

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of:)
)
JOE BARTON, SAM TIEFER,) Protest No. PR-242-79
THREE STAR SUZUKI SPORT CYCLES,)
)
) Protestants,)
)
vs.)
)
U. S. SUZUKI MOTOR CORPORATION,)
)
) Respondent.)
)
_____)

PROPOSED DECISION

Procedural Background

1. Respondent, U. S. Suzuki Motor Corporation ("Suzuki") gave notice pursuant to section 3062 of the Vehicle Code,^{1/} by letter dated June 15, 1979, that it intended to establish Handy Cycles as a dealer of Suzuki motorcycles, parts, accessories, and service at 12973 Washington Boulevard, Los Angeles, California, 90066.

2. The Protestants, doing business as Three Star Suzuki Sport Cycles ("3 Star"), filed a protest on June 27, 1979, with the New Motor Vehicle Board, requesting a hearing.

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

3. A notice was also sent to Suzuki City of Inglewood, a Suzuki dealer within the relevant market area. No protest was filed by that dealer.^{2/}

4. A hearing was held pursuant to section 3066 before Aaron S. Resnik, Administrative Law Judge, appointed by the Board, commencing on August 20, 1979, at the Federal Building in Laguna Niguel, California. 3 Star was represented by A. Albert Spar, Esq. of the law firm of Sidney I. Pilot, a Professional Corporation, of Los Angeles. Suzuki was represented by Philip J. Metzinger, Esq. of the law firm of Rimel and Helsing, Inc., Santa Ana.

Issues Presented

5. 3 Star contends that good cause exists for not entering into a franchise establishing a dealership at the proposed location for the following reasons:

a. The additional franchise will jeopardize the permanent investment of 3 Star (3063(1));

b. The additional franchise will have an adverse effect on the retail motorcycle business and the consuming public in the relevant market area (3063(2));

c. It would be injurious to the public welfare for the additional franchise to be established (3063(3));

d. Franchisees of the same line make are providing adequate competition and convenient care for Suzuki owners and buyers in the relevant market area (3063(4));

2. Although the protestants advised that the Inglewood dealer would be called as a witness and was available, no witness from that dealership was called. RT 10; see Evidence Code §913; Jefferson, California Evidence Benchbook §35.3.

e. The establishment of the additional franchise would not materially increase competition, but on the contrary, it would dilute and subdivide the relevant market area so that the dealers would be unable to adequately serve the Suzuki owners and buyers; hence, it would not be in the public interest (3063(5)).

FINDINGS OF FACT

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

6. 3 Star is franchised by both Suzuki and Kawasaki. It has been a Suzuki dealer for approximately fourteen (14) years and a Kawasaki dealer for ten (10) years. 3 Star has been at its present location for thirty-two (32) years.

7. 3 Star owns the real estate and improvements at its dealership. These assets have a present value of approximately \$175,000. 3 Star also rents the store adjoining it at a monthly rental of \$450 with an anticipated increase to \$1,000 per month.

8. 3 Star sales over the years have been divided approximately equally between Suzuki and Kawasaki. In the past year, Suzuki accounted for 54% and Kawasaki 46%. 3 Star maintains approximately \$30,000 in parts inventory divided evenly between Suzuki and Kawasaki. 3 Star's new motorcycle inventory is between \$120,000 and \$130,000, of which \$50,000 - \$60,000 represents Suzuki motorcycles.

9. 3 Star has seven full-time employees in addition to its two owners who also work full time, and the partners' wives, who work part time in the business.

10. The proposed new franchisee, Handy Cycles, is located approximately five and one-quarter miles west of 3 Star. The business is owned by Barry Sulkin, who was not called as a witness.

11. Handy Cycles is not presently selling new motorcycles; it acts as a service facility for motorcycles and sells parts and used motorcycles. It has been at its present location for about three years.

12. Handy Cycles has flooring commitments of \$150,000, a modern facility with adequate square footage to engage in the sale of new motorcycles, and otherwise generally meets Suzuki's dealer guidelines.

Facts Relating to the Effect on the Consuming Public (§3063(2))

13. 3 Star sold approximately 140 Suzuki motorcycles during the period July, 1978, through June, 1979.

14. Approximately fifty percent of the above sales were made to consumers residing to the south and west of 3 Star, in the direction of the proposed new dealership.

15. 3 Star's purchases from Suzuki and sales to retail customers during the model years indicated (October 1 to October 1) were as follows:

<u>Year</u>	<u>Purchases</u>	<u>Sales</u>
1979	167	129
1978	57	52
1977	41	32
1976	41	71

16. Both 3 Star and Handy Cycles are in densely populated areas. The exclusive territories^{3/} assigned to each by Suzuki had populations of almost 100,000 as of 1970.

