (PR-
22 505) Generally, the rider of a sport bike bears more weight on his wrists for more “performance
23 orientation” and enjoys wind protection; two persons may ride a touring bike, which has a capacity for
24 storage or luggage in the rear; and the rider of a traditional bike sits upright and has minimal wind
25 protection. (I:125-128; II:48)

26 38. Start-up costs for new Ducati dealers are currently the following: a “fixture package”,
27

28 ⁹ Ducati does not compete in the fourth segment, cruisers; many Harley Davidson models are considered cruisers. (I:126-128)

1 which includes a display totem, for between \$8,000 and \$12,000; a start-up investment in tools for
2 approximately \$17,000; a start-up investment in parts ranging between \$7,000 and \$20,000, which varies
3 depending on “the level of dealership [and] the bike order that they’re expected to sell”; software
4 licensing information for about \$12,000; exterior signage, which can range from \$900 to \$1,500; and
5 apparel and accessories for a minimum purchase of around \$10,000. (I:49-50)

6 39. The proposed new franchisee, A & S Motorcycle Parts, Inc., is located seven and one-half
7 (7.5) miles from protestant Good Times Kawasaki Suzuki Ducati.

8 **Findings Relating to Permanency of Investment [Section 3063(a)]**

9 **Protestant Walker Management, Inc., dba Good Times Kawasaki Suzuki Ducati**

10 40. The Good Times motorcycle dealership (at that time called “Good Times Kawasaki
11 Suzuki”) was purchased by Sherman Walker in January 1988. (IV:77)

12 41. In December of 1995, Good Times purchased the Ducati motorcycle franchise for
13 approximately \$17,000 “through a buy/sell with Mega Cycles”. (I:135, 138-140; II:90; IV:114; PR-592)
14 At that time, the dealership was located in a leased space at 5000 B Madison Avenue in Sacramento.

15 42. In about 1998, the dealership moved to its present location at 4727 Auburn Boulevard in
16 Sacramento, which (at approximately 14,000 to 14,500 square feet) is smaller by about 2,000 square feet
17 than its prior location. (IV:116-117) The real estate where Good Times is now located was purchased for
18 \$1.2 million in about 1999 (two years after the move) by the Sherman and Adelle Walker Family Trust.
19 The Family Trust leases the premise to the dealership (a family corporation) on “a five year renewable
20 lease” for “roughly \$10,000.00 a month”. Day-to-day operations of the business are run by Jeffrey
21 Walker; his father, Sherman Walker, is semi-retired. (I:42; IV:83-84, 85, 88-101,132-133)

22 43. The premises are used exclusively as a dealership and service facility for seven line-makes
23 of motorcycles, as well as ATV’s and personal watercraft. Therefore, any investments in the business
24 will benefit all line-makes and products offered by protestant.

25 44. During 2004, Good Times made no investments in “building and tenant improvements”,
26 “machinery and equipment”, “furniture and fixtures” or “vehicles”. (IV:85-87; PR-1, pp. 059, 062)
27 During 2005, Good Times made no investments in “building and tenant improvements”, “machinery and
28 equipment”, or “furniture and fixtures”, but invested \$27,250.70 in “shop vehicles”. (IV:86; PR-1, pp.

1 062, 064)

2 45. Good Times' balance sheet for 2006 describes "assets", which include \$407.00 in
3 "furniture and fixtures" and \$28,160.00 in "leasehold improvements", but no information as to whether
4 these were outlays made during 2006 or simply assets accounted for in 2006. (PR-1, p. 067) Good
5 Times' balance sheet for 2007 shows \$22,247.00 in "leasehold improvements" as an "asset", but there is
6 no information as to whether this was an investment made during 2007 or simply an asset accounted for
7 in 2007; the 2007 "asset" in "furniture and fixtures" was \$0. (PR-1, p. 071)

8 46. Good Times has recently ordered approximately \$36,000 in Ducati accessories, and it has
9 roughly \$65,000 in Ducati parts and accessories. (IV:39, 57)

10 47. All advertising placed by Good Times (print ads, TV, radio, magazines) is for all brands
11 and products offered by protestant. (IV:87-88)

12 *A & S Motorcycle Parts, Inc.*

13 48. The prospective franchisee, A & S Motorcycle Parts, Inc., was established in 1983 by the
14 parents of Randy Felice. Mr. Felice runs the company's day-to-day operations as President and Sales
15 Manager. It moved to its present location at 1125 Orlando Avenue in Roseville in 2000; Randy Felice
16 owns the business and his parents own the real estate. The dealership sells BMW Motorcycles (as well as
17 Vespa and Peugeot scooters).

