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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of )

EUGENE JOHN BUONACCORSI dba )  
CORKY MOTORS, )

Protest No. PR-339-81

Protestant, )

vs. )

U.S. SUZUKI MOTOR CORPORATION, )

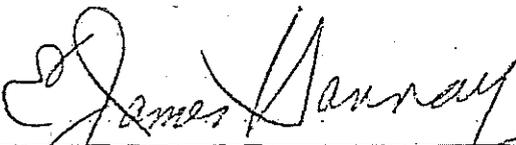
Respondent. )

DECISION

The attached Proposed Decision of the Administrative Law Judge 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 14 day of July, 1982.

  
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E. JAMES HANNAY  
President  
New Motor Vehicle Board

New Motor Vehicle Board  
1507-21st Street, Suite 330  
Sacramento, California 95814

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CORKY MOTORS, )  
Protestant, )  
vs. )  
U.S. SUZUKI MOTOR CORPORATION, )  
Respondent. )

Protest No. PR-339-81

PROPOSED DECISION

PROCEDURAL BACKGROUND

1. By a letter dated June 9, 1981, U.S. Suzuki Motor Corporation (Suzuki) notified Eugene John Buonaccorsi dba Corky Motors (Corky) of termination and cancellation of their Suzuki Dealer Agreement.

2. On July 1, 1981, Corky filed a protest with the New Motor Vehicle Board (Board) under the provisions of Vehicle Code § 3060.<sup>1/</sup>

3. A hearing on the protest was held before James P. Cooper, Administrative Law Judge for the Board. The

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<sup>1/</sup> All references are to the California Vehicle Code unless otherwise indicated.

hearing was conducted on March 9, 1982; March 23, 1982; March 24, 1982; and March 25, 1982.

4. Suzuki was represented by Duffern H. Helsing of the law firm of Helsing and Rockwell, Inc. Corky was represented by Barbara L. Detrich of the law firm of Spridgen, Barrett, Achor, Luckhardt, Anderson, James and Zeigler.

ISSUES PRESENTED

5. Vehicle Code § 3066 imposes upon Suzuki the burden of proof to establish that there is good cause to terminate or refuse to continue the franchise of Corky.

6. Vehicle Code § 3061 provides that, in determining whether there is good cause for terminating or refusing to continue a franchise, the Board shall take into consideration the existing circumstances, including, but not limited to:

- (a) Amount of business transacted by the franchisee, as compared to the business available to the franchisee [§ 3061(1)];

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- (b) Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise [§ 3061(2)];
- (c) Permanency of the investment [§ 3061(3)];
- (d) Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted [§ 3061(4)];
- (e) Whether the franchisee has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles handled by the franchisee and has been and is rendering adequate services to the public [§ 3061(5)];
- (f) Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee [§ 3061(6)]; and

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(g) Extent of franchisee's failure to comply with the terms of the franchise [§ 3061(7)].

7. Suzuki's letter of June 9, 1981, notifying Corky of the termination of the franchise agreement, stated specific reasons for the termination. The stated reasons all related to the amount of business transacted by the franchisee, as compared to the business available to the franchisee [§ 3061(1)].

FINDINGS OF FACT

FACTS RELATING TO THE AMOUNT OF BUSINESS TRANSACTED  
BY CORKY, AS COMPARED TO THE BUSINESS AVAILABLE TO IT  
[§ 3061(1)]

8. There are currently three Suzuki dealerships in Sonoma County. These are Cycle West in Petaluma, Healdsburg Cycle in Healdsburg, and Corky in Santa Rosa.

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9. The following indicates wholesale purchases and retail sales by Corky by model year:

<u>Model Year*</u>	<u>Wholesale Purchases by Corky from Suzuki</u>	<u>Retail Sales by Corky</u>
1974	98	92
1975	140	57
1976	34	112
1977	9	24
1978	38	31
1979	20	24
1980	20	21
1981	27	25

\*October 30 through September 1.

