

1 NEW MOTOR VEHICLE BOARD  
1507 - 21st Street, Suite 330  
2 Sacramento, California 95814  
Telephone: (916) 445-1888

CERTIFIED MAIL

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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

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In the Matter of the Protests of )  
REDLANDSRIDER, INC. dba )  
HUNTINGTON HONDA, )  
TRI CITY CYCLE CENTER, INC., )  
HONDA WEST, a Co-Partnership, )  
Protestants, )  
vs. )  
AMERICAN HONDA MOTOR CO., INC., )  
Respondent. )

Protest Nos. PR-344-81  
PR-345-81  
PR-346-81

DECISION

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HERB FRIEDLANDER IMPORTS, INC., )  
Interested Individual. )

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TO: Mr. James L. Wells, Protestant  
Huntington Honda  
7911 Warner Avenue  
Huntington Beach, California 92647  
  
Mr. Colman P. Colker, Protestant  
Tri City Cycle Center  
9041 Katella Avenue  
Anaheim, California 92804

1 Mr. Jack Rehberger, Protestant  
2 Honda West  
3 12451 Westminster Avenue  
4 Santa Ana, California 92703

5 Roland N. Smoot, Esq., Arnold E. Sklar, Esq., Attorneys  
6 for Respondent  
7 Lyon & Lyon  
8 800 Wilshire Boulevard  
9 Los Angeles, California 90017

10 Herbert Licker, Esq., Attorney for Interested Individual  
11 1571 West Katella Avenue  
12 Suite J  
13 Anaheim, California 92802

14 The Board, after reviewing the Proposed Decision, Proposed  
15 Decision After Remand, the record, and the relevant statutory  
16 and regulatory code sections, makes the following:

17 Determination of Issues

18 Protestants Redlandsrider, Inc. dba Huntington Honda, Tri  
19 City Cycle Center, Inc., and Honda West, have failed to establish  
20 that there is good cause for not relocating Herb Friedlander  
21 Imports, Inc. to the proposed location for the following  
22 reasons:

23 1. The Protestants have failed to establish that their  
24 investment would be jeopardized by the proposed relocation;

25 2. The Protestants have failed to establish that there  
26 would be an adverse affect on the retail motor vehicle business  
27 and the consuming public in the relevant market area;

3. The Protestants have failed to establish that it would  
be injurious to the public welfare for Herb Friedlander Imports,  
Inc. to be relocated;

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1           4. The Protestants have failed to establish that the  
2 proposed relocation would result in a decrease in competition  
3 or a decline in consumer care for the owners of Honda products  
4 in the relevant market area;

5           5. The Protestants have failed to establish that the  
6 proposed relocation would have an adverse affect on competition  
7 and therefore would not be in the public interest;

8           6. Section 582 of Title 13 of the California Administrative  
9 Code does not apply to proceedings under sections 3062 and  
10 3063 of the California Vehicle Code.

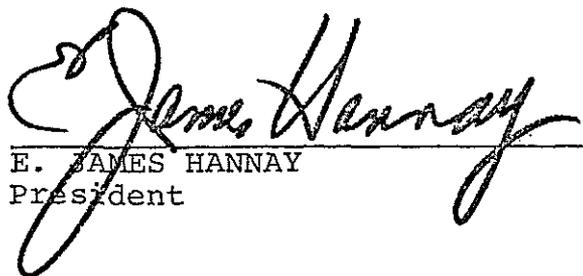
11           THEREFORE, the following is the Decision of the Board:

12           The Protests are overruled. American Honda Motor Co., Inc.  
13 is permitted to relocate Herb Friedlander Imports, Inc. from  
14 its present location at 7051 Garden Grove Boulevard, Garden  
15 Grove, California, to 13740 Beach Boulevard, Westminster,  
16 California.