18 49. Randy Felice has been interested in acquiring a Ducati franchise for approximately three
19 years and, to this end, has contacted both Sherman Walker (CEO of Good Times) and Michael Lock
20 (CEO of Ducati) and he or an employee have attended the annual Ducati dealer meetings in 2005, 2006
21 and 2007. He anticipates that the addition of the Ducati brand to his dealership would be a good fit for his
22 business, since BMW emphasizes touring bikes while Ducati emphasizes sport bikes. He has made no
23 investment in the Ducati franchise, since he has not been appointed as a Ducati dealer. (III:250-IV:28)

24 50. The dealership moved to a modern and spacious new location in 2000 from a 6,500 square
25 foot store. The new facility, with 27,000 square feet, boasts fifteen (15) service lifts, currently
26 "underutilized", with seven technicians "either certified or on track to be certified"; a showroom for
27 BMW's and scooters and brand-related accessories; a parts area; a lounge room for the public with a
28 "clubhouse atmosphere"; and offices. There is a spacious parking lot, available for test-drives of

1 motorcycles. Randy Felice envisions devoting a separate showroom suite, closest to the freeway, to
2 retailing Ducati motorcycles, an area formerly occupied by ArcticCat and now vacant. He plans to have a
3 salesperson devoted exclusively to the Ducati line-make. (III:260-261)

4 51. A & S Motorcycle Parts, Inc., anticipates a substantial permanent investment in the Ducati
5 franchise. The dealership evidences a willingness to assume the start-up costs imposed by respondent on
6 all new dealers, and it has the facilities available to establish a Ducati dealership in the manner envisioned
7 by its owner, Randy Felice.

8 Findings Relating to Effect on the Retail Motor Vehicle Business and
9 The Consuming Public in the Relevant Market Area [Section 3063(b)]

10 52. In addition to Ducati motorcycles, the Good Times dealership represents the following
11 line-makes and products:

12 Motorcycles: Kawasaki, Suzuki, Husquvarna, Aprilia, Moto Guzzi, and Hyosung.

13 All Terrain Vehicles: Iton ATV's.

14 Watercraft: Hydrospace Personal Watercraft, Kawasaki Jet Skis. (I:43)

15 53. The "typical Ducati customer" is usually older, upper middle class and interested in
16 European motorcycles---a "Euro [kind of] guy". (I:27-28) This aficionado is "definitely different from
17 your average motorcycle buyer", which is a "younger demographic" of males between the ages of 19 and
18 26, attracted by the sport bike market represented by "Kawasaki, Suzuki, [and] Japanese bikes in
19 general". (I:27-28)

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1 54. Good Times' gross receipts from "major unit sales" and parts and accessories (excluding
 2 all costs and expenses as well as freight and setup and overhead) are the following: (IV:77-82; PR-1)

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>To 6/30/07</u>
Ducati "Major Unit Sales"	\$ 489,646	\$ 515,441	\$ 821,619	\$ 596,352	\$ 379,758
Ducati Parts & Accessories	+\$ 47,333	+\$ 77,611	+\$ 87,813	+\$ 129,021	+\$ 62,327
Total Ducati Sales	\$ 536,979	\$ 593,052	\$ 909,432	\$ 725,373	\$ 442,085

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>To 6/30/07</u>
All Brands "Major Unit Sales"	\$ 7,123,065	\$ 8,314,950			
All Brands Parts & Accessories	+\$ 1,562,728	+\$ 1,610,201			
All Brands "Gross Sales" or "Total Revenue"			\$12,681,250	\$11,640,535	\$ 5,912,799
Total All Brand Sales	\$8,685,793	\$9,925,151	\$12,681,250	\$11,640,535	\$ 5,912,799

16 55. Good Times' gross profits (gross sales less cost of goods only) attributable to Ducati bikes,
 17 parts and accessories was \$127,162 in 2006 and \$51,964 in the first six months of 2007. Net profits are
 18 lower, since these figures do not have "any expenses extracted" from them. (IV:81; PR-1, pp.038, 052)

