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9 Polaris Sales, Inc.

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11 **STATE OF CALIFORNIA**
12 **NEW MOTOR VEHICLE BOARD**

13 In the Matter of the Protest of
14 ADRENALINE POWERSPORTS,
15 Protestant,
16 v.
17 POLARIS INDUSTRIES, INC.,
18 Respondent.

19 Protest No. PR 2418-15

20 **MOTION TO DISMISS PROTEST**
21 **FOR LACK OF JURISDICTION**

22 Hearing Date: March 27, 2015
23 Time: 10:00 a.m.
24 Hon. Anthony M. Skrocki

25 Respondent Polaris Sales Inc. ("Polaris"), erroneously named as Polaris Industries,
26 Inc., hereby moves to dismiss this protest on the ground that the Board lacks jurisdiction.
27 Polaris in November 2014 entered into a Polaris Dealer Agreement authorizing 20993
28 Granite Bay Motorcycle Partners, Inc. dba Roseville Yamaha ("New Dealer") to sell
Polaris Ranger and LSV vehicles at a location in Roseville, California. A true and correct
copy of this agreement ("Dealer Agreement") is attached hereto as Exhibit A. As therein
stated, it became effective when signed by a Polaris representative on November 26, 2014.

At that time, the Ranger and LSV vehicles were not included in the definition of
"all-terrain vehicles" set forth in Veh. Code § 111. As a result, the Dealer Agreement was
not subject to Veh. Code § 3062, Polaris was not required to give notice to Protestant, and
Protestant therefore has no right to protest establishment of the New Dealer.

1 Polaris distributes Polaris Ranger and LSV vehicles through a network of
2 authorized dealers, including Protestant Adrenaline Powersports. Ranger vehicles are
3 “utility terrain vehicles” within the meaning of Veh. Code § 531. LSV vehicles are
4 “recreational off-highway vehicles” within the meaning of Veh. Code § 500.

5 Effective January 1, 2015, the definition of “all-terrain vehicle” in Veh. Code § 111
6 was expanded to include utility terrain vehicles and recreational off-highway vehicles.
7 This change was effected by the addition of a new subdivision (b) to section 111:

8 (b) Notwithstanding subdivision (a), for purposes of Chapter 6
9 (commencing with Section 3000) of Division 2 and Chapter 4 (commencing
10 with Section 11700) of Division 5, "all-terrain vehicle" also means a
11 recreational off-highway vehicle as defined in Section 500 and a utility-
12 terrain vehicle as defined in Section 531.

13 A true and correct copy of section 111, showing the effective date of section 111(b) is
14 attached hereto as Exhibit B. Under this new provision, Protestant on January 1, 2015,
15 became a “new motor vehicle dealer” within the meaning of Veh. Code § 426 because it is
16 a “dealer” under Veh. Code § 285 that “acquires for resale new and unregistered ... all-
17 terrain vehicles from manufacturers or distributors of the vehicles.” Effective on the same
18 date, Protestant’s Dealer Agreement became a “franchise” under Veh. Code § 331(a)(2)
19 because it “granted [Protestant] the right to offer for sale or lease, or to sell or leas at retail
20 new motor vehicles ... manufactured or distributed by the franchisor....” Finally, again
21 on January 1, 2015, the establishment of a new dealership to sell and service vehicles
22 included in the definitions set forth in Veh. Code §§ 500 and 531 became subject for the
23 first time to Veh. Code § 3062(a)(1), which provides in pertinent part as follows:

24 [I]f a *franchisor* seeks to enter into a *franchise* establishing an
25 additional motor vehicle dealership within a relevant market area where the
26 same line-make is represented ... the *franchisor* shall, in writing, first notify
27 the board and each *franchisee* in that line-make in the relevant market area
28 of the *franchisor’s* intention to establish an additional dealership ... within

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or into that market area. Within 20 days of receiving the notice ... any franchisee required to be given the notice may file with the board a protest to the establishing ... of the dealership.

(Emphasis added.)

On November 26, 2014, before Veh. Code § 111(b) became effective, Polaris sought to and did enter into a Polaris Dealer Agreement establishing the New Dealer to sell and service Polaris vehicles falling within the definitions of “recreational off-highway vehicles” and “utility terrain vehicles” set forth in Veh. Code §§ 500 and 531. Because these vehicles at that time were not included in the definition of “all-terrain vehicles” in former Veh. Code § 111, Polaris did not have a “franchise” with Adrenaline for these vehicles, Adrenaline was not a “franchisee” and Polaris was not a “franchisor” under Veh. Code §§ 331, 331.1 and 331.2.

Thus, under the express terms of Veh. Code § 3062(a)(1), quoted above, Polaris was not obligated to give – and Protestant was not “required to be given” – any notice of the intended establishment of the New Dealer. Because § 3062(a)(1) gives the right to protest only to a “franchisee” that is “required to be given the notice” by the “franchisor,” Protestant as a non-franchisee who was *not* “required to be given the notice” by non-franchisor Polaris has no right to protest the establishment of the New Dealer. The Board therefore lacks jurisdiction, and the instant purported protest must be dismissed.