17 DATED: July 14, 1982

NEW MOTOR VEHICLE BOARD

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21 By

  
E. JAMES HANNAY  
President

22  
23 cc: Doris Alexis, Director, DMV  
24 Roger Hagen, Chief, Div. Compl., DMV  
25 Alan Mateer, Chief Counsel, DMV  
26  
27

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

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TRI CITY CYCLE CENTER, Inc., and )  
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Respondent, )  
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HERB FRIEDLANDER IMPORTS, Inc., )  
 )  
Interested Individual. )  
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PROTEST NOS. PR-344-81  
PR-345-81  
PR-346-81

PROPOSED DECISION  
AFTER REMAND

PROCEDURAL BACKGROUND

1. The proposed decision in the above entitled protests was submitted by Aaron S. Resnik, Administrative Law Judge, to the New Motor Vehicle Board (Board) on March 8, 1982. The Board considered the matter at its regularly scheduled meeting on April 7, 1982, and remanded the matter back to the Administrative Law Judge for additional findings of fact

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relative to the good cause factors enumerated in Vehicle Code § 3063.<sup>1/</sup>

2. Protestants submitted declarations to the Board addressing the good cause factors in Vehicle Code § 3063, and Respondent submitted counter-declarations to the Board.

JURISDICTIONAL BACKGROUND

3. In the proposed decision in this matter, the Administrative Law Judge determined that American Honda Motor Co., Inc. (Honda) maintained a position of neutrality throughout the proceedings. The Administrative Law Judge determined that Honda's neutrality was equivalent to a constructive withdrawal of its notice of intent to relocate Herb Friedlander Imports, Inc. (Friedlander) and constituted an abandonment of its interest in the subject matter of the proceedings.

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

ISSUES PRESENTED

4. Protestants contend that there is good cause for not relocating the franchise for the following reasons:

- (a) The Protestants' investments are permanent and will be adversely affected by the relocation of the franchise [§ 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 relocation of the franchise will be injurious to the public welfare [§ 3063(3)];
- (d) The Honda franchisees in the relevant market area are providing adequate competition and convenient consumer care for the Honda vehicles in the market area, including adequate motor vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel [§ 3063(4)]; and

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- (e) The relocation would not increase competition and would not be in the public interest [§ 3063(5)].

FINDINGS OF FACT

FACTS RELATING TO THE PERMANENCY OF INVESTMENT  
[§ 3063(1)]

5. Tri City Cycle Center, Inc. (Tri City), operates a Honda motorcycle franchise and a Kawasaki motorcycle franchise at 9041 Katella Avenue, Anaheim. Colman Colker (Colker), President of Tri City, and Delores Colker own 100% of the stock of Tri City. Colker has been a Honda dealer for 11 years and has operated from his present location since December of 1975.

6. The Tri City facility consists of approximately 5,000 square feet of building space located on approximately 16,000 square feet of property.

7. Redlandsrider, Inc., dba Huntington Honda (Huntington Honda) operates a Honda franchise at 7911 Warner Avenue, Huntington Beach. Jim Wells (Wells) is the sole stockholder of Huntington Honda. Huntington Honda leases the property on which the facility is located.

8. Wells values his capital investment in Huntington Honda at \$100,000.

9. Honda West, a co-partnership, operates a Honda franchise at 12451 Westminster Avenue, Santa Ana.

10. Herb Friedlander Inc., (Friedlander) was incorporated in 1962. Herb Friedlander is the President of the corporation. Friedlander first became a Honda Motorcycle dealership in 1962 and was located at 8992 Garden Grove Boulevard, Garden Grove. In 1964, the dealership was relocated to 13750 Beach Boulevard, Westminster. In February 1976, the dealership was relocated to 7051 Garden Grove Boulevard, Garden Grove, where it has remained to the present time. It is proposed that Friedlander relocate to the previous site at 13750 Beach Boulevard, Westminster.

11. At the time of the hearing Friedlander was using the proposed location for the sale of new Jaguar automobiles and used cars. If the relocation is approved, the facility will be used exclusively for Honda motorcycles.

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12. Over the years, the facilities had been used for the sale and service of various makes of imported cars, and from 1964 to 1976, for Honda motorcycles. Several years ago, Friedlander invested approximately \$250,000 in the facilities at the proposed location for the purpose of accommodating the various franchises. The investment was not made in contemplation of this proposed relocation. Friedlander does not anticipate any additional improvement, renovation, or modification costs to be incurred in the relocation. The proposed facility meets Honda's sales and service facility requirements.