19 56. Good Times also makes money servicing Ducatis. Additionally, there are financial
 20 benefits to the dealership which cannot be quantified precisely: the high-end appeal of the Ducati brand
 21 attracts customers through its doors who cannot afford a Ducati, but who may be persuaded to purchase
 22 another brand. (IV:104, 106)

23 57. Sherman Walker's estimate that sales of Ducati motorcycles have accounted for roughly
 24 7% (in 2003) to 9% (for the first six months of 2007) of the Good Times' dealership's total "gross sales of
 25 new units" is reasonable. (IV:94-108)

26 58. Because the limited market for Ducatis will be shared by the establishment of a second
 27 Ducati dealership in the area, protestant's Ducati sales may decline. However, other than costs of goods
 28 sold, protestant has presented no expenses attributable exclusively to marketing Ducati bikes and

1 accessories. There have been no outlays or investments by Good Times shown to have been incurred in
2 operating the Ducati franchise; in fact, the only such investment was the original purchase of the Ducati
3 franchise for about \$17,000 in 1995, and that amount has long ago been recovered by protestant. (IV:113,
4 114) Therefore, declining sales of a line-make which represents (at most) 9% of protestant's total gross
5 sales and in which no investment has been made by protestant in recent years will not devastate its
6 remaining viable business. (IV:113, 114)

7 59. Although a second dealership in the area may cause protestant's Ducati sales to decline, its
8 sales of other line-makes may increase, since customers will be attracted to the area by the Ducati
9 motorcycles showcased in a modern spacious facility.

10 **Findings Relating to Whether it is Injurious to the Public Welfare for an**
11 **Additional Franchise to be Established [Section 3063(c)]**

12 60. The owner of A & S Motorcycle Parts has the present intention and ability to establish a
13 Ducati franchise at his motorcycle dealership in Roseville; to acquire an inventory of Ducati bikes, parts
14 and accessories; to dedicate currently unused showroom space to Ducati products; and to offer currently
15 "underutilized" service areas to Ducati customers. These acts are beneficial to the public welfare, not
16 injurious.

17 **Findings Relating to Whether Good Times is**
18 **Providing Adequate Competition and Convenient Consumer Care for**
19 **Ducati Motorcycles in the Market Area, Including Adequate Sales and**
20 **Service Facilities, Equipment, Supply of Parts, and**
21 **Qualified Service Personnel [Section 3063(d)]**

22 **Adequacy of Good Times' Facility and Personnel**

23 61. The Good Times dealership is situated in two freestanding buildings on the same real
24 estate parcel. The front building, containing the sales floor, the parts department and general offices, is
25 10,000 square feet. The service department, located in the back building, is 4,500 square feet. (IV:84-85)
26 The total square footage for the facility is approximately 14,000 square feet or more. (IV:117)

27 62. Protestant employs a total of 28 people. There are five people in the sales department,
28 seven in the service department (service managers, service writers, and technicians), six in the parts
department ("primarily parts counter people"), two in the office (an office manager and one with clerical
and accounting duties), and four in the corporate office. Good Times also has an Internet department
which employs two people who sell accessories from the company's website. (IV:75-76)

63. Good Times sells and services six brands of motorcycles in addition to Ducati. Two of the dealership's five mechanics have Ducati training and one is a factory certified Ducati mechanic (although his certificate may not be current). (I:37, 41; IV:55) The service department can be organized, "under more control", but, on one occasion, it "was dirty, it didn't look like a cleaned, well organized service department."¹⁰ (III:181-182)

64. Ducati models are typically showcased in the front showroom, to the left of the front door, where there is a small area dedicated to Ducati bikes, apparel and accessories. However, some Ducati models were "intermingled" between "some of the Japanese bikes" and others were tightly lined up against each other in the showroom. (III:184-185)

The Adequacy of Good Times' Competitiveness in Marketing and Servicing Ducati Motorcycles

Good Times' Ducati Sales

65. Good Times' total sales of Ducati motorcycles, both within the "Sacramento CBSA" and in areas outside it¹¹, are the following: (II:28; III:44, 60; IV:100; PR-534, PR-550, PR-561)

