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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of )  
GARY & ORIE COLE; ) Protest No. PR-329-81  
ALVIN & RONALD FRANCIS; )  
COLE BROS. M/C SALES, INC., )  
Protestant, )  
vs. )  
U. S. SUZUKI MOTOR CORPORATION, )  
Respondent. )

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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 2<sup>nd</sup> day of October, 1981.

Kathleen O. Turner  
KATHLEEN O. TURNER  
President  
New Motor Vehicle Board

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vs. ) PROPOSED DECISION  
U. S. SUZUKI MOTOR CORPORATION, )  
Respondent. )

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Procedural Background

1. Respondent U. S. Suzuki Motor Corporation (Suzuki) gave notice on April 3, 1981, pursuant to Section 3062 of the Vehicle Code<sup>1/</sup> of its intention to establish an additional franchise at either the corner of Maple Avenue and Brand Boulevard in Glendale, California, or the corner of Feliz Avenue and Brand Boulevard in Glendale, California.

2. A protest was filed with the New Motor Vehicle Board (Board) on April 20, 1981, by Gary and Orie Cole; Alvin and

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1. All references are to the Vehicle Code unless otherwise stated.

Ronald Francis; Cole Bros. M/C Sales, Inc. (Cole Bros.).<sup>2/</sup> Cole Bros. is located at 5906 Lankershim Boulevard, North Hollywood, California 91601.

3. A hearing was held pursuant to Section 3066 before Sam W. Jennings, Executive Secretary/Administrative Law Judge of the New Motor Vehicle Board, in Los Angeles, on July 13, 1981. Protestant was represented by Lawrence E. Weitzman. Respondent was represented by Phillip Metzinger.

#### Issues Presented

4. Protestant contends that good cause exists for not entering into an additional franchise at either of the proposed locations for the following reasons:

- a. The additional franchise would jeopardize the permanent investment of Protestant (§ 3063(1));
- 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 of the additional franchise would be injurious to the public welfare (§ 3063(3));
- d. Franchisees of the same line-make in the relevant market area are providing adequate competition and convenient consumer care for the owners of Suzuki motorcycles (§ 3063(4));
- e. Establishment of the additional dealership would not increase competition and therefore would not be in the public interest (§ 3063(5)).

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2. The franchisee and Protestant is Cole Bros. M/C Sales, Inc.

Facts Relating to Permanency of Investment  
(§ 3063(1))

5. Cole Bros. has been in business approximately 12 years and originally carried the following five lines of motorcycles: Suzuki, Maico, Sachs, Montesa, and Puch. It currently carries the Suzuki and Maico lines of motorcycles.

6. Gary Allen Cole (Cole) originally invested \$7,500 in Cole Bros. as his interest in a partnership with his brother. Cole eventually bought out his brother for the approximate purchase price of \$20,000.

7. In 1970 Cole incorporated Cole Bros. with other shareholders. As of 1975, Cole had purchased all of the outstanding shares of the corporation, at a total cost of \$67,000.

8. The property on which Cole Bros. is located was purchased in 1975 and is leased to Cole Bros. for \$750 per month rent. Cole paid \$70,000 for the property and has an approximate total investment in Cole Bros. of \$250,000.

9. The current fair market value of Cole Bros. is approximately \$400,000 to \$500,000.

10. Cole Bros. has approximately \$100,000 in parts inventory.<sup>3/</sup>

11. Cole Bros. currently has a new and used motorcycle inventory of approximately \$225,000.<sup>4/</sup>

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3. The record is unclear as to whether this figure is Suzuki only or both Suzuki and Maico.

4. No breakdown was available as to the dollar amount of used, or new, Suzuki, or Maico inventory.

12. The list below indicates the total dealership gross sales and net profit or loss for Cole Bros. from 1976 through 1980 fiscal year.<sup>5/</sup>

<u>Fiscal Year</u>	<u>Total Dealership Gross Sales</u>	<u>Net Profit/Loss</u> <sup>6/</sup>
1976	\$ 562,000	\$ 1,901
1977	754,000	10,768
1978	923,000	36,889
1979	1,051,000	14,821
1980	758,000	(800) <sup>7/</sup>

13. Cole Bros. had a gross profit on sales of \$169,000 in 1978 and \$207,000 in 1979.<sup>8/</sup>

14. Cole receives an annual salary from the corporation as president. This salary is computed on the basis of annual sales and profits. Cole received \$18,146 in salary in 1976; \$20,860 in 1977; \$21,700 in 1978; \$32,230 in 1979; and \$28,080 for the first 11 months of 1980.

15. During its fiscal year ending February 28, 1981, Cole Bros. has paid out \$48,088 for automobile expenses in operating the dealership. These automobiles have also been depreciated approximately \$1,600 for the same period.

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5. Cole Bros. fiscal year is March 1 to February 28.

6. Source of data was Federal Income Tax Returns of Cole Bros.

7. Net profit for first 11 months of Fiscal Year 1980 was \$11,608.

8. Figures for other years were unavailable at the hearing.

Facts Relating to the Effect on the Retail  
Motorcycle Business and the Consuming Public  
in the Relevant Market Area  
(§ 3063(2))

16. Suzuki identifies potential new sites for dealerships through an "open area analysis". This analysis consists of a review by the regional and district sales managers of such things as population, total market sales, total units sold, travel patterns, population densities and existing competitive brand dealerships.

17. Last year's analysis identified 18 points that were available for new dealerships in the 11 western states. The proposed dealership in Glendale was one of the 18 points identified in the Suzuki analysis.

18. As part of its evaluation of the Glendale area, Suzuki representatives made personal inspection of the proposed sites as well as the surrounding area.