13. Herb Friedlander plans to divest himself of his interests in the Garden Grove facility if the relocation is approved.

14. Friedlander presently sells Honda automobiles in Westminster, across the street from the proposed location.

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FACTS RELATING TO THE EFFECT ON THE RETAIL  
MOTOR VEHICLE BUSINESS AND THE CONSUMING  
PUBLIC IN THE RELEVANT MARKET AREA  
[§ 3063(2)]

15. Friedlander's present location is situated near the intersection of Garden Grove Boulevard and Golden West in Garden Grove. The proposed location is one and one-third straight line miles from the present location. The proposed location is one and one-half customary driving miles from the present location. The customary driving time from the present location to the proposed location is approximately 3 minutes. The proposed location is situated just north of the intersection of Westminster and Beach Boulevard in Westminster.

16. There are 53 independent motorcycle repair shops in the relevant market area. The proposed relocation would not add to or diminish the number of motorcycle dealerships or motorcycle repair shops in the relevant market area.

17. There are 11 Honda dealerships in the relevant market area. The proposed relocation would not add to or diminish the number of Honda dealerships in the relevant market area.

FACTS PERTAINING TO WHETHER THE ESTABLISHMENT  
OF THE ADDITIONAL FRANCHISE WILL BE INJURIOUS  
TO THE PUBLIC WELFARE [§ 3063(3)]

18. The proposed relocation will not add to or diminish the number of dealerships located in the relevant market area.

FACTS PERTAINING TO WHETHER THE FRANCHISEES  
OF THE SAME LINE-MAKE IN THE RELEVANT MARKET  
AREA ARE PROVIDING ADEQUATE COMPETITION AND  
CONVENIENT CONSUMER CARE FOR THE MOTOR VEHICLE  
SALES AND SERVICE FACILITIES, EQUIPMENT, SUPPLY  
OF VEHICLE PARTS AND QUALIFIED SERVICE PERSONNEL  
[§ 3063(4)]

19. There are currently 11 Honda dealerships in the relevant market area. The proposed relocation will not add to or diminish the number of Honda dealerships in the relevant market area.

20. Huntington Honda's service facility is presently operating at approximately 40% of capacity.

21. Huntington Honda has an inventory of parts, accessories, motorcycles, equipment, and supplies (including operating cash) valued at \$150,000.

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22. Tri City has a motorcycle inventory valued at approximately \$260,000. Tri City has an inventory of parts and accessories valued at \$200,000.

23. Tri City's service facility is presently operating at approximately 55% of capacity.

24. Huntington Honda, Tri City, and Honda West's service facilities all meet Honda's requirements.

25. Friedlander's present service facility does not meet Honda's minimum service standards due to the necessity for motorcycles to be stored in front of the service facility and Friedlander's mechanics have not attended Honda's training schools in two years. Friedlander plans to transfer the same mechanics to the proposed facility.

26. The proposed facility meets Honda's minimum service requirements.

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FACTS PERTAINING TO WHETHER THE ESTABLISHMENT OF  
AN ADDITIONAL FRANCHISEE WOULD INCREASE COMPETI-  
TION AND THEREFORE BE IN THE PUBLIC INTEREST  
[\S 3063(5)]

27. The proposed relocation is one and one-third straight line miles from the present location. The number of Honda dealerships in the relevant market area will not be increased or decreased by the relocation.

28. The following chart indicates the distances and driving times between the site of the proposed relocation and the Honda dealerships indicated:

<u>Proposed Dealer To:</u>	<u>Straight Line Miles</u>	<u>Driving Miles</u>	<u>Driving Time (Minutes)</u>
Huntington Honda	3.1	3.4	15
Tri City	Unknown	3.8	14
Honda West	4.25	4.4	7

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29. The following chart indicates the distances and driving times between Friedlander's present location and the Honda dealerships indicated:

<u>Friedlander Present Dealership To:</u>	<u>Straight Line Miles</u>	<u>Driving Miles</u>	<u>Driving Time (Minutes)</u>
Huntington Honda	4 1/8	5.2	21
Tri City	4	4	11
Honda West	5.5	6.2	24* 15**

\* (Customary)

\*\* (Freeway)

30. Honda was achieving approximately 50% of the market share of sales in Orange County in 1975. Honda's market share of sales in Orange County has presently declined to approximately 40% of the market share of sales.