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10. The following indicates new motorcycle registrations as compared to Suzuki's registrations and Suzuki's percent of industry registrations in Sonoma County:

<u>Calendar Year</u>	<u>Total Industry Registrations</u>	<u>Total Suzuki Registrations</u>	<u>Suzuki's Percent of Industry</u>
1976	921	52	5.65
1977	1162	79	6.80
1978	1486	249	16.76
1979	1163	152	13.07
1980	1105	122	11.04

11. Sales by Sonoma County Suzuki dealers for model year 1979 and 1980 were as follows:

	<u>Model Year 1979</u>	<u>Model Year 1980</u>
Cycle West	87	92
Healdsburg Cycle	23	28
Corky	24	21

12. Corky's decline in sales can be attributed to financial problems encountered after Corky purchased a large number of new motorcycles from Suzuki in 1975. Corky had

difficulty selling the motorcycles. Due to Corky's financial problems, Corky's line of credit was terminated by the financing company in 1976. Because of Corky's inability to finance the purchase of new motorcycles from Suzuki, Corky's inventory decreased as did Corky's sales.

13. In September 1981, Corky obtained from ITT Diversified Credit Corporation (ITT) a \$35,000 line of credit, the amount required by Suzuki.

FACTS RELATING TO THE INVESTMENT  
NECESSARILY MADE AND OBLIGATIONS  
INCURRED BY CORKY TO PERFORM ITS  
PART OF THE FRANCHISE [§ 3061(2)]

14. Corky is a sole proprietorship owned by Eugene J. Buonaccorsi. Corky is a single line Suzuki dealership.

15. Corky became a Suzuki dealer on June 5, 1968, with facilities located at 603 Santa Rosa Avenue, Santa Rosa, California. At that time the facilities consisted of a lot with a "lean-to" structure.

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16. Commencing in 1969 Suzuki requested that Corky upgrade the facilities to meet Suzuki's standards. By October 13, 1972, the requests became insistent to the point that cancellation of the franchise was recommended by the Suzuki District Manager.

17. Corky constructed the present facility in 1973 at 606 Santa Rosa Avenue, Santa Rosa.

18. In January 1981, Buonaccorsi refinanced the dealership property by borrowing \$105,000 and executed a Deed of Trust in favor of the Bank of Sonoma County. In September 1981, Buonaccorsi executed a Deed of Trust on the dealership property in favor of ITT to secure the \$35,000 line of credit needed for the flooring of inventory.

19. Refinancing the dealership property increased Corky's monthly mortgage payments from \$362 per month to \$1600 per month.

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FACTS RELATING TO THE PERMANENCY OF THE INVESTMENT  
[\$ 3061(3)]

20. The dealership building was designed and specifically constructed with the approval of Suzuki in 1973, to serve as a Suzuki dealership.

21. Corky's present facilities are valued at \$202,000.

22. Corky has a parts and accessory inventory valued at approximately \$30,000.

FACTS RELATING TO WHETHER IT IS INJURIOUS  
OR BENEFICIAL TO THE PUBLIC WELFARE FOR  
THE FRANCHISE TO BE MODIFIED OR REPLACED  
OR THE BUSINESS OF THE FRANCHISEE DISRUPTED  
[\$ 3061(4)]

23. In the event of Corky's termination, Suzuki anticipates utilizing Cycle West and Healdsburg Cycle to service the consumers currently being serviced by Corky until a qualified replacement dealer can be recruited and established in Santa Rosa.

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24. Corky is located approximately 13 miles from Cycle West in Petaluma and approximately 14.2 miles from Healdsburg Cycle in Healdsburg.

25. Corky's hours of operation are from 9:00 a.m. to 6:00 p.m. Tuesday through Saturday.

FACTS RELATING TO WHETHER CORKY HAS ADEQUATE MOTOR VEHICLE SALES AND SERVICE FACILITIES, EQUIPMENT, VEHICLE PARTS, AND QUALIFIED SERVICE PERSONNEL TO REASONABLY PROVIDE FOR THE NEEDS OF THE CONSUMERS FOR THE MOTOR VEHICLES HANDLED BY THE FRANCHISEE AND HAS BEEN AND IS RENDERING ADEQUATE SERVICES TO THE PUBLIC [§ 3061(5)]

26. Corky provides full-line servicing to its consumers. Corky operates a mail order parts service to accommodate consumers in the outlying areas of Sonoma County.

