

1507 - 21st Street, Suite 330  
Sacramento, California  
Telephone: (916) 445-1888

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protests of: )  
)  
SPORTS CYCLE CENTER, INC. dba ) Protest No. PR-467-83  
BILL KRAUSE SPORTS CYCLE, ) Protest No. PR-468-83  
)  
TED EVANS MOTORCYCLE SALES & SERVICE, ) Protest No. PR-471-83  
) Protest No. PR-472-83  
)  
C & G TECHNOLOGY COMPANY, INC. dba ) Protest No. PR-473-83  
BUENA PARK YAMAHA, ) Protest No. PR-474-83  
)  
LONG BEACH YAMAHA, ) Protest No. PR-477-83  
) Protest No. PR-478-83  
)  
PALM SPRINGS YAMAHA, ) Protest No. PR-486-83  
) Protest No. PR-487-83  
Protestants, )  
)  
vs. )  
)  
YAMAHA MOTOR CORPORATION, U.S.A., )  
)  
Respondent. )  
)

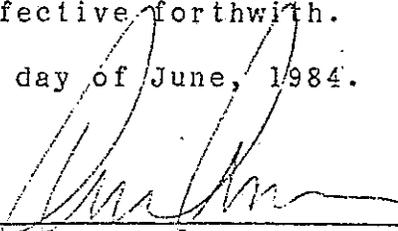
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RULING

The attached Proposed Ruling of the Administrative Law Judge is hereby adopted by the New Motor Vehicle Board as its Ruling in the above-entitled matter.

This Ruling shall become effective forthwith.

IT IS SO ORDERED this 8<sup>TH</sup> day of June, 1984.

  
ALLAN E. CONE  
President  
New Motor Vehicle Board

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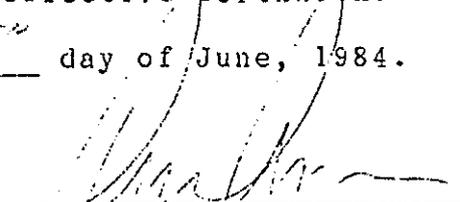
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RULING

The attached Proposed Ruling of the Administrative Law Judge is hereby adopted by the New Motor Vehicle Board as its Ruling in the above-entitled matter.

This Ruling shall become effective forthwith.

IT IS SO ORDERED this 5<sup>th</sup> day of June, 1984.

  
ALLAN E. CONE  
President  
New Motor Vehicle Board

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Protestants, )  
)  
vs. )  
)  
YAMAHA MOTOR CORPORATION, U.S.A., ) PROPOSED RULING  
)  
Respondent. )  
)

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PROCEDURAL BACKGROUND

1. The five protestants are:

SPORTS CYCLE CENTER, INC., dba  
BILL KRAUSE SPORTS CYCLE  
1257 South La Brea  
Inglewood, CA

TED EVANS MOTORCYCLE SALES & SERVICE  
13347 Washington Boulevard  
Los Angeles, CA

C & G TECHNOLOGY COMPANY, INC., dba  
BUENA PARK YAMAHA  
7521 Orangethorpe Avenue  
Buena Park, CA

LONG BEACH YAMAHA  
4138 East Anaheim Street  
Long Beach, CA

PALM SPRINGS YAMAHA  
67-430 E. Ramon Road  
Palm Springs, CA

2. Respondent is Yamaha Motor Corporation, USA. (YMC). Each protestant is authorized to sell Yamaha motorcycles pursuant to their franchises with YMC.

3. In September 1982, YMC introduced a motor scooter which YMC named RIVA. RIVAs were not available to existing Yamaha dealers unless they agreed to enter a separate franchise and to meet additional requirements including, in some instances, separate facilities.

4. Protests were filed by each dealer alleging:

A. YMC established additional dealers (RIVA only) in violation of Section 3062 of the California Vehicle Code.<sup>1/</sup>

B. YMC, in violation of Section 3060, attempted to modify the protestants' franchises by requiring additional facilities and other commitments as conditions to the right to receive the RIVA motor scooter.

5. YMC gave no notice to either the Board or the protestants of YMC's intention to establish additional dealerships or to modify protestants' franchises as alleged by protestants.

6. By stipulation of counsel for the parties all of the protests were consolidated for the limited purpose of resolving the issue of "whether the RIVA motor scooters are a line-make separate and distinct from Yamaha motorcycles for purposes of Sections 3060 and 3062 of the California Vehicle Code".

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

7. Pursuant to the stipulation a hearing was held before Marilyn Wong, Administrative Law Judge for the Board, on December 5, 6, and 7, 1983; February 22, 23, March 2, 3, 15, 16, 20, 30, and April 4, 1984.

8. Protestants are represented by Cris C. Vaughan, of the law office of Gary L. Hall. Respondent is represented by Bruce L. Ishimatsu of the law firm of Kelley Drye & Warren, and by Forrest A. Plant of the law firm of Diepenbrock, Wulff, Plant & Hannegan.