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31. Tri City has experienced a decline in sales of new Hondas as indicated in the following record of sales:

<u>Year</u>	<u>Number of New Hondas Sold</u>
1978	349
1979	491
1980	300
1981	335

32. Friedlander has experienced a decline in sales of new Hondas at the present location indicated in the following record of sales:

<u>Year</u>	<u>Number of New Hondas Sold</u>
1978	124
1979	77
1980	89
1981	71 (Through 9/81)

33. The proposed move is from an old converted gas station facility with relatively low exposure to a more modern facility with increased service capacity and increased public exposure.

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DETERMINATION OF ISSUES

34. Honda maintained its position of neutrality throughout the proceedings. Honda's neutrality is equivalent to a constructive withdrawal of its notice of intent to relocate Friedlander and constitutes an abandonment of its interest in the subject matter of these proceedings.

35. Honda elected to relocate Friedlander and so notified the Protestants and the Board. Honda subsequently withdrew its intention to relocate Friedlander. Had Honda not abandoned its interest in the proposed relocation, the protests may have been overruled due to a failure of the Protestants to establish good cause not to allow the relocation. Because of Honda's abandonment, it is not necessary for the Board to issue a decision on the merits of the protests.

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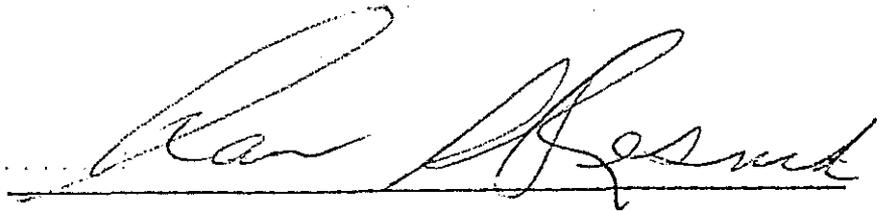
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The following proposed decision is respectfully submitted:

Honda has withdrawn its notice of intent to relocate Friedlander. Honda is not permitted to relocate Herb Friedlander Imports, Inc.

I hereby submit the foregoing which constitutes my proposed decision in the above-entitled matter and recommend its adoption as the decision of the New Motor Vehicle Board.

DATED: July 9, 1982

A handwritten signature in cursive script, appearing to read "Aaron S. Resnik", is written over a horizontal line.

AARON S. RESNIK  
Administrative Law Judge  
New Motor Vehicle Board

1507 - 21st Street, Suite 330  
Sacramento, California 95814  
Telephone: (916) 445-1888

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

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TRI CITY CYCLE CENTER, Inc., and	)	PR-345-81
HONDA WEST, a Co-Partnership,	)	PR-346-81
Protestants,	)	
vs.	)	
AMERICAN HONDA MOTOR CO., INC.,	)	<u>PROPOSED DECISION</u>
Respondent,	)	
_____	)	
HERB FRIEDLANDER IMPORTS, Inc.,	)	
Interested Individual.	)	
_____	)	

Procedural Background

1. By letter dated September 2, 1981, American Honda Motor Co., Inc. (Honda) gave notice to the protestants that Honda..."elected to relocate"...the motorcycle franchise of Herb Friedlander Imports, Inc. (Friedlander) from its present location at 7051 Garden Grove Boulevard, Garden Grove to 13750 Beach Boulevard, Westminster.<sup>1/</sup>

1/ Friedlander sells Honda automobiles in Westminster, across the street from the proposed location.

2. The New Motor Vehicle Board (Board) received notice from Honda on September 8, 1981.

3. By letter dated September 11, 1981, Tri City Cycle Center, Inc. (Tri City) advised Honda, that Tri City . . . "is filing a formal protest to the relocation." A copy of this letter was received by the Board on September 16, 1981.<sup>2/</sup>

4. Redlandsrider, Inc., dba Huntington Honda (Huntington Honda) filed a protest on September 17, 1981, pursuant to Vehicle Code Section 3062.<sup>3/</sup> Honda West, a co-partnership (Honda West), filed a protest with the Board on September 30, 1981.