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>To 6/30/07</u>
All Models – Good Times' Sales To Customers Living In The Sacramento CBSA	31	30	44	41	27
All Models – Good Times' Sales To Customers Living Outside The Sacramento CBSA	<u>+ 14</u>	<u>+ 8</u>	<u>+ 20</u>	<u>+ 10</u>	<u>+ 8</u>
All Models - Sold To Customers Living Anywhere in California (Total Good Times' Sales)	45	38	64	51	35

66. For each of the years 2003 to 2006 and through June 30, 2007, customers buying motorcycles from Good Times typically lived in the immediate vicinity of Sacramento, with the greatest concentration of its customers generally living south of the dealership. "[T]he sales of Good Times tend to be clustered closer to the dealership but with a large concentration south of their current location."

¹⁰ No evidence was presented showing adequacy of equipment. No evidence established the value or extent of protestant's supply of vehicle parts. (IV:57)

¹¹ These are "pump-outs" or "out-sells." (III:60)

1 (III:44, 47-48; IV:137, 141; PR-507 to PR-518¹²) “[Good Times’ Ducati] sales made to the northern
 2 part are actually Roseville or north, are not as prevalent as the sales that [Good Times is] making in the
 3 southern part of the Sacramento market.” (I:154; PR-507 and PR-508) “[There is] a strong propensity for
 4 the dealership to sell to the southern part of their marketplace, with a lower penetration to the northern
 5 part of their market.” (I:156; PR-507 to PR-518)

6 67. Good Times’ Ducati sales improved in 2007 because the dealership hosted “Ducati
 7 weekends” to introduce the new Ducati model, the Super Motard. This advertising program had been
 8 suggested by Ducati, not initiated by protestant. (IV:124)

9 “Intrabrand” Competition

10 68. Since Good Times is the only Ducati dealer in the “Sacramento CBSA” and therefore has a
 11 geographic monopoly in the area, it is relevant to compare its sales of Ducati motorcycles in that market
 12 with other Ducati dealers located outside the “Sacramento CBSA”¹³ (i.e., “intrabrand competition”): (PR-
 13 561)

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>To</u> <u>6/30/07</u>
All Models – Good Times’ Sales To Customers Living in The Sacramento CBSA	31	30	44	41	27
All Models – Sales By Ducati Dealers Other Than Good Times To Customers Living in The Sacramento CBSA ¹⁴	<u>+ 24</u>	<u>+ 36</u>	<u>+ 31</u>	<u>+ 27</u>	<u>+ 23</u>
Total Ducati Sales in The Sacramento CBSA	55	66	75	68	50

22 69. Protestant made an average of approximately 55% of the above sales and, in the first six
 23 months of 2007, its sales percentage in the “Sacramento CBSA” was 54%. (PR-562)

24 70. Geographical competitors to protestant are the following Ducati franchisees: the closest is
 25

26 ¹² Exhibits 507 to 518, inclusive, 12 exhibits in all, are “dot maps” showing Good Times’ Ducati sales (exclusively), for
 different years and different geographical areas. (III:44)

27 ¹³ These are “pump-ins” or “in-sells”.

28 ¹⁴ There is no evidence of where---either within the “Sacramento CBSA” or within the immediate vicinity of Sacramento---
 customers lived who purchased Ducati motorcycles from other than Good Times, or the identities of the Ducati dealers (other
 than protestant) making such sales. (III:46-47)

1 in Modesto (the “freestanding” Ducati dealership); the next closest is in Contra Costa County in the East
2 Bay of the San Francisco area; and the Reno, Nevada, Ducati dealer is the closest toward the east. There
3 are no Ducati dealerships north of Sacramento to the border. (II:78-79; PR-512, PR-514, and PR-518)

4 “Interbrand Competition”

5 71. In its assessments, Ducati uses data from the Motorcycle Industry Council (“MIC”). MIC
6 is a non-profit organization funded by a trade organization whose membership is mainly large motorcycle
7 manufacturers (including Ducati). (I:114-115)

8 72. The MIC database is composed exclusively of information from warranty registrations
9 from new motorcycle sales, not from state or local registrations. A warranty registration is “when the
10 dealer informs the manufacturer that they have sold a motorcycle...the manufacturer then activates the
11 warranty for the customer”. There are incentives to encourage dealers to submit warranty registrations in
12 a timely manner. (I:115-117, 120)

13 73. Each manufacturer-member of MIC, including Ducati, submits its sales data, generated
14 from the information in the warranty registrations received from its dealers, to MIC each month.

