

NEW MOTOR VEHICLE BOARD
1507 - 21st Street, Suite 330
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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of)
) Protest No. PR-1511-96
KLEE STORY, INC. (Honda, Kawasaki,)
Polaris of Santa Monica),)
)
Protestant,)
)
vs.)
)
AMERICAN HONDA MOTOR CO., INC.,)
and DOES 1 THROUGH 20, Inclusive,)
)
Respondent.)
_____)

DECISION

The attached Proposed Decision of the Administrative Law Judge was considered by the Public members of the New Motor Vehicle Board at its special meeting of December 13, 1996. After such consideration, the Public members of the Board adopted the Proposed Decision as its Decision in the above entitled matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 13th day of December 1996.



MANNING J. POST
President Emeritus
New Motor Vehicle Board



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10 In the Matter of the Protest of)
11 KLEE STORY, INC. (Honda, Kawasaki,)
Polaris of Santa Monica),)
12 Protestant,) Protest No. PR-1511-96
13 vs.)
14 AMERICAN HONDA MOTOR CO., INC.) PROPOSED DECISION
15 Respondent .)
16

17
18 PROCEDURAL BACKGROUND
19

20 1. By letter dated February 8, 1996, American Honda Motor
21 Co., Inc. ("Honda") gave notice to Klee Story, Inc., Honda,
22 Kawasaki, Polaris of Santa Monica ("Klee Story"), pursuant to
23 Vehicle Code Section 3062¹, of Honda's intention to establish an
24 additional dealership location in Inglewood, California.

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27 ¹ All statutory references are to the Vehicle Code unless
otherwise noted.

1 2. Klee Story is a licensed motorcycle dealer enfranchised
2 to sell Honda motorcycles. Klee Story is located at 828 Pico
3 Boulevard, Santa Monica, California.

4 3. Klee Story is owned by Don Yim and Brian Hyon. Mr. Yim
5 is the dealer principal of Klee Story.

6 4. Honda is a manufacturer and distributor of new
7 motorcycles in California.

8 5. Pursuant to Section 3062, Klee Story filed its protest
9 on February 22, 1996, with the New Motor Vehicle Board ("Board").
10 The Board assigned protest number PR-1511-96.

11 6. A four (4) day hearing was held before Marilyn Wong,
12 Administrative Law Judge, commencing on June 17, 1996, and ending
13 on June 20, 1996.

14 7. Protestant was represented by William C. Hudson, Jr.,
15 Esq., and Freeman Butland, Esq., of the Law Offices of William C.
16 Hudson, Jr., 3580 Wilshire Boulevard, Suite 2050, Los Angeles,
17 California.

18 8. Respondent was represented by Wallace M. Allan, Esq.,
19 of O'Melveny & Myers, 400 South Hope Street, Los Angeles,
20 California.

21 9. Respondent was also represented by Duane E. Okomoto,
22 Esq., of Honda North America, Inc., 700 Van Ness Avenue,
23 Torrance, California.

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25 CONTENTIONS OF THE PARTIES

26 10. Protestant contends that Honda intentionally misled it
27 by failing to inform Protestant of Honda's intent to establish a

1 new dealership in Inglewood, California. Protestant contends
2 that had it been aware of this fact it would not have purchased
3 the Honda dealership.

4 11. Protestant further contends that it was told by Honda
5 representatives that if it were to move its dealership within one
6 mile of its existing dealership that it would not be the subject
7 of protest under the Vehicle Code.

8 12. Mr. Yim contends that a Honda representative told him
9 that if he moved more than one mile from his current dealership
10 location and within 10 miles of an existing dealer that the
11 dealer could protest the move and prevent him from opening.

12 13. Mr. Yim also assumed that his dealership would be
13 afforded the same protection, mainly that if Honda tried to open
14 a dealership within 10 miles of his dealership he could prevent
15 the opening by filing a protest.

16 14. Protestant contends that had it been aware of the true
17 nature of the laws set forth under the Vehicle Code, it would
18 have relocated to a different site which would have been a better
19 location and more financially advantageous resulting in a lower
20 rent factor and therefore a lower overhead.