5. Each of the protestants appeared in propria persona through an authorized representative.

6. Honda was represented by Arnold E. Sklar and John T. Wiedmann, of the law firm of Lyon and Lyon.

7. Friedlander requested and was granted interested individual status pursuant to Section 3066. Friedlander was represented by Herbert Licker.

#### Jurisdictional Issue Presented

8. Did Honda constructively withdraw its notice of intent to relocate Friedlander or abandon its interest in the subject matter of the proceeding?

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<sup>2/</sup> No formal protest was thereafter received by the Board, notwithstanding a request by the Board for compliance with Section 598 of the Board's regulations. Whether Tri-City was formally before the Board is moot, in light of the proposed decision.

<sup>3/</sup> All references are to the California Vehicle Code, unless otherwise indicated.

Findings of Fact

9. Honda filed answers to the various protests. These answers contained general denials and an affirmative defense that the protests did not comply with the regulations of the Board.

10. The hearing was set to commence on November 8, 1981, but was continued until December 8, 1981, due to an emergency in the family of one of the dealer principals.

11. At the time and place set for the hearing to commence, the protestants and the interested individual appeared and were prepared to proceed. No appearance was made on behalf of Honda. The hearing was suspended pending an attempt to contact counsel for Honda.

12. A telephone call was placed by Friedlander to the law firm representing Honda. During this telephone call, the Administrative Law Judge spoke with Arnold Sklar, counsel for Honda. Sklar advised that Honda was taking a "neutral position" and questioned whether appearance was necessary. The Administrative Law Judge advised that appearance was necessary, and failure to appear would be construed as an abandonment of the matter by Honda. Sklar appeared on behalf of Honda when the hearing reconvened that afternoon.

13. When the hearing reconvened Sklar more fully articulated the position of Honda as being "essentially neutral . . . and having . . . no position either way . . ." Sklar

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maintained Honda was neither approving nor disapproving the relocation.<sup>4/</sup>

14. Counsel for Honda requested that he be allowed to leave the hearing room and that Honda be excused from further participation in the proceedings.

15. In light of Honda's indication they would not participate, the Administrative Law Judge allowed Sklar to leave the hearing room.

16. As the hearing progressed, it became apparent to the Administrative Law Judge that the absence of Honda interfered with the orderly process of the hearing and the position of neutrality on behalf of Honda raised a question of constructive withdrawal. The Administrative Law Judge then continued the proceedings.

17. The proceedings were reset for January 11, 1982, and the parties were notified that they were expected "to appear and participate." The parties were specifically referred to Board regulation Section 589.<sup>5/</sup>

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<sup>4/</sup> Webster's Third New International Dictionary defines "neutral" as "a condition of being uninvolved in controversies between others or refraining from taking part on either side of a controversy."

<sup>5/</sup> Board regulation Section 589 provides: "Any party who fails to appear at a hearing will not be entitled to a further opportunity to be heard unless good cause for such failure is shown to the board or to the hearing officer within five days thereafter. The lack of such showing of good cause may, in the discretion of the board or the hearing officer, be interpreted as an abandonment of interest by such party in the subject matter of the proceeding."

18. At the time and place set for the hearing to reconvene, appearances were made by protestants, the interested individual, and Honda.

19. When the hearing reconvened Sklar indicated Honda would remain neutral. The Administrative Law Judge indicated that a position of neutrality might not be sufficient to generate a controversy between the protestants and respondent. He further indicated that unless Honda affirmatively seeks to relocate Friedlander, the matter would be taken under submission.

20. Sklar maintained that Honda had made such an affirmative election as indicated in its letter to the Board dated September 2, 1981.

21. Honda's position was restated by its Regional Sales Manager who testified that: "...whether or not Mr. Friedlander relocated his franchise didn't make any difference to American Honda."

22. Thereupon the Administrative Law Judge took the matter under submission. