VIA E-MAIL

Sent by Certified Mail
Postmarked 2-23-12
DATE
Rec'd by NMVB 2-27-12
DATE

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FEB 27 2012
NEW MOTOR VEHICLE BOARD

Leon Bellissimo
Burbank Kawasaki
1329 Hollywood Way
Burbank, California 91505

Tel. (818) 848-6627
Fax (818) 848-6630

7007 1490 0004 4273 4530

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NEW MOTOR VEHICLE BOARD

FILED
NEW MOTOR VEHICLE BOARD
DATE 2-23-12
BY

NEW MOTOR VEHICLE BOARD
STATE OF CALIFORNIA

BURBANK KAWASAKI INC. Protestant, vs. KAWASAKI MOTORS CORP., U.S.A., a Corporation, Respondent.	PROTEST NO. PR-2333-12 ~~PR-2326~~-12 PROTEST PURSUANT TO VEHICLE CODE SECTION 3060 AND REQUEST FOR PREHEARING CONFERENCE AND HEARING [ATVs]

FILED
NEW MOTOR VEHICLE BOARD
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BY

1. The respondent is Kawasaki Motors Corp., U.S.A., a corporation. Respondent's address is 9950 Jeronimo Road, Irvine, California 92618, telephone (949) 770-0400. The notice to which this protest relates was signed by the Regional Sales Director at the address set forth above.

2. The protestant is Burbank Kawasaki INC. ("dealer" or "protestant"). Protestant's address is 1329 N. Hollywood Way, Burbank, California 91505. Burbank Kawasaki is filing this protest through its principal and owner, Leon Bellissimo, pro se.

3. Protestant is a duly licensed California new motor vehicle dealer doing business at the aforesaid address.

4. Protestant sells new motor vehicles and associated parts, accessories, and service, pursuant to an agreement and franchise entered into by and between protestant and respondent, wherein respondent is franchisor, and protestant is franchisee, all subject to the jurisdiction of this Board.

5. On or about and no earlier than January 26, 2012, protestant received a letter from respondent (a copy of which is attached as Exhibit "A") purporting to give protestant notice of termination of protestant's franchise as a Kawasaki dealer, which franchise includes, without limitation, motorcycle, utility vehicle, watercraft, and RUV vehicles (hereinafter the "Notice").

6. At no time has protestant agreed to, acquiesced in, or otherwise indicated any approval whatsoever for the purported termination of the franchise.

7. Protestant denies that the reasons for termination set forth in the Notice are true. Protestant avers that the reasons for termination set forth in the Notice are misleading.

8. Protestant denies that any of the reasons for termination set forth in the Notice (whether or not true) constitute good cause for the termination of protestant's franchise pursuant to Vehicle Code Section 3061, and other applicable law.

9. Protestant denies that any of the reasons for termination set forth in the Notice (whether or not true) constitute valid contractual grounds for termination under the franchise agreement.

10. Protestant furthermore denies that good cause exists for terminating protestant's franchise. By way of example, and among other legal and factual contentions, the following reflect the lack of such good cause:

(a) Protestant has made a substantial and permanent investment in the dealership which will be damaged if respondent's purported termination of protestant's franchise is allowed;

(b) Protestant has transacted and is transacting an adequate amount of business compared to the business available to it.

(c) The extent of protestant's noncompliance, if any, with the terms of the franchise agreement is legally privileged and/or excused and lacks sufficient materiality to warrant termination.

(d) Protestant has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of buyers and owners of respondent's products in the market area and is rendering adequate service to the public.

(e) It would be injurious to the public welfare for protestant's franchise to be terminated

by respondent.

(f) Protestant is informed and believes and thereon alleges that the purported termination runs contrary to certain legal, equitable, and contractual obligations of respondent, and rights of protestant.

11. Protestant desires to appear before the Board and to have a hearing on this Protest and estimates that the time required for a hearing will be approximately 15 days.

12. Protestant requests a prehearing conference.

WHEREFORE, Protestant prays for relief as follows:

1. That the New Motor Vehicle Board hold a hearing and based on the evidence and proof produced therein determine that good cause does not exist for the termination of protestant's franchise and thereby sustain this protest; or, if the Board does not enter such an order, that the Board conditionally sustain this protest on such terms as comport with the Board's authority under Vehicle Code section 3067; or, if the Board does not enter the orders aforesaid, that any order overruling the protest be conditioned in such a manner as shall preserve the dealer's rights under Vehicle Code section 11713.3 and applicable law.

2. For such other rulings and relief as the Board deems just and equitable.

DATE: February 23, 2012

Burbank Kawasaki INC.

By _____
Leon Bellissimo, Principal and Owner

Exhibit "A."
Termination notice letter

Kawasaki
Kawasaki Motors Corp., U.S.A.

January 24, 2012

Certified Mail #7008 2810 0001 8126 6084;
Return Receipt Requested

Leon Bellissimo
Burbank Kawasaki, Inc.
1329 N. Hollywood Way
Burbank, CA 91505

Re: Termination of ATV Dealership, Dealer # 0173

Dear Mr. Bellissimo:

I am writing to inform you that in light of your failure to fully perform your obligations under the Kawasaki Authorized Dealer Sales and Service Agreement ("Dealer Agreement"), Kawasaki Motors Corp., U.S.A. ("KMC") is notifying you that it is terminating your appointment as an authorized dealer for Kawasaki ATVs under the Dealer Agreement effective 60 days from your receipt of this letter.

This termination is based upon, but not limited to, Burbank Kawasaki, Inc.'s: 1) failure to maintain model inventory, 2) failure to meet sales requirements, 3) failure to provide equal representation for Kawasaki products and 4) failure to maintain a wholesale financing line of credit (flooring) in an amount sufficient to permit you to purchase an adequate inventory of the full line of Kawasaki products. KMC reserves the right to supplement this notice if it becomes aware of additional grounds for termination under the Sales and Service Agreement and/or any applicable statute.

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days after receiving this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived.

Please note that upon your receipt of this letter, and continuing after the effective date of termination, you continue to have certain important obligations under the Dealer Agreement. The following convenient summary of termination procedures is intended to assist you, and to facilitate an orderly termination of your Kawasaki dealership.

P.O. Box 25252
Santa Ana, California
92799-5252

949/770-0400
Fax 949/460-5600
www.kawasaki.com

9950 Jeronimo Road
Irvine, California
92618-2084

Use of Kawasaki Trademarks.

As of the effective date of termination, you must immediately discontinue all use of the word "Kawasaki" and all other trademarks, trade names, and other means of identification associated with KMC and Kawasaki ATV products ("Kawasaki Trademarks"). This obligation to discontinue using the Kawasaki Trademarks includes, without limitation, the immediate cessation of all advertising using the word "Kawasaki" or the other Kawasaki Trademarks, and the removal of all listings in telephone directories, display advertising and outdoor signs which include the Kawasaki Trademarks and relate to ATVs.

Inventory Subject to Flooring Financing.

All or a portion of your Kawasaki ATV inventory may be subject to wholesale financing (flooring) by Kawasaki Motors Finance Corporation and/or other flooring lenders. Therefore, you may wish to contact your flooring lenders to obtain information regarding the disposition of your Kawasaki inventory. Each flooring lender may have certain requirements for the return of inventory, including terms and conditions under which the inventory is to be delivered as well as the physical condition of each item.

Payment of Amounts Owing to KMC.

All indebtedness of your dealership owing to KMC and related to ATVs, if not due and payable on or prior to the effective date of termination, shall become due and payable on the effective date of termination. You and all guarantors of your account will remain fully responsible for payment and performance of all obligations to KMC, if any, which remain unpaid and unsatisfied after the effective date of termination.

KMC will deduct from all net proceeds and credits payable to or for your account and related to ATVs, the amount of any and all obligations and indebtedness then owing by you to KMC. Any surplus net proceeds and credits, after deduction for amounts owing to KMC, will be distributed to you and/or your flooring lenders or other persons or entities entitled to the proceeds, as their interests may appear.

Please refer to your Dealer Agreement for additional termination procedures and obligations pending the termination of your Kawasaki ATV dealership, and continuing after the termination date.

Very truly yours,

Kawasaki Motors Corp., U.S.A.

By: _____
Bruce Gill
Regional Sales Director

cc: New Motor Vehicle Board
507 21st Street, Suite 330
Sacramento, CA 95811

Proof of Service

I, Leon Bellissimo, declare:

I am a citizen of the United States, a resident of Los Angeles County, California, and over 18 years of age. I am not a party to the above-entitled action. My business address is 1329 N. Hollywood Way, Burbank, California 91505. On February 23, 2012, in the above-entitled action, I served a copy of the attached document titled

Protest Pursuant To Vehicle Code Section 3060 And Request For Prehearing Conference And Hearing

by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United States Mail at WOODLAND HILLS, 91367 California addressed as set forth below. I am readily familiar with the business' practice for collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date 2-23-2012

Signature

Leon Bellissimo

Parties Served (exact envelope address)

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

(By certified mail, return receipt requested)

Kawasaki Motors Corp., U.S.A.
Attn: Bruce Gill, Regional Sales Director
9950 Jeronimo Road
Irvine, California 92618

(Regular Mail)