21 15. Protestant contends that the establishment of a new
22 Honda dealership in Inglewood will result in loss of sales
23 creating such a deep decline in its profits that it will be
24 forced out of business.

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1 FINDINGS OF FACT

2 a. Facts relating to permanency of the investment.
3 (\$ 3063(a))

4 18. In March 1993, Messrs. Don Yim and Brian Hyon purchased
5 an existing Kawasaki dealership located in Santa Monica for
6 between \$180,000 to \$190,000. They subsequently invested an
7 additional \$40,000 in working capital.

8 19. In June 1993, Messrs. Yim and Hyon merged their
9 Kawasaki dealership with a Honda and Polaris dealership located
10 in Santa Monica and owned by Klee Story, Inc., a corporation
11 whose principal shareholder was Mr. Val Kim. The dealership is
12 currently multi-line, offering Honda, Kawasaki and Polaris
13 products for sale.

14 20. In December 1993, shortly after the merger, Mr. Val Kim
15 sold his entire interest in Klee Story, Inc., to Messrs. Yim and
16 Hyon for \$300,000, which included \$200,000 and an assumption of
17 \$100,000 in liabilities.

18 21. Upon purchasing Klee Story and the Santa Monica Honda
19 dealership, Messrs. Yim and Hyon invested an additional \$60,000
20 in working capital.

21 22. In March 1994, the new shareholders and owners of Klee
22 Story, submitted their dealership application to Honda for
23 approval. In April 1995, they were approved by Honda.

24 23. In 1995, the net income for the dealership of \$30,350
25 was reinvested in the dealership. Although the principals worked
26 full-time at the dealership, they took no income from the
27 dealership in 1995.

1 24. The dealership employs 18 workers, 16 are full-time and
2 2 are part-time. This does not include either of the principals.

3 25. In July 1993, Mr. Yim entered into a long term lease
4 for the premises on which the dealership is located. The lease
5 period extends for five years with a subsequent five-year option.
6 The annual rent for the dealership is \$106,000.

7 26. In the opinion of the owner, the rent factor for Klee
8 Story has lead to high fixed costs. The Protestant believes that
9 the new dealership has a lower rent factor and therefore has an
10 advantage of lower fixed costs. The lower overhead will allow
11 the Inglewood dealer to be more price competitive than the
12 Protestant.

13 27. The Protestant believes that the opening of the
14 Inglewood point would result in a loss of 50% of its sales and
15 therefore make the dealership unable to compete with the
16 Inglewood dealership.

17
18 b. Facts relating to the effect on the retail motor
19 vehicle business and the consuming public in the
relevant market area. (§ 3063(b))

20 28. The proposed Honda dealership is located at 977 W. Hyde
21 Park, Inglewood, which is the present site of Los Angeles
22 Triumph-Suzuki, a dealership owned by Larry Hart.

23 29. The proposed Inglewood dealership site is located
24 approximately 7 miles south of Protestant's dealership.

25 30. There are two Honda dealerships within the relevant
26 market area ("RMA") of the proposed Inglewood dealership. One of
27 the dealerships is Honda-BMW-Kawasaki-Suzuki of Hollywood and the
28

1 other is Protestant's dealership located in Santa Monica.

2 31. According to 1990 census figures, the RMA area
3 surrounding the proposed Inglewood point had a population of a
4 little over 3 million people. The RMA is described as a heavily
5 populated, mature geographic region, meaning that the RMA is not
6 expected to experience much population growth in the future,
7 although Los Angeles county and the state will experience an
8 increase in population.

9 32. In some instances, households are a better means of
10 analyzing a retail base for durable goods such as automobiles and
11 motorcycles, because households consume durable goods more
12 appropriately than do populations.

13 33. According to 1990 census figures, the RMA contains a
14 little over 1 million households. In 1996 the number of
15 households within the RMA is estimated to have slightly declined
16 from the 1990 census figures. Like the population of the RMA,
17 households are not expected to grow in the future.

18 34. Although population and household figures are flat, the
19 RMA is highly dense in both population and households. The
20 population and households within the RMA represent one-third of
21 the entire county of Los Angeles and one-tenth of the residents
22 of the State.

23 35. In 1996, the median household income for Los Angeles
24 county was \$43,817, and the median household income for the State
25 of California was \$43,868. In 1996, the median household income
26 for the cities within the RMA was \$37,525, less than the median
27 household incomes for Los Angeles county and the State. However,

28

1 the median household income within the RMA was greater than the
2 median household income for U.S. households, which is \$34,497.

3 36. Based on the median household income there is no reason
4 for market share performance for Honda in the Inglewood RMA to be
5 any different than Honda's market share performance in the U.S.
6 based upon income.

7 37. The following table represents Honda motorcycles market
8 share within the Inglewood RMA for 1994, 1995, through February
9 1996.³

	<u>1994</u>	<u>1995</u>	<u>2/1996</u>
RMA	28.2	25.1	18.1
Los Angeles County	29.6	27.4	25.5
California	30.3	29.8	29.4
U.S.	32.6	33.2	32.0
RMA Exceeds/Lags			
California	-2.1	-4.7	-11.3
RMA Exceeds/Lags			
U.S.	-4.4	-8.1	-13.9

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17 38. Comparing Honda's penetration rate within the RMA in
18 1995 with Honda's penetration rate within the U.S. there is a 24%
19 shortfall in the RMA. Expressed another way the penetration rate
20 of 25.1% within the RMA is 76% of Honda's national penetration
21 rate of 33.2%.

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25 ³ The data is based on a compilation of sales and
26 distribution compiled by the Motorcycle Industry Council (MIC)
27 which is a consortium of motorcycle manufacturers and suppliers.
28 The data includes a total of all units sold including
unregistered units. The MIC has only been compiling data since
1994.

1 39. Sales potential is based upon the assumption that Honda
2 should be able to achieve a market penetration level or
3 performance level in the RMA equivalent to what Honda achieves
4 across the U.S. on average.

5 40. In 1994 and 1995 the average number of new motorcycle
6 registrations for all line-makes within the proposed Inglewood
7 RMA was 2,182.

8 41. Assuming that Honda could achieve its average U.S.
9 market share of 32.61%, then the unit potential within the RMA
10 would be 712 new sales units out of a total of 2,182 units.

11 42. If Honda could achieve its average California market
12 share of 29.83%, then the unit potential within the RMA would be
13 651 new sales units out of a total of 2,182 units.

14 43. In 1995 actual Honda sales within the RMA totaled 527
15 units.⁴

16 44. When comparing Honda's actual sales of 527 units to
17 Honda's potential sales of 712 (based on U.S. penetration rates)
18 there is a shortfall of 185 units. When comparing Honda's actual
19 sales of 527 units to Honda's potential sales of 651 (based on
20 state penetration rates) there is a shortfall of 124 units.

21 45. The unit shortfall measure is what Honda could have
22 expected in sales if the dealers within the RMA were performing
23 similarly to the national or state in average penetration rates.

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26 ⁴ The units sold (527) is based on MIC data, infra.
27 Actual American Honda Motor Co. warranty registrations show 445
28 units sold. The difference between 527 and 445 is most likely
attributable to export sales.

1 46. Dealers within the RMA enjoy a distinct geographical
2 advantage over dealers outside the RMA. Sales within the RMA by
3 dealers outside the RMA, known as "pumped-in" sales or in-sell,
4 represent lost sales opportunities by dealers within the RMA.

5 47. The following is compiled from Honda warranty
6 registration data for the period of 1991-1995 for Honda
7 motorcycle sales units in the RMA. The top figures represent
8 sales figures made by Honda dealers within the RMA. The middle
9 figures represent the total sales within the RMA. The bottom
10 figure represents the percentage of sales made by dealers within
11 the RMA.