#### Issue Presented

WHETHER THE RIVA MOTOR SCOOTERS ARE A LINE-MAKE SEPARATE AND DISTINCT FROM YAMAHA MOTORCYCLES FOR PURPOSES OF SECTIONS 3060 AND 3062 OF THE CALIFORNIA VEHICLE CODE.

9. YMC contends that Yamaha RIVA motor scooters are a separate line-make from Yamaha motorcycles and therefore the protestants are not Yamaha RIVA franchisees but are only Yamaha motorcycle franchisees.

10. Protestants contend that the Yamaha RIVA motor scooter is another motorized product of YMC which comes within the definition of "motorcycle", thereby mandating the Board to take jurisdiction pursuant to Sections 3060 and 3062.

Applicable Statutory Provisions

11. Vehicle Code Section 3060 in relevant part provides:

The franchisor shall not modify or replace a franchise with a succeeding franchise if. . . the modification. . . or replacement would substantially affect the franchisee's sales or service obligations or investment, unless the franchisor . . . has first given the board and each affected franchisee notice thereof at least 60 days in advance of. . . the modification or replacement. Within 30 days of receipt of. . . the notice, a franchisee may file a protest with the board and . . . the modification or replacement. . . does not become effective until there is a finding by the board that there is good cause for. . . the modification or replacement.

12. Vehicle Code Section 3062.(a) in relevant part provides:

Except as otherwise provided in subdivision (b), in the event that a franchisor seeks to enter into a franchise establishing an additional motor vehicle dealership within a relevant market area where the same line-make is then represented, or relocating an existing motor vehicle dealership, the franchisor shall in writing first notify the board and each franchisee in. . . that line-make in the relevant market area of. . . the franchisor's intention to establish an additional dealership or to relocate an existing dealership within or into that market area.

Statutory Definitions

13. Vehicle Code Section 400 provides:

A "motorcycle" is any motor vehicle other than a tractor having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground and weighing less than one thousand five hundred pounds, except that four wheels may be in contact with the ground when two of the wheels are a functional part of a sidecar.

14. Vehicle Code Section 405 provides:

A "motor-driven cycle" is any motorcycle, including every motor scooter, with a motor which produces less than 15 gross brake horsepower, and every bicycle with motor attached. A motor-driven cycle does not include a motorized bicycle, as defined in Section 406.

15. There are no statutory definitions of "line-make" or "motor scooter".

Applicable Provisions of the Protestants'  
Yamaha Dealer Agreements

16. Paragraph A of the Yamaha Dealer Agreement provides:

"(YMC) is the exclusive distributor in the United States of quality motorcycles<sup>2/</sup> which are sold under the trademark "Yamaha" and distributes parts and accessories therefor (hereinafter collectively referred to as the 'Products')."

17. Section 1.01 of the Yamaha Dealer Agreement provides:

"1.01 Appointment of Dealer. (YMC) hereby appoints Dealer as an authorized (YMC) dealer for the sales and service of the Products only from Dealer's location and Dealer hereby accepts such appointment."

18. Section 2.07 of the Yamaha Dealer Agreement provides:

"2.07 Changes to the Products. (YMC) may periodically change the design, models, and features of the Products, add new products (sic), or discontinue the distribution of any or all of the Products to Dealer without accountability to Dealer in connection with any Products ordered by Dealer or Dealer's inventory of the Products."

19. Section 8.05 of the Yamaha Dealer Agreement provides:

"8.05 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California."

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<sup>2/</sup> The word motorcycle is typed onto the standard printed form.

20. Section 8.06 of the Yamaha Dealer Agreement provides:

"8.06 Construction. This Agreement and all of the words, terms, and provisions hereof shall be construed in accordance with their usual and ordinary meanings, and not in favor of or against either party hereto."

21. The Dealer Agreement does not define "motorcycles" and makes no express reference to "motor scooters."

#### Findings of Fact

22. YMC conducted two marketing studies between 1979 and 1982. These studies, "Opportunities to Expand the Motorcycle Market" and "Scooter Market Potential", were interpreted by Yamaha to require the creation of a marketing strategy for the RIVA different from the strategy used to market the traditional Yamaha motorcycle. This resulted in the unilateral decision by the President of YMC to attempt to market the RIVA as a separate line-make.

23. YMC introduced the RIVA motor scooters in California in September 1982.

24. Because YMC intended RIVA motor scooters to be a separate line-make, YMC refused to allow its existing motorcycle franchisees to purchase and re-sell RIVAs unless the dealers agreed to sign a separate franchise agreement for RIVA motor scooters and to comply with other standards established by YMC including facilities for display of RIVAs.

25. Yamaha Motor Company, Ltd., Japan, manufactures a full line of motorcycles. These include at least 45 differently named products (not including RIVA) from large four stroke 1,198 cc to small two stroke 49 cc models. The models are designated by names and by numbers. The names include such as "Venture," "Maxim," "Virago," "Seca," and "Heritage" for the large products to "Yzinger" and "Yamahopper" for the smaller. The products also include all-terrain vehicles called "Tri-Motos" and "Yamahaulers" which are not required to be licensed. Yamaha Motor Company, Ltd., Japan also previously manufactured small products called "Chappy," "Champ," and "Towney".

26. The Yamaha RIVA is also manufactured by Yamaha Motor Company, Ltd., Japan.

27. All of the products referred to above, including the RIVA were distributed by YMC.

28. Prior to the introduction of the RIVA products YMC made no attempt to differentiate between the traditional "motorcycles" and other more specialized motorized two or three wheeled vehicles which were introduced by YMC.

29. RIVA products are two wheeled vehicles with engine sizes of 50 cc, 80 cc or 180 cc and are designated by YMC as RIVA 50, RIVA 80<sup>3/</sup> or RIVA 180.

30. RIVA scooters clearly fall within the statutory definition of a motorcycle in that they are:

- a. Self propelled,
- b. Are not tractors,
- c. Have a seat or saddle for the use of the rider,
- d. Are designed to travel on not more than three wheels in contact with the ground, and
- e. Weigh less than 1500 pounds.

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<sup>3/</sup> The RIVA 80 is not available in California.

31. YMC contends that one of the differentiating features between a motor scooter and a motorcycle is the fact that the scooter rider need not straddle any cross bars or engine components due to a step through design. It is noted, however, that the statutory definition of a motorcycle allows for the vehicle to have "a seat or saddle" (emphasis added).

32. All of the RIVAs are required by the Department of Motor Vehicles to be registered as motorcycles and a motorcycle operator's license is required to operate any of the RIVAs on the public streets. The RIVA 180 is "freeway legal".

33. Protestants, as franchised YMC motorcycle dealers, have historically received all vehicles distributed by YMC which fit the definition of motorcycle contained in the Vehicle Code. The 1983 Yamaha product line includes vehicles having both two and three wheels, and ranging in engine sizes from 49 cc to 1,198 cc and varying in weight from 80 pounds to 699 pounds.

34. YMC imports, distributes, warehouses, warranties and promotes both the RIVA and the traditional Yamaha motorcycles. From the time the RIVA was first available in California in September of 1982 until October 1, 1983, the same YMC personnel handled these tasks for both the RIVA and Yamaha motorcycles. Each local YMC motorcycle district manager was also the local district manager for the distribution of the RIVA. The local district managers' responsibilities were identical for both the Yamaha motorcycle and the RIVA.

35. Subsequent to the protests being filed YMC designated separate personnel for the RIVA.

36. YMC provided the warranty for both the RIVA and the Yamaha motorcycles. The warranty given to RIVA purchasers refers to the product as a "Yamaha RIVA". The warranty document indicates during the warranty period "any authorized Yamaha dealer" will provide warranty repairs.

37. The vehicle YMC designated as the RIVA was imported into the United States and distributed to the dealers without

the name "RIVA" on the vehicle. These vehicles have the name Yamaha on them in at least 9 places. Respondent eventually developed a gummed back decal with the word "RIVA" on it. YMC made a separate charge to the dealers for the RIVA decals. When the RIVA was first being sold in California, these decals were not available to the dealers. There was also a six or seven month period in which the decals were on back order and not available to the dealers. Consequently, the RIVA vehicles were being sold without the name "RIVA" on the vehicles.

38. In at least two instances advertising materials used by YMC in the promotion of its RIVA vehicles depicted vehicles without the name "RIVA" on the vehicles. Fifteen to twenty thousand posters of Reggie Jackson sitting on a RIVA 180 were distributed throughout the United States. The vehicle bore the name "Yamaha" but did not contain the name RIVA.

39. The plan to install the RIVA emblems on the RIVA scooters at the Yamaha factory in Japan was interrupted by a trademark infringement lawsuit filed by the registered owner of the RIVA trademark.

40. One sticker put on the RIVA when manufactured in Japan contains the vehicle number and type and classifies the vehicle as a "motorcycle."

#### Determination of Issue

41. The RIVA is deemed to be a "motorcycle" within the terms of the franchise and for the purpose of determining the effects of Sections 3060 and 3062 upon the franchise.

42. Because the RIVA is deemed to be a YMC motorcycle under the terms of the Yamaha Dealer Agreement, the protestants are entitled to be Yamaha RIVA dealers and are therefore franchisees of the same line-make as other Yamaha RIVA franchisees.

43. YMC confuses marketing strategy with line-make. YMC may be correct that a different marketing strategy may be required to realize fully YMC's sales goals for RIVAs. However, YMC's unilateral determination that a different marketing strategy is needed does not automatically result in a different line-make being created.

44. YMC's market studies and resultant marketing decisions may well be good cause to allow a franchise to be modified or to establish additional dealerships, but to do so YMC must first give notice to each affected franchisee and the Board pursuant to Sections 3060 and 3062.

45. It is therefore determined that Protestants are entitled under the terms of their franchises to sell Yamaha RIVAs.

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

DATED: June 1, 1984

  
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MERILYN WONG  
Administrative Law Judge  
New Motor Vehicle Board