15 74. Each manufacturer also designates the market segment (sportbike, touring, traditional, or
16 cruiser) into which each of its models is to be placed in the MIC database. Since motorcycle models do
17 not necessarily fit squarely into the general descriptions of the four segments, manufacturers have
18 discretion in reporting that a particular model falls into one segment as opposed to another; this discretion,
19 in turn, will affect statistical analyses of competitive segments. (I:115-117, 120, 165-167)

20 75. MIC “geocodes” the sales data it receives by organizing the information from the warranty
21 registrations in usable arrangements so that each manufacturer may assess its own (and its dealers) sales
22 performance. Each manufacturer has “full visibility” over its own data, including the customer’s name,
23 address, ZIP Code, price paid, the model and displacement of the motorcycle, and market segmentation.
24 (I:117-120, 132)

25 76. Manufacturers may also access the MIC database for limited information about
26 competitors’ sales: only the manufacturer’s name, the model of the motorcycle sold, and the customer’s
27 ZIP Code are available. (I:117, 121) Using the MIC database, manufacturers may compare their sales
28 performance with that of other manufacturers. (PR-505)

1 77. A company's market share (or "penetration" of a market) is expressed as a percentage,
 2 calculated by using the company's sales as a numerator and competitor sales as a denominator.
 3 Companies use market share percentages, among other things, to evaluate the performance of products,
 4 market areas and dealers. In Ducati's market share calculations, the number of its sales and those of its
 5 competitors are based on the number of motorcycle warranty registrations transmitted to MIC.

6 78. For purposes of market analysis, Ducati uses for some metropolitan areas the United States
 7 Census Bureau's geographical area designation of "CBSA" (Core Based Statistical Area) or, where no
 8 CBSA is "defined", the county in which the Ducati dealership is located. (I:108; II:11)

9 79. The "Sacramento CBSA" is composed of four counties: Sacramento, El Dorado, Placer
 10 and Yolo Counties. Good Times, located in the far northern part of Sacramento County, is the only
 11 dealership selling Ducati motorcycles in the "Sacramento CBSA". (III:22, 43) A & S Motorcycle Parts is
 12 located north-east of Good Times, in Roseville, on the border of Sacramento and Placer Counties. (I:108-
 13 110, 152; II:74, 76; PR-501, PR-502)

14 80. Ducati's designation of the "Sacramento CBSA" geographical area (the 4-county area
 15 composed of Sacramento, its suburbs and environs) to evaluate the market potential of Ducati
 16 motorcycles is reasonable. The area of the "Sacramento CBSA" may also be referred to as the
 17 "Sacramento market".

18 81. To customers living in the "Sacramento CBSA", the following numbers of new Ducati
 19 motorcycles were sold by all Ducati dealers: (I:162-168 to II:1-2; PR-521 to PR-525, PR-561)

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>To 6/30/07</u>
Sportbike	28	28	22	24	22
Touring	5	8	8	6	1
Traditional	22	30	45	38	27
TOTALS	55	66	75	68	50

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82. The following numbers represent “competitive group registrations”, i.e., warranty registrations by all motorcycle manufacturers (including Ducati) to customers living in the “Sacramento CBSA” for the three segments of the “Ducati Relevant Market” (“DRM”): (I:162; PR-521 to PR-525)

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>To 6/30/07</u>
Sportbike	1159	1402	1842	2191	1053
Touring	1063	1161	1165	1235	562
Traditional	199	166	169	127	74
TOTALS	2421	2729	3176	3553	1688

83. Ducati expresses its market share in the “Sacramento CBSA” for each of the three segments as “actual penetration” percentages, which are measures of interbrand competition (i.e., competition between Ducati and competitive brands). Using the figures in the two charts above, Ducati calculates each percentage with the numerators being the Ducatis sold by all dealers and the denominators being the “competitive group registrations”: (PR-536, PR-540, PR-559)

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>To 6/30/07</u>
Sportbike	2.4%	2.0%	1.2%	1.11%	2.1%
Touring	0.5%	0.7%	0.7%	0.5%	0.2%
Traditional	11.0%	18.1%	26.6%	29.9%	37.0 %