27. Corky has maintained one licensed salesman, one parts man and one mechanic in its employ.

28. Corky has a parts and accessory inventory valued at approximately \$30,000.

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29. There was no evidence presented to indicate that Corky does not have adequate motor vehicle sales and service facilities, equipment, or vehicle parts.

30. There was no evidence presented to indicate that Corky does not have qualified service personnel to reasonably provide for the needs of the consumers of the motor vehicles handled by the franchisee.

31. There was no evidence presented to indicate that Corky is not rendering adequate services to the public.

FACTS RELATING TO WHETHER CORKY FAILS TO FUL-  
FILL SUZUKI'S WARRANTY OBLIGATIONS [§ 3061(6)]

32. There was no evidence presented to indicate that Corky has failed to fulfill Suzuki's warranty obligations.

FACTS RELATING TO THE EXTENT OF CORKY MOTORS'  
FAILURE TO COMPLY WITH THE TERMS OF THE  
FRANCHISE [§ 3061(7)]

33. The franchise agreement in effect between Suzuki and Corky provides in part that the dealer shall maintain at all times an adequate stock of Suzuki products for display,

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demonstration, sale and servicing including inventories of parts, accessories, and tools.

- (a) Corky has maintained a limited number of motorcycles in stock for display and sale purposes since being denied a line of credit for flooring purposes in 1976. Effective September 1981, Corky has established a line of credit of \$35,000 with ITT.

34. The franchise agreement in effect between Suzuki and Corky provides in part that the dealer agrees to participate in any existing or future cooperative advertising programs with Suzuki.

- (a) Corky has not participated in Suzuki's cooperative advertising programs for approximately three years.

#### DETERMINATION OF ISSUES

35. Suzuki has failed to establish that there is good cause to terminate or cancel Corky's franchise, in that:

- (a) Suzuki did not establish that the amount of business transacted by Corky, as compared to the business

available, is inadequate under the existing circumstances [§ 3061(1)];

- (b) Suzuki did not establish that Corky has not made substantial investment, and Suzuki did not establish that Corky did not incur substantial obligations to perform its part of the franchise agreement [§ 3061(2)];
- (c) Suzuki did not establish that the investment made by Corky was not permanent [§ 3061(3)];
- (d) Suzuki did not establish that it would not be injurious or that it would be beneficial to the public welfare for the franchise of Corky to be terminated or cancelled [§ 3061(4)];
- (e) Suzuki did not establish that Corky has inadequate motorcycle sales and service facilities, equipment, vehicle parts or qualified service personnel to reasonably provide for the needs of the consumers of Suzuki products or that Corky is not rendering adequate service to the public [§ 3061(5)];

- (f) Suzuki did not establish that Corky failed to fulfill the warranty obligations of Suzuki [§ 3061(6)]; and
  
- (g) Suzuki failed to establish that the extent of the failure of Corky to comply with the terms of the franchise agreement with Suzuki was substantial, or material or constituted good cause to terminate the franchise [§ 3061(7)].

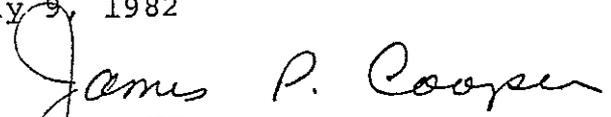
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The following proposed decision is respectfully submitted:

The Protest is sustained. Respondent is not permitted to terminate the franchise of Protestant.

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 aforementioned dates at Sacramento and Santa Rosa, California, and recommend its adoption as the decision of the New Motor Vehicle Board.

DATED: July 9, 1982

  
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JAMES P. COOPER  
Administrative Law Judge  
New Motor Vehicle Board