17. After the Protest was filed in this matter, Suzuki formulated, through its District Sales Manager, boundaries that it thought would be the principal marketing areas of 3 Star and the new dealership.

18. At the time that 3 Star became a Suzuki dealer, there was a competing dealer within three to four miles of its location. A Suzuki dealer within three miles of 3 Star discontinued operations in 1979.

19. 3 Star is the only Suzuki dealership in the central area of Los Angeles.

20. Each of its major competitors--Honda, Yamaha, and Kawasaki--has as many or more dealerships as does Suzuki in the area surrounding 3 Star and the proposed dealership.

3. Suzuki's concept of "exclusive territory" relates to the area immediately surrounding a dealership; where it would not propose to establish a competing entity.

21. There are 13 instances in Los Angeles and Orange Counties where existing Suzuki dealers are located within 5 miles of another Suzuki dealer.

22. 3 Star and the proposed dealership are in different cities and are separated by the San Diego and Santa Monica freeways.

Facts Relating to the Public Welfare (§3063(3))

23. During all of 3 Star's existence as a Suzuki dealer, until late 1979, there was another Suzuki dealer within 5 miles of its establishment. First, it was "N & M", and then Valerian, neither of which is still in business.

24. Although the establishment of too many dealers in a given geographical territory may have adverse consequences to the dealerships and to the public, the proper location of competing dealers can be beneficial.

25. It was only after a complete study of interbrand and intrabrand competition in the geographic locations of 3 Star and the proposed new dealership and the impact on the buying public, that Suzuki planned and sought approval for the establishment of Handy Cycles as a franchisee. Suzuki anticipates annual sales of 200 cycles for Handy Cycles.

26. Although Suzuki has no present plans to eliminate dual-line dealers, Suzuki's present policy is to appoint dealers who handle Suzuki exclusively. Accordingly, Handy Cycle would be a single-line and not a dual-line dealer.

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

27. Suzuki franchisees in the relevant market area are presently providing adequate sales and services, and Suzuki's plan to establish the proposed new dealership is not based upon any inadequacies in 3 Star's performance.

28. Some inadequacies in 3 Star's facilities have been brought to its attention; specifically, that its service department should be increased and general facility appearance can be improved.

29. 3 Star has responded by undertaking a program to increase its service facilities, employ more service personnel and otherwise improve its facilities.

30. 3 Star's sales activities in May, 1979, were reported as "good", with heavy floor traffic, and severe discounting.

31. 3 Star has limited its advertising to the telephone yellow pages. It has recently begun to participate in a "co-op" advertising program.

Facts Relating to Increased Competition in the Public Interest
(Section 3063(5))

32. In the area to the east of 3 Star, within the Metropolitan area of Los Angeles, there is no Suzuki dealer for 10 to 15 miles.

33. In the past, two Suzuki dealers within two to four miles of 3 Star--N & M and Valerian--have gone out of business for reasons not disclosed in the record.

34. In the five and one-quarter miles separating the proposed dealership and 3 Star, there are two distinct marketing territories, measured not only by population but separated as well by freeways and access roads.

35. Two of Suzuki's principal competitors--Honda and Yamaha--recognize that there are two distinct marketing territories in the area sought to be served by 3 Star and Handy Cycle.

36. 3 Star's principal competition has come from distant dealers who advertise in local papers and discount heavily. This has compelled 3 Star to engage in discounting also.

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DETERMINATION OF ISSUES

1. 3 Star has failed to sustain its burden of proof.

2. 3 Star has failed to establish that good cause exists for not establishing the proposed franchise for the following reasons:

a. Both 3 Star and the proposed new Suzuki dealership have permanent investments in their facilities; 3 Stars' investment would not be jeopardized by the opening of the proposed dealership.

b. 3 Star has failed to show that the opening of the new dealership will have a detrimental effect on the retail motorcycle business and the consuming public in the relevant market area.

c. The creation of the new dealership will insure greater intrabrand and interbrand competition in the relevant market area, thereby benefitting the consuming public.

d. Although 3 Star has provided convenient consumer care without apparent deficiency, establishment of the new dealership will result in improvement in this regard in the relevant market area.

e. The establishment of the additional franchise would increase competition and therefore be in the public interest.

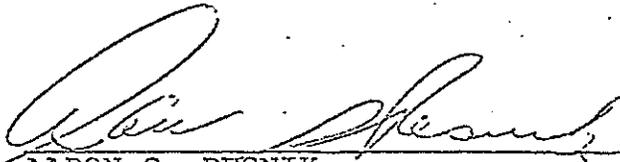
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Wherefore the following order is hereby made:

The protest is denied.

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 Laguna Niguel, California, and recommend its adoption as the decision of the New Motor Vehicle Board.

Dated: January 4, 1980



AARON S. RESNIK
Administrative Law Judge
New Motor Vehicle Board