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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

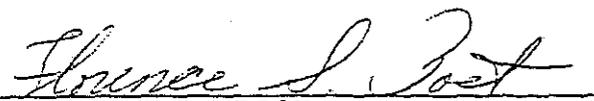
In the Matter of the Protests of)
)
SHERMAN OAKS CYCLES, INC.,) Protest Nos. PR-216-79
a California Corporation,)
)
KOLBE CYCLE SALES, INC.,) PR-217-79
a California Corporation,)
)
KOLBE CYCLE SALES, INC.,) PR-218-79
a California Corporation,)
)
ALLYN SCHULTZ, dba ALLYN'S) PR-219-79
SAN FERNANDO HONDA-KAWASAKI,)
)
BILL ROBERTSON & SONS, INC.,) PR-220-79
dba HONDA OF NORTH HOLLYWOOD, and)
)
BILL ROBERTSON & SONS, INC.,) PR-221-79
dba HONDA OF BURBANK,)
)
)
Protestants,)
)
vs.)
)
AMERICAN HONDA MOTOR CO., 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 9th day of May, 1979.



FLORENCE S. POST
President
New Motor Vehicle Board

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AMERICAN HONDA MOTOR CO., INC.,)	
Respondent.)	

PROPOSED DECISION

Procedural Background

1. Respondent, American Honda Motor Co., Inc. ("Honda") gave notice on January 16, 1979, pursuant to Vehicle Code section 3062^{1/}, "that our dealership, Bob Gibbons & Sons, Inc.^{2/},

1. All references are to the Vehicle Code, unless otherwise indicated.

2. Hereinafter referred to as "Gibbons".

dba Honda Van Nuys, 14329 Victory Boulevard, Van Nuys, California 91401, will be relocating to a new facility and will be under a new ownership . . . (at) 6160 Van Nuys Boulevard, Van Nuys, California 91401".

2. Protests were filed with the New Motor Vehicle Board on January 24, 1979 and January 25, 1979 by the following Honda dealers in the relevant market area: Sherman Oaks Cycles, Inc. ("Sherman"), Kolbe Cycles Sales, Inc. (at two locations), Allyn's San Fernando Honda-Kawasaki, Honda of North Hollywood and Honda of Burbank.

3. A hearing was held pursuant to section 3066 before Richard C. Wulliger, Hearing Officer of the New Motor Vehicle Board, in Los Angeles, California on March 12, 1979. Protestants were represented by David Laufer, Esq., of Laufer & Roberts. Honda was represented by Arnold Sklar, Esq., of Lyon & Lyon.

Issues Presented

4. Protestants contend that the establishing and/or relocation of the proposed dealership is not exempted from the provisions of section 3062(a) by section 3062(b).

5. Protestants contend that good cause exists for not establishing or relocating the proposed dealership for the following reasons:

(a) The establishment of the proposed dealership will jeopardize the permanent investments of the protestants (§3063(1));

(b) The proposed dealership will adversely affect the retail motor vehicle business and the consuming public in the relevant market area (§3063(2));

(c) The proposed dealership will injure the public welfare (§3063(3));

(d) Protestants are providing adequate competition and convenient consumer care for the motor vehicles of the line-make in the market area (§3063(4));

(e) The proposed dealership would not increase competition and therefore would not be in the public interest (§3063(5)).

Findings of Fact

Finding Relating to Relocation Less Than One Mile from the Existing Location of the Dealership (§3062(b)).

6. Gibbons sold his Honda dealership to Fred Woodward ("Woodward") and concurrently with the termination of Gibbons as the Honda dealer at 14329 Victory Boulevard, Van Nuys, California, Woodward will become the Honda dealer at 6160 Van Nuys Boulevard, Van Nuys, California.

7. The number of Honda dealerships in the relevant market area will not be increased as a result of the above transaction

8. The new location of the Honda dealership in Van Nuys at 6160 Van Nuys Boulevard is approximately six blocks

from its present location at 14329 Victory Boulevard, i.e. less than one mile, and both locations are in the same relevant market area and city.

Findings Relating to Permanency
of Investment (§3063(1))

9. Sherman has been a franchised Honda dealer since 1972 and has been, since that time, located at 14460 Ventura Boulevard, Sherman Oaks, California.

10. As of January 31, 1979, the value of Sherman's assets was over \$215,000, its liabilities over \$155,000 and its net worth over \$60,000.

11. The proposed dealer will have an investment in the new location which initially will be at least \$152,000, including \$35,000 in permanent improvements to the building. Extensive work on the new facility has already been done.

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

12. Gibbons has been a Honda dealer at its present location at 14329 Victory Boulevard, Van Nuys, California since the 1960's.

13. When Sherman became a Honda dealer at his present location in 1972, Gibbons had been in business as a Honda dealer for several years at his present location.

14. The proposed transaction, i.e. the sale by Gibbons to Woodward of Gibbons' Honda dealership and the relocation of this Honda dealership from the present location in Van Nuys to the new location in Van Nuys, will not affect the protestants in general in sales or otherwise, nor affect the sales of Sherman in particular.