84. Each of these three market share percentages is generally accurate and each may be used as a basis for further analysis of Ducati’s sales performance in the “Sacramento CBSA”.¹⁵

85. Ducati also calculates percentages from the figures from the “Total” columns from the two charts above in the same manner with the following results: (PR-551, PR-553, PR-563)

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>To 6/30/07</u>
TOTALS	2.27%	2.42%	2.36% or 3.05%	1.91%	2.96%

¹⁵ A factor contributing to inaccuracy is that which affects all MIC data: each manufacturer defines the segment into which it reports a particular model, which designations may be questionable or inaccurate. (I:166-167)

1 86. However, these "total" percentages are entitled to little or no weight as evidence and may
2 not be used as a basis for further analysis. The three segments are too different from one another to be
3 combined in this manner. Since Ducati has only a miniscule .18% market share of the very large touring
4 bike segment and a whopping 37.00% market share of the tiny traditional bike segment, simply adding up
5 columns of figures and calculating percentages from the totals produces misleading results.

6 Ducati's Analysis of the "California Represented" Market

7 87. Ducati has compared the performance of the "Sacramento CBSA" with three markets: the
8 "California Represented" Market, the "California Market" and the five Bay Area counties of the "San
9 Francisco CBSA". In each analysis, according to Ducati, the "Sacramento CBSA" has "underperformed"
10 and needs another Ducati dealer. (II:9-13; III:20, 32; PR-559)

11 88. However, Ducati presented neither demographic nor geographic information to assist in the
12 interpretation of the numbers its analyses have produced, and the conclusions it has reached---based upon
13 the numbers---are therefore entitled to little or no weight as evidence. Ducati's argument that
14 "demographic factors" are somehow subsumed within the sales figures is expressly rejected.¹⁶ (II:3-5;
15 III:35-38) Similarly, Ducati's conclusion that there were "lost sales" from the "Sacramento CBSA" for
16 which Good Times is responsible cannot be evaluated without knowing where within the "Sacramento
17 CBSA" the customers lived who bought Ducatis from dealers other than protestant, and which competing
18 Ducati dealer got those sales.

19 89. Ducati considers the "California represented" market as the "most appropriate" standard in
20 judging Ducati sales performance to customers living in the "Sacramento CBSA". (II:12-13) The
21 following analytical steps are used by Ducati in this inquiry, which are the same or similar to its analysis
22 of the performances of the other two markets:

23 (1) Ducati defines the area to be surveyed. The "California represented" market
24 includes only those areas where Ducati has "representation", therefore excluding all geography north of
25 Sacramento and some large Southern California counties, such as San Bernardino and Riverside, where
26 there are no dealerships selling Ducatis. (II:10-11, 13) It is the following: the Sacramento CBSA (four

27 ¹⁶ As examples, there is no demographic information regarding gender, age, or marital status of the various populations;
28 population density; population growth; or average household income. Geographic information is nonexistent, so natural
barriers (such as mountains, deserts and lakes) or artificial ones (such as military bases, parks and roadways) are not
considered.

1 counties); the San Francisco CBSA (five counties); the San Jose CBSA (two counties); the Los Angeles
2 CBSA (two counties); and six separate CBSA's (Santa Rosa-Petaluma, Modesto, Santa Cruz-Watsonville,
3 Salinas, Fresno, and Santa Barbara-Santa Maria). (I:163; PR-536)

4 (2) Next, Ducati calculates its market shares in the total "California represented"
5 market: (III:50, 60; PR-525, PR-536, PR-540)

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>To 6/30/07</u>
Sportbike	3.6%	3.9%	2.9%	2.4%	4.75%
Touring	0.7%	1.1%	0.9%	0.7%	0.67%
Traditional	21.3%	26.4%	33.1%	43.2%	44.58%

11 (3) Ducati then applies these percentages to the "Sacramento CBSA" by multiplying
12 the competitive group sales numbers in the "Sacramento CBSA" by these percentages, obtaining numbers
13 it calls "expected registrations" (i.e., Ducati's sales performance in the "Sacramento CBSA" if it had
14 attained the same sales percentages as the collective "California represented" percentages).