<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>
597	340	297	300	220
1446	671	572	560	445
52%	51%	52%	54%	49%

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17 48. Over the past five years the dealers within the RMA averaged
18 a little more than 50% of the total sales units registered within the
19 RMA. Conversely, a little less than 50% of the units registered within
20 the RMA were sold by dealers outside the RMA. The in-sell rate of 50%
21 within the RMA is greater than the 30-35% in-sell rate usually found in
22 metropolitan areas.

23 49. The proposed Inglewood dealer's business plan projects the
24 sale of 165 new Hondas during his first year of operation. If 70% of
25 his sales occur within the RMA, it will result in the sale of
26 approximately 116 new units. With between 124 and 185 potential sales
27 units, there is sufficient opportunity available for both the existing
28

1 d. Facts relating to whether the franchisees of the same
2 line-make in that relevant market area are providing
3 adequate competition and convenient consumer care for
4 the motor vehicles of the line-make in the market area
5 which shall include the adequacy of motor vehicle sales
6 and service facilities, equipment, supply of vehicle
7 parts, and qualified service personnel. (§ 3063(d))

8 54. Protestant's dealership meets Honda's facility and space
9 requirements and has adequate hours of operation.

10 55. The Klee Story dealership has ranked in the top 5 out of 27
11 within its sales district over the last few years.

12 56. Klee Story has 18 employees, 16 work full-time and 2 work
13 part-time.

14 57. Klee Story has sent its management employees to Honda's
15 management training program. Its sales force is experienced, with
16 three sales persons having more than five years experience. Klee
17 Story's sales manager has more than 20 years of experience in the
18 business. Klee Story employs six full-time service personnel.

19 58. Klee Story employs a driver to pick up parts from Honda's
20 Torrance warehouse to expedite parts to their customers.

21 59. The ratio of Honda dealers per person in the U.S. is
22 1:235,000. The ratio of Honda dealers per person in California is
23 1:314,000. The current Honda dealer ratio per person in the RMA is
24 1:1,572,000. If the proposed dealership were added the ratio would be
25 reduced to 1:1,000,000.

26 60. The below U.S. and state penetration rates within the RMA as
27 well as the high degree of in-sell is an indication that the existing
28 RMA dealers are having difficulty in serving the densely populated RMA.

61. To some extent, the lack of industry sales is a reflection of
the ability of the customer to find a dealer to sell and service the

1 product.

2 62. The establishment of the proposed Inglewood dealership would
3 provide an additional dealer to those residents who live East of the
4 proposed site.

5

6 e. Facts pertaining to whether the establishment of an
7 additional franchise would increase competition and
8 therefore be in the public interest. (§ 3063(e))

9 63. Across the U.S. the Honda customer is provided with a level
10 of representation and competition of one dealer for every 235,000. In
11 California, Honda representation is one dealer for every 314,000. In
12 the proposed Inglewood RMA, existing representation is one Honda dealer
13 for every 1,572,00. If a dealer were added this ratio would decrease
14 and change to one Honda dealer for every 1,000,000.

15 64. Presently within the RMA consumers are not provided with the
16 same level of intrabrand competition as consumers within the state or
17 the U.S.

18 65. Based on potential sales as well as pump-in sales there is a
19 need for an additional Honda line-make dealer within the Inglewood RMA.
20 An additional dealer in this metropolitan region will provide
21 additional convenient access for the consuming public for the Honda
22 line-make.

23

24 f. Facts related to whether Protestant will cease to
25 do business if the Inglewood point is permitted.

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27 66. Protestant contends that it will experience a 20% reduction
28 in sales of Hondas if the proposed Inglewood point is permitted to
open. However, with the availability of potential sales from both an

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1 increase in penetration rates as well as potential sales from
2 "pump-ins" there are sufficient potential sales opportunities for the
3 Klee Story dealership, as well as a proposed dealership at the
4 Inglewood location.

5 67. After Protestant filed the protest, Mr. Yim was approached by
6 Larry Hart and his employees. On one occasion Hart's employees
7 appeared without an appointment at Protestants dealership and
8 threatened Mr. Yim. Hart's employees threatened "to put him out of
9 business" unless Mr. Yim dropped the protest. The Hart employees also
10 stated that if the protest was not dropped that they would also obtain
11 the Kawasaki and Polaris franchises (which are line-makes sold by Klee
12 Story). However, if Mr. Yim dropped the protest Hart would wait one
13 year before acquiring these franchises.

14 68. Hart and/or his employees also contacted two key employees of
15 Klee Story in an attempt to hire them away from Klee Story.

16 69. Although Hart denies that he directed his employees to
17 threaten Mr. Yim, he does admit that he directed a couple of his
18 employees to go drive over to the dealership and reiterate what he had
19 previously told him. Hart's denial that the threats took place is not
20 credible.

21
22 g. Facts related to whether Protestant was misled by
23 Honda.

24 70. At some point in time Mr. Yim asked Honda representative Lori
25 Conway if Honda intended to have another dealer in the area.
26 Ms. Conway responded that Honda preferred to have one strong dealer
27 over two poor dealers, and that their dealership was ranked third in
28

1 the district and she was not dissatisfied with their performance.

2 71. A letter to Mr. Yim from Honda, which was received and read
3 by Mr. Yim, states, in part: "In furtherance of your application, we
4 need to let you know that if approved, you will have rights to sell
5 Honda Motorcycles, All Terrain Vehicles and Motor Scooters but will not
6 have exclusive rights to any specific geographic area."

7 72. Mr. Yim also understood that Honda could name additional
8 dealers as set forth in the various dealer agreements between Honda and
9 Protestant.

10 73. Mr. Kim and Ms. Conway visited a location known as the Fox
11 Hills site as a possible relocation site for Klee Story. The Fox Hills
12 location was not suitable because the city would not grant permits for
13 service repairs at that location. Klee Story ultimately moved to its
14 current location on Pico.

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16 DETERMINATION OF ISSUES

17 74. Protestant has failed to prove that there is good cause for
18 not establishing the Inglewood point as an additional Honda franchisee,
19 in that:

20 a. Protestant has established that its investment is permanent,
21 but has failed to establish that its investment would be adversely
22 affected by the establishment. [3063(a)];

23 b. Protestant failed to prove that the establishment will have
24 an adverse effect on the retail motor vehicle business and the
25 consuming public in the relevant market area [3063(b)];

26 c. Protestant failed to prove that the establishment will be
27 injurious to the public welfare [3063(c)];

1 d. Protestant failed to prove that there is adequate competition
2 and convenient consumer care for the owners of Honda vehicles in the
3 relevant market area, including adequate motor vehicle sales and
4 service facilities, equipment, supply of vehicle parts, and qualified
5 service personnel [3063(d)];

6 e. Protestant failed to prove that the establishment would not
7 increase competition and that therefore the establishment would not be
8 in the public interest [3063(e)];

9 f. Protestant failed to prove that it would cease to do business
10 as a result of the establishment of the Inglewood point. Protestant
11 proved that Larry Hart through his employees threatened and attempted
12 to intimidate Mr. Yim for exercising his rights under Vehicle Code
13 Section 3062.

14 g. Although Respondent's representative most likely misstated
15 the effects of a protest filed under 3062 of the Vehicle Code,
16 Protestant failed to prove that misstatements were the sole reasons for
17 its move to the Pico address. Protestant also failed to prove that the
18 misstatements amounted to a guarantee of exclusive rights to a
19 geographic area for sales and service. Protestant failed to prove that
20 Respondent had a duty to notify Protestant of its intention to
21 establish an additional dealer within its RMA except as provided by
22 law.

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PROPOSED DECISION

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2 1. The protest is overruled. American Honda Motor Co., is
3 permitted to establish Larry Hart as an additional franchisee at 977
4 West Hyde Park Boulevard, Inglewood, California.
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7

8 I hereby submit the foregoing which
9 constitutes my proposed decision in
10 the above-entitled matter, as a
11 result of a hearing before me on the
12 above dates and recommend the
13 adoption of this proposed decision
14 as the decision of the New Motor
15 Vehicle Board.

DATED: December 11, 1996

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By


MERILYN WONG
Administrative Law Judge