15. The new location will be as convenient for the public to reach as is the present location. Both are very accessible.

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

16. Honda is not establishing an additional franchise.

17. The last motorcycle dealer established by Honda in the San Fernando Valley (the predecessor of Sherman) was established in 1965.

18. The Van Nuys area wherein both the old facility and the new facility are located is heavily populated.

19. The proposed transaction will have no adverse effect on the public.

20. The proposed dealer (Woodward) is experienced. He is presently a Honda dealer at another location and has been for approximately two years.

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

21. During the riding season, the Honda dealers in the San Fernando Valley do not have enough service capacity.

22. Sherman has no room to expand its service facility.

23. The sale of new Honda motorcycles in the San Fernando Valley declined in November from 1977 to 1978.

24. Sherman sold fewer new Honda motorcycles in 1978 than in 1977. This was chiefly due to the owner of Sherman having purchased a Harley-Davidson store in Canoga Park and having someone else running the Sherman Oaks location. Since the owner of Sherman is back managing the Sherman Oaks location, its sales have increased. During this entire period, the Honda dealership in Van Nuys was located on Victory Boulevard.

25. In 1977 and 1978, 26 per cent of Sherman's new Honda sales were registered in the Sherman Oaks area, 44 per cent were registered in other areas of the San Fernando Valley, and 30 per cent were registered outside of the San Fernando Valley.

26. In 1977 and 1978, 35 per cent of the sales by Sherman of new Honda motorcycles into the Van Nuys marketing area were registered north of Victory Boulevard where Gibbons is located. Thus Sherman, who is located south of Gibbons, is attracting and selling to customers who are located north of Gibbons.

27. All protestants had a significant number of their sales in other dealer's primary market areas within San Fernando Valley and also outside of San Fernando Valley.

28. Customers are not primarily concerned with the exact location of the dealership and will travel a considerable distance to find what they feel is the right dealership. Therefore a minor change in the location of the Honda dealership in Van Nuys is not going to have any significant effect on Sherman.

Findings Relating to Increased Competition
and the Public Interest (§3063(5)).

29. Honda is not establishing an additional franchise.

30. The six protestants are not selling a substantial number of their new Honda motorcycles into the Van Nuys area. Only 8 percent of their total sales in 1977 and 1978 were into the Van Nuys area. Sherman sold only 11 percent of its new Honda motorcycles in the Van Nuys area in 1977 and 1978.

31. Sales of new Honda motorcycles by Gibbons have declined in number from 1974 to 1978.

32. The new location will service approximately 35 to 40 motorcycles daily. Its total building facility will be approximately 8,000 square feet while the present location has approximately 5,000 square feet under roof. The new service

facility is far superior to that of the old and should result in quicker service, less downtime and more convenience for customers.

33. The proposed dealer will have a physical plant at the new location capable of providing sales and service to the public at least equivalent to that provided at the present location.

Findings Relative to Kolbe Cycle Sales, Inc.
(Two Locations), Allyn's San Fernando Honda-
Kawasaki, Honda of North Hollywood and Honda
of Burbank.

34. There is no evidence to support the contentions that the proposed dealership; will jeopardize protestants' permanent investments; will adversely affect the retail motor vehicle business and consuming public in the relevant market area, or will injure the public welfare; that protestants are providing adequate competition and convenient consumer care for the motor vehicle of the line-make in the market area; or that the proposed dealership would not increase competition and therefore would not be in the public interest.

Determination of Issues

1. Under section 3062(b), this is a relocation of an existing dealership to a location within one mile of the existing location of the dealership and to a location within the same relevant market area within the same city where the exist-

ing dealership is located. Section 3062(a) is not applicable to these facts

When ownership of the dealership changes, it is still an "existing dealership" under section 3062(a) and (b). The sale of a dealership, i.e. the business of the dealer, by one person to another person, does not constitute "establishing an additional . . . dealership" under section 3062(a).

2. Notwithstanding the above determination protestants have failed to establish that good cause exists for not permitting the enfranchisement of the proposed dealer, Woodward, at 6160 Van Nuys Boulevard, Van Nuys, California, protestants have failed to establish that:

(a) The proposed dealership will adversely affect permanent investment of protestants.

(b) The proposed dealership will adversely affect the retail motor vehicle business and the consuming public in the relevant market area.

(c) The proposed dealership will be injurious to the public welfare.

(d) The franchisees of the same line-make in the relevant market area are providing adequate competition and convenient consumer care for the motor vehicle of the line-make in the relevant market area.

(e) The proposed dealership will not increase competition and therefore would not be in the public interest.

* * * * *

The following proposed decision is respectfully submitted:

Pursuant to Determination of Issue #1, the Board does not have jurisdiction to consider these protests.

However, if such jurisdiction could be established, the protests would be overruled due to protestants failure to meet their burden of proof.

The respondent is entitled to enfranchise Woodward at 6160 Van Nuys Boulevard, Van Nuys, California.

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

Dated:



RICHARD C. WULLIGER
Hearing Officer
New Motor Vehicle Board