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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

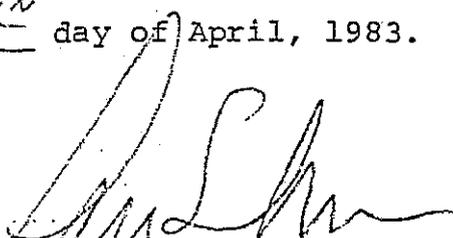
In the Matter of the Protests of)
)
ANAHEIM SUZUKI, INC.;) Protest No. PR-420-82
IRV SEAVER MOTORCYCLES, INC.,) Protest No. PR-421-82
)
) Protestants,)
)
) vs.)
)
U. S. SUZUKI MOTOR CORPORATION,)
)
) Respondent.)
_____)

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 6TH day of April, 1983.



ALLAN E. CONE
President
New Motor Vehicle Board

2. On November 16, 1982, Anaheim and Seaver each filed a protest with the New Motor Vehicle Board (Board) pursuant to Vehicle Code §3062.^{1/}

3. The Board issued an order consolidating the Anaheim and Seaver protests on November 19, 1982.

4. A hearing was held on January 20, February 1 and February 2, 1983, before James P. Cooper, Administrative Law Judge for the Board.

5. Anaheim and Seaver were represented by Michael J. Flanagan of the law firm of Pilot and Spar. Suzuki was represented by Richard S. Rockwell and Peter C. Freeman of the law firm of Helsing and Rockwell.

ISSUES PRESENTED

6. Protestants contend that there is good cause for not entering into the additional Suzuki franchise for the following reasons:

(a) The Protestants' investments are permanent; [§3063(1)]

^{1/} All references are to the California Vehicle Code unless otherwise indicated.

- (b) There will be an adverse effect on the retail motor vehicle business and the consuming public in the relevant market area; [§3063(2)]
- (c) The establishment will be injurious to the public welfare; [§3063(3)]
- (d) The Suzuki franchisees in the relevant market area are providing adequate competition and convenient consumer care for the owners of Suzuki motorcycles, including adequate Suzuki motorcycle sales and service facilities, equipment, supply of motorcycle parts and qualified service personnel; [§3063(4)] and
- (e) The proposed establishment would not increase competition and would not be in the public interest. [§3063(5)]

FINDINGS OF FACT

FINDINGS RELATING TO THE PERMANENCY OF INVESTMENT
[§3063(1)]

7. Suzuki stipulated that Protestants' investments are substantial and permanent.

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8. Seaver is a California corporation. The dealership was originally acquired by Irv Seaver in 1953. Seaver became a Suzuki franchisee in 1963. Mr. Bell (Bell) was employed by Mr. Seaver from August, 1959 until the purchase of Seaver by Bell in January, 1979. Mr. and Mrs. Bell are the sole shareholders of Seaver.

9. Seaver was the 11th Suzuki dealership appointed in the United States.

10. Anaheim is a California corporation. Bobby L. Cavness owns 60% of the stock of Anaheim, and the remaining 40% is owned by Mr. Saba Saba.

11. Mr. Cavness and Mr. Saba purchased Anaheim from Suzuki in November, 1978. Suzuki operated Anaheim during the preceeding 1 1/2 to 2 years, and had sustained a loss of \$50,000.

12. The location of the proposed dealership is 607 West Katella Avenue, Orange. The proposed dealer principal will be Mr. Avril Sparks (Sparks).

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13. Sparks previously owned the land on which the proposed dealership is to be located. Sparks currently holds a 10-year lease on this property, with 9 1/2 years remaining.

14. Sparks previously owned Kawasaki, Honda and Yamaha dealerships. All three were sold during 1982.

FACTS RELATING TO THE EFFECT ON THE RETAIL MOTOR VEHICLE
BUSINESS AND THE CONSUMING PUBLIC IN THE RELEVANT
MARKET AREA [§3063(2)]

15. The following chart indicates Suzuki dealerships in the relevant market area and the year each was established:

<u>Dealership</u>	<u>Location</u>	<u>Established</u>
Irv Seaver	Santa Ana	1953 ^{2/}
Anaheim	Anaheim	1978 (Nov.) ^{3/}
California Suzuki	Orange	1971 (Oct.) ^{4/}
Southland Cycle Center	Garden Grove	1969 (May)
Town and Country	Fullerton	1970 (May)

^{2/} The Suzuki franchise was acquired in 1963 and the dealership was purchased by its present owners in 1979. (See paragraph 8 supra.)