Facts Relating to Whether It Would Be Injurious  
to the Public Welfare for an Additional  
Franchise to Be Established  
(§ 3063(3))

19. There was no evidence presented upon which findings can be made concerning whether it would be injurious to the public welfare for an additional franchise to be established.

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Facts Pertaining to Whether the Current Franchisees  
in the Relevant Market Area are Providing Adequate  
Competition and Convenient Consumer Care for the  
Owners of Suzuki Motorcycles in the Market Area,  
Including Adequate Motorcycle Sales and Service  
Facilities, Equipment, Supply of Motorcycle Parts,  
and Qualified Service Personnel  
(§ 3063(4))

20. Cole Bros.' sales and business offices are open from 9:00 a.m. to 6:00 p.m., Monday through Saturday. The service department is open 9:00 a.m. to 6:00 p.m., Tuesday through Saturday.

21. Cole Bros. has a total of 8 employees: 5 in the service department; 2 in the parts department, and Cole in the sales department.

22. Cole Bros.' service department operates at approximately 70% capacity. The service department offers a full line of service, including major mechanical repairs as well as normal maintenance.

23. Cole Bros. carries a full line of parts inventory except slow-moving items, such as center cases and frames.

24. Cole Bros. has a high level of customer satisfaction with regard to its service performance.

25. The San Fernando Valley Metropolitan Area has a relatively stable population base. Glendale's population is 134,279; Pasadena's population is 106,208. The Los Angeles Metropolitan Area located nearby has a population of 2,787,176.<sup>9/</sup>

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9. Figures are for 1980 and based upon stipulation of the parties.

26. The following chart indicates the number of new Suzuki motorcycle sales registrations by the competing dealers in the San Fernando Valley Area.

	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>May 1981</u>
Cole Bros.	187	400	367	273	196
Van Nuys	329	719	1,041	696	399
Pasadena	244	272	507	473	216
Saugus	-	224	317	244	154
Canoga Park	-	134	550	393	174

27. The straight line distance between Cole Bros. and the noticed locations are:

Maple Avenue at Brand Boulevard, Glendale, 7.857 miles;

Feliz Avenue at Brand Boulevard, Glendale, 8.143 miles.

28. The driving distance between Cole Bros. and the noticed locations are:

Maple Avenue at Brand Boulevard, 9.996 miles;

Feliz Avenue at Brand Boulevard, Glendale, 10.608 miles.

Facts Pertaining to Whether the Establishment of an  
Additional Franchise Would Increase Competition and  
Therefore Be in the Public Interest  
(§ 3063(5))

29. Listed below are the major competing motorcycle makes in the San Fernando Valley, including each line-make's

approximate U.S. market share, and the number of dealers of each make operating within the San Fernando Valley.

<u>Make</u>	<u>U S. Market Share</u>	<u>No. of Dealers in San Fernando Valley</u>
Honda	30%	12
Yamaha	30%	7
Suzuki	14.5%	4
Kawasaki	13%	4

30. The figures below indicate the percentage of Cole Bros.' total retail sales of new Suzuki motorcycles it sells into each of the listed communities. The figures are based on Zip Code listings:<sup>10/</sup>

North Hollywood	22.5%
Burbank	11.7%
Van Nuys	8.6%
San Fernando	6.2%
Sun Valley	4.9%
Glendale-Montrose Area (proposed location)	3.4%
All others	11.3% <sup>11/</sup>

31. Cole Bros. has taken advantage of Suzuki's free-flooring program.<sup>12/</sup>

10. 31.5% of Cole Bros.' sales did not contain Zip Code information. Therefore, the statistics only represent 68% of Cole Bros.' Suzuki sales.

11. There were 8 other communities that were all less than 3.4 percent.

12. Suzuki's free-flooring program provides free flooring, or flooring at a minimal expense.

32. If Cole Bros. did not have the Suzuki free-flooring program, they would only have a motorcycle inventory of approximately \$120,000.

33. Suzuki provides a cooperative advertising program in which it pays for one-half of a dealer's advertising costs within the stated limits of the program.

34. For the 1981 model year Suzuki dealers in District One<sup>13/</sup> claimed 98.8% of the funds offered by Suzuki's cooperative advertising program. Cole Bros. utilized only 43% of the funds available to it under the program.

#### Determination of Issues

35. Protestant has failed to prove that there is good cause for not establishing the proposed additional dealership, in that:

a. Protestant proved that its investment is permanent, but failed to prove that its investment will be adversely affected by the establishment;

b. Protestant failed to prove that the establishment will have an adverse effect on the retail motorcycle business and the consuming public in the relevant market area;

c. Protestant failed to prove that the establishment would be injurious to the public welfare;

d. Protestant failed to prove that there is adequate competition and convenient consumer care for the owners of Suzuki motorcycles in the market area, including adequate motorcycle

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13. District One is comprised of Los Angeles and Orange Counties.

sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel; and

e. Protestant failed to prove that the establishment would not increase competition and therefore would not be in the public interest.

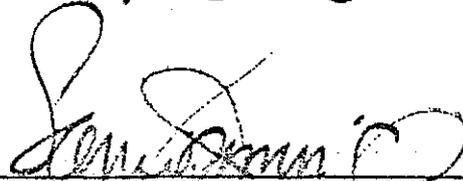
The following proposed decision is respectfully submitted:

The Protest is overruled. Suzuki is permitted to establish the proposed additional dealership.

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 date and recommend its adoption as the decision of the New Motor Vehicle Board.

Dated:

9-30-81



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SAM W. JENNINGS  
Executive Secretary/Administrative  
Law Judge  
New Motor Vehicle Board