15 (4) Ducati then uses these "expected registration" numbers in two ways:

16 A. Ducati fractionalizes the "expected registration" numbers with actual Ducati
17 sales in the "Sacramento CBSA" and calculates an "efficiency percentage" for each number, thus
18 comparing the "level of performance" of Ducati sales in the Sacramento CBSA "versus a set of
19 parameters" which, in this analysis, is the "California represented" market; and

20 B. Ducati adds or subtracts the "expected registration" numbers with the
21 numbers of actual Ducati warranty registrations in the "Sacramento CBSA" to get "lost sales". (III:88;
22 PR-521 to PR-525)

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1 (5) According to Ducati, the higher the “efficiency percentage” number, the better the
 2 sales performance because the numbers approximate more closely the “California represented” numbers.
 3 The “efficiency percentages” of the “Sacramento CBSA” are the following: (PR-521 to PR-525)

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>To 6/30/07</u>
Sportbike	67.67%	51.5%	40.90%	46.41%	43.98%
Touring	65.33%	61.0%	79.85%	73.61%	26.56%
Traditional	52.02%	68.4%	80.35%	69.31%	82.97%

8
 9 (6) Lastly, Ducati calculates sales “lost” in the “Sacramento CBSA” to other brands:
 10 (PR-525, PR-536)¹⁷

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>To 6/30/07</u>
Sportbike	16	24	25	17	28
Touring	0	1	-1	0	3
Traditional	19	14	21	45	6

16 *The Convenience of Consumer Care Offered by Good Times*

17 90. Since Good Times has a “dedicated Ducati mechanic”, there is usually not a wait for a
 18 customer to get service. If, on occasion, a customer must wait, it is “usually” not more than a few days
 19 and “that is only because we want to make sure we get the Ducati mechanic to do that repair.” (IV:56)

20 **Findings Relating to Whether the Establishment of an Additional Franchise**
 21 **Would Increase Competition and Therefore be in the Public Interest [Section 3063(e)]**

22 91. Ducati’s market share is small, but sales are growing steadily and impressively. Although
 23 it is a “niche” product, therefore appealing to a certain type of buyer (older, male, more affluent and
 24 knowledgeable), there is ample room for increased competition within this expanding market.

25 92. The establishment of a second Ducati franchise in the Sacramento area would increase
 26 competition, both between protestant and A & S Motorcycle Parts, and between the Ducati line-make and
 27

28 ¹⁷ These figures differ from those in PR-521 to PR-525.

1 other brands. There is room for two dealerships to attempt to exploit a growing consumer interest in
2 Ducati motorcycles. Consumers will have clear choices, since each dealership offers unique approaches
3 to the public: A & S Motorcycle Parts will market exclusively European products in a polished
4 atmosphere, while Good Times will continue to primarily market to its customer base of sport bike
5 enthusiasts aged 19 to 26 in a casual, masculine, atmosphere.

6 93. With increased marketing of Ducatis, consumer interest in the line-make would be
7 enhanced, and competition between Ducati and other brands would increase, which would also be in the
8 public interest.

9 ANALYSIS

10 *Permanency of the Investment [Vehicle Code section 3063(a)]*

11 94. In 1995, protestant purchased the right to sell Ducati motorcycles from another Sacramento
12 dealership, one called Mega Cycles.¹⁸ This was an astute investment: Good Times' Ducati franchise,
13 acquired for the minimal purchase price of \$17,000, has yielded substantial monetary returns.

14 95. However, since that initial outlay, there have been no additional contributions made by
15 protestant attributable solely to the enhancement of the Ducati line-make (as opposed to items held for
16 resale, such as parts and accessories). Even capital improvements to the dealership's real estate and other
17 expenditures (which benefit all line-makes carried by protestant) have been small.

18 96. Therefore, protestant has not sustained its burden of proof of showing permanency of its
19 investment, despite the Walker family's substantial investment in the dealership real estate, its longevity
20 in the motorcycle business, the number of its employees, and the length of its Ducati franchise.

21 *Effect on the Retail Motor Vehicle Business and the Consuming Public* 22 *in the Relevant Market Area [Vehicle Code section 3063(b)]*

23 97. Protestant has not sustained its burden of proof in this regard. No adverse effect on the
24 retail motorcycle business and the consuming public has been shown, despite the fact that the prospective
25 dealership is only 7.5 miles from protestant's store.