^{3/} Prior to acquisition by its present owners, Anaheim was operated by U.S. Suzuki, Inc. (See paragraph 11 supra)

^{4/} California Suzuki went out of business in June, 1982. (See paragraph 24 infra)

16. Anaheim is presently operating its service facility at 60% of capacity. Seaver is operating its service facility at 75% of capacity. No waiting periods for service or repair are being experienced at either dealership.

17. The following chart reflects the straight line distances from Protestants to the proposed location:

<u>Dealership</u>	<u>Proposed Location</u>
Anaheim	3 miles
Suzuki	3 miles

18. Anaheim and Seaver are four straight line miles apart.

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19. The following represents the market penetration of Suzuki in Orange County, as compared to the penetration of its three major competitors:

ORANGE COUNTY MARKET PENETRATION

<u>Period</u>	<u>Suzuki</u> <u>%</u>	<u>Honda</u> <u>%</u>	<u>Kawasaki</u> <u>%</u>	<u>Yamaha</u> <u>%</u>
1/79 to 12/79	12.73%	38.31%	12.65%	28.66%
1/80 to 12/80	13.17%	36.75%	15.13%	28.08%
1/81 to 12/81	12.96%	34.25%	15.73%	30.00%
1/82 to 10/82	14.23%	41.87%	13.10%	21.12%

20. The following represents the market penetration of Suzuki in District 1 (Los Angeles and Orange Counties) as compared to the penetration of Suzuki's three major competitors:

DISTRICT 1 MARKET PENETRATION

<u>Calendar Year</u>	<u>Suzuki</u> <u>%</u>	<u>Honda</u> <u>%</u>	<u>Kawasaki</u> <u>%</u>	<u>Yamaha</u> <u>%</u>
1/79 to 12/79	12.75%	45.30%	11.21%	22.80%
1/80 to 12/80	13.92%	43.64%	13.34%	21.88%
1/81 to 12/81	14.42%	38.99%	14.90%	24.61%
1/82 to 10/82	16.44%	44.99%	13.46%	18.48%

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21. The following represents the market penetration of Suzuki in California, as compared to the penetration of its three major competitors:

CALIFORNIA MARKET PENETRATION

<u>Period</u>	<u>Suzuki</u> %	<u>Honda</u> %	<u>Kawasaki</u> %	<u>Yamaha</u> %
1/79 to 12/79	12.17%	43.52%	12.30%	23.65%
1/80 to 12/80	13.84%	42.36%	13.74%	23.17%
1/81 to 12/81	13.24%	38.99%	14.73%	26.23%
1/82 to 10/82	13.85%	44.21%	13.20%	22.90%

22. The following represents the national market penetration of Suzuki as compared to the penetration of its three major competitors:

NATIONAL MARKET PENETRATION

<u>Period</u>	<u>Suzuki</u> %	<u>Honda</u> %	<u>Kawasaki</u> %	<u>Yamaha</u> %
1/79 to 12/79	13.34%	39.20%	14.94%	23.12%
1/79 to 11/80	15.25%	38.57%	15.76%	23.48%
1/81 to 12/81	14.03%	37.52%	16.21%	25.39%
1/82 to 10/82	14.77%	42.25%	13.58%	23.23%

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23. The following chart represents registrations of Suzuki motorcycles in the City of Orange for the periods indicated:

<u>Year</u>	<u>January to June</u>	<u>July to December</u>
1980	21	33
1981	44	30
1982	49	29 ^{5/}

FACTS RELATING TO WHETHER IT IS INJURIOUS TO THE PUBLIC
WELFARE FOR THE FRANCHISE TO BE ESTABLISHED
[\$3063(3)]

24. California Suzuki of Orange (California) was the previous Suzuki dealer in City of Orange. California was established at 1915 E. Katella Avenue in October 1971. In 1975, California was sold to Mr. Phillip Eppler, who operated the dealership until it failed in June, 1982.

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^{5/} California Suzuki failed in June, 1982.

25. In June of 1982, California voluntarily surrendered its Suzuki franchise and went out of business. The failure of California was due to high flooring costs and low profits on sales of Suzuki products.

26. The proposed location for Sparks will be three miles from both Anaheim and Seaver, which is one and one-half miles closer than the previous dealer, California.