Dated: March 4, 2015

ISAACS CLOUSE CROSE & OXFORD LLP

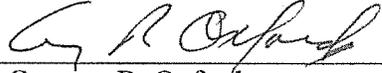
By: 
Gregory R. Oxford
Attorneys for Respondent
Polaris Sales, Inc.

EXHIBIT A

POLARIS DEALER AGREEMENT

PARTIES: Polaris Sales Inc. ("Polaris")
2100 Highway 55
Medina, MN 55340

20993 Granite Bay Motorcycle Partners, Inc. ("Dealer")
Db a Roseville Yamaha ("Authorized Retail Location")
2014 Taylor Rd
Roseville, CA 95678

Polaris and Dealer enter into this Agreement, which authorizes Dealer to be a Polaris Dealer for only the following Polaris line-makes (as indicated by Polaris) that are specifically designed and sold for retail sales to consumers or businesses: ___ Snowmobiles, ___ All-Terrain Vehicles, X RANGER®, X LSV, ___ Victory® Motorcycles, ___ Indian® Motorcycles, ___ GEM, ___ COM, together with parts, accessories, oil and apparel specifically related to the particular line-makes indicated in this paragraph (collectively, "Products"). This Agreement is independent and separately enforceable for each Product designated, and the use of this common Agreement is intended to simplify the execution of the Agreement(s). This Agreement grants Dealer no rights to purchase or sell any other Polaris Products other than those specifically designated in this paragraph.

The Term of this Agreement, unless otherwise terminated or renewed in accordance with the Standard Provisions, shall be from July 1, 2014 through June 30, 2015 ("Term"). This Agreement is non-exclusive as to geography and gives Dealer an appointment to be a Polaris Dealer only in the United States and at the Authorized Retail Location.

This Agreement includes an arbitration provision (see Standard Provisions, Section 19). The Polaris Dealer Policy Manual is incorporated herein by reference. The following agreements are also incorporated herein: (None)

By signing below, Dealer and Polaris agree to comply with all of the provisions of this Agreement including those in the Standard Provisions, which are included and incorporated herein. This Agreement will not become effective until signed by an Authorized Polaris Representative.

By [Signature]
(Authorized Polaris Representative)

By [Signature]
(Authorized Dealer Signature)

Dated: 11/26/14

Title: PRESIDENT/CEO

Dated: 11/21/14

EXHIBIT B

Cal Veh Code § 111

This document is current through the 2015 Supplement (All 2014 legislation)

Deering's California Code Annotated > VEHICLE CODE > Division 1. Words and Phrases Defined

§ 111. "All-terrain vehicle"

- (a) "All-terrain vehicle" means a motor vehicle subject to subdivision (a) of Section 38010 that is all of the following:
- (1) Designed for operation off of the highway by an operator with no more than one passenger.
 - (2) Fifty inches or less in width.
 - (3) Nine hundred pounds or less unladen weight.
 - (4) Suspended on three or more low-pressure tires.
 - (5) Has a single seat designed to be straddled by the operator, or a single seat designed to be straddled by the operator and a seat for no more than one passenger.
 - (6) Has handlebars for steering control.
- (b) Notwithstanding subdivision (a), for purposes of Chapter 6 (commencing with Section 3000) of Division 2 and Chapter 4 (commencing with Section 11700) of Division 5, "all-terrain vehicle" also means a recreational off-highway vehicle as defined in Section 500 and a utility-terrain vehicle as defined in Section 531.

History

Added Stats 1987 ch 881 § 1. Amended Stats 2002 ch 205 § 1 (SB 1302). Amended Stats 2003 ch 252 § 1 (SB 232); Stats 2014 ch 279 § 1 (AB 988), effective January 1, 2015.

Annotations

Notes

Amendments:

2002 Amendment:

Substituted "Nine" for "Six" in subd (c).

2003 Amendment:

(1) Substituted "more than one passenger" for "passengers" in subd (a); and (2) added ", or a single seat designed to be straddled by the operator and a seat for no more than one passenger" at the end of subd (e).

2014 Amendment:

(1) Added subdivision designation (a); (2) substituted "that" for "which" in the introductory clause of subd (a); (3) redesignated former subds (a)-(f) to be subds (a)(1)-(a)(6); and (4) added subd (b).

Note

Stats 2003 ch 252 provides:

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates

a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Research References & Practice Aids

Cross References:

All-terrain vehicles, generally: Veh C §§ 38500 et seq.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 515 "Securities And Franchise Regulation".

Hierarchy Notes:

Veh Code Note

Div. 1 Note

Deering's California Codes Annotated

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PROOF OF SERVICE

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 21515 Hawthorne Blvd., Suite 950, Torrance, California 90503.

- ✓ **VIA ELECTRONIC MAIL** on March 4, 2015 I served the foregoing documents described as **MOTION TO DISMISS PROTEST FOR LACK OF JURISDICTION** on the parties in this action by electronic mail to the electronic mailing addresses listed below.
- ✓ **VIA U.S. MAIL** on March 4, 2015, I served the foregoing document described as **MOTION TO DISMISS PROTEST FOR LACK OF JURISDICTION** on the parties in this action by U.S. mail, by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Michael Sieving, Esq.
8865 La Riviera Dr Unit B
Sacramento, CA 95826
msievinglaw@att.net

Executed on March 4, 2015 at Torrance, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


Gwendolyn Oxford