26 98. Protestant has a viable business, generating substantial income from the sales and servicing
27

28 ¹⁸ Typically, in the motor vehicle industry, dealer franchises are granted by the manufacturer, not bought and sold between dealers, as was the case here.

1 of a number of line-makes of motorcycles, ATV's and personal watercraft. Although a second dealership
2 in the area may cause protestant's Ducati sales to decline, its business will not be devastated. Its sales
3 may increase, since more customers may come to the area to shop for motorcycles.

4 99. The consuming public would benefit by the attractiveness of a modern spacious facility
5 and the amenities it offers.

6 Whether it is Injurious to the Public Welfare for an
7 Additional Franchise to be Established [Vehicle Code section 3063(c)]

8 100. In fact, the public welfare will be enhanced: the public's observation of the new activity at
9 A & S Motorcycle Parts (the use of the previously-vacant showroom and underutilized service facilities)
10 will increase consumer confidence and convenience.

11 Whether Good Times is Providing Adequate Competition and Convenient Consumer
12 Care, Taking Into Consideration Facilities and Personnel [Vehicle Code section 3063(d)]

13 101. Protestant has established that it is providing adequate competition and convenient
14 consumer care. This is true even though its facilities have not been upgraded, its retail showroom is
15 crowded, its salespersons may have been inefficient, and its service facilities may have been disorganized.

16 102. Good Times is an "adequate" representative of the Ducati line-make. Its sales generally
17 conform to other market areas. Its service department is responsive to customers.

18 103. It is true that upward trends of Ducati sales in other areas and nationwide are not reflected
19 in Good Times' market share, which has held steady at about 54% of the sales in the "Sacramento
20 CBSA". This could be due to a number of factors, unknown in this proceeding. However, in part, it may
21 be reflective of protestant's lack of initiative or innovation in promoting the Ducati line-make.

22 Whether the Establishment of a New Dealership would Increase
23 Competition and Therefore be in the Public Interest [Vehicle Code section 3063(e)]

24 104. Since sales of Ducati motorcycles have increased steadily in recent years, establishing a
25 new dealership will create opportunities for increased competition, despite the limited appeal of the brand.
26 Protestant and the proposed franchisee present different marketing choices to consumers, which will be in
27 the public interest.

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DETERMINATION OF ISSUES

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2 1. Protestant has not sustained its burden of proof of establishing the permanency of its
3 investment. [Section 3063(a)]

4 2. Protestant has not proved an adverse effect on the retail motor vehicle business and the
5 consuming public in the relevant market area and therefore has not sustained its burden of proof in this
6 respect. [Section 3063(b)]

7 3. Protestant has not proved that it would be injurious to the public welfare for an additional
8 Ducati dealership to be established and therefore has not sustained its burden of proof in this respect.
9 [Section 3063(c)]

10 4. Protestant has sustained its burden of proof of establishing that it is providing adequate
11 competition and convenient consumer care for Ducati vehicles in the relevant market area, taking into
12 consideration the adequacy of motor vehicle sales and service facilities. Protestant has not sustained its
13 burden of proof of showing its adequacy of equipment, supply of vehicle parts, and qualified service
14 personnel. [Section 3063(d)]

15 5. The establishment of a new Ducati dealership would increase competition and therefore be
16 in the public interest; Protestant has not sustained its burden of proof in this regard. [Section 3063(e)]

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1 PROPOSED DECISION

2 Based on the evidence presented and the findings herein, it is hereby ordered that Protest No. PR-
3 2048-07 is overruled. Protestant has not met its burden of proof under Vehicle Code section 3066(b) to
4 establish that there is good cause not to enter into a Ducati franchise establishing A&S Motorcycle Parts,
5 Inc., as a Ducati dealer at 1125 Orlando Avenue, Suites F & G, Roseville, California.

6
7 I hereby submit the foregoing which constitutes my
8 Proposed Decision in the above-entitled matter, as
9 the result of a hearing before me and I recommend
10 this Proposed Decision be adopted as the decision of
11 the New Motor Vehicle Board.

12 DATED: January 22, 2008

13 By: _____

Diana Woodward Hagle
14 DIANA WOODWARD HAGLE
15 Administrative Law Judge
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26 George Valverde, Director, DMV
27 Mary Garcia, Branch Chief,
28 Occupational Licensing, DMV