FACTS RELATING TO WHETHER THE SUZUKI DEALERS IN THE RELEVANT MARKET AREA ARE PROVIDING ADEQUATE COMPETITION AND CONVENIENT CONSUMER CARE FOR THE OWNERS OF SUZUKI MOTORCYCLES, INCLUDING ADEQUATE SALES AND SERVICE FACILITIES, EQUIPMENT, SUPPLY OF VEHICLE PARTS, AND QUALIFIED SERVICE PERSONNEL [§3063(4)]

27. Suzuki stipulated that Anaheim and Seaver have adequate sales and service facilities, equipment, supply of vehicle parts and qualified service personnel.

28. There are currently four Suzuki dealerships in the relevant market area.

29. In 1982, Seaver sold 146 Suzukis at an average gross profit per unit of \$149.

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30. In 1982, Anaheim sold 118 Suzukis at an average gross profit per unit of \$110.

31. Competition among the Suzuki dealerships in the relevant market area is spirited.

FACTS RELATING TO WHETHER THE ESTABLISHMENT OF AN
ADDITIONAL FRANCHISE WOULD INCREASE COMPETITION AND
THEREFORE BE IN THE PUBLIC INTEREST [§3063(5)]

32. In July, 1982, Suzuki determined that the establishment of representation in the City of Orange was its number one priority in District 1.

33. Sparks approached Suzuki regarding the establishment of a franchise in the City of Orange in October, 1982. Prior to that time, Suzuki's sole effort to establish representation in the City of Orange was placement of a newspaper advertisement seeking applicants for several areas, including the City of Orange. The advertisement produced no applicants for the City of Orange.

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34. Population growth is projected in the eastern portion of the City of Orange and Orange County. Suzuki's proposed location is 1 1/2 miles west of the former dealership, which failed in 1982.

35. Suzuki does not request periodic financial statements from its dealers. Prior to its decision to establish the proposed dealership, Suzuki did not attempt to ascertain the financial condition of the four dealerships in the relevant market area.

36. By Suzuki's standards, a dealer should earn from 18% to 20% in annual gross profits, and between 4% and 8% in net profits.

37. The following represents the gross and net profit or loss for Anaheim for the periods indicated:

<u>Period</u>	<u>Gross Profit</u>	<u>Net Profit/Loss</u>
4/1/80 to 3/31/80	13.8%	\$2,438
4/1/80 to 3/31/82	13.3%	- \$3,960
4/1/82 to 12/31/82	13.7%	- \$8,653

38. In 1981, the owner of Seaver, Bell, drew a salary of \$20,000. In 1982, because of poor market conditions, Bell drew a salary of \$10,000. Because of the reduction in Bell's salary in 1982, Seaver earned a net profit of \$9,618. Had Bell not reduced his salary, Seaver would have sustained a loss of \$382.

DETERMINATION OF ISSUES

Protestants proved that there is good cause for not permitting the establishment in that:

- (a) Protestants and Respondent stipulated that both protestants' investments are permanent. Protestants proved that their respective investments will be adversely affected; [§3063(1)]
- (b) Protestants proved that the establishment will have an adverse effect on the retail motorcycle business and the consuming public in the relevant market area; [§3063(2)]
- (c) Protestants proved that the establishment would be injurious to the public welfare; [§3063(3)]
- (d) Protestants proved that the Suzuki franchisees in the relevant market area are providing adequate competition. Respondent stipulated that protestants are providing convenient consumer care for the

owners of Suzukis, including adequate sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel; [§3063(4)] and

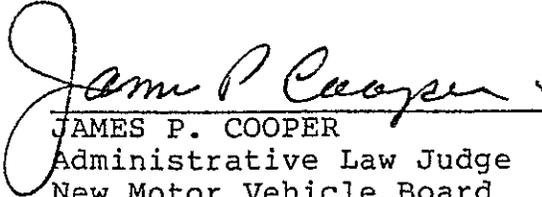
- (e) Protestants proved that the establishment would not increase competition, and would not be in the public interest. [§3063(5)]

The following proposed decision is respectfully submitted;

The protests are sustained. Suzuki is not permitted to establish the additional 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 had before me on the above dates and recommend its adoption as the decision of the New Motor Vehicle Board.

DATED: March 23, 1983



JAMES P. COOPER
Administrative Law Judge
New Motor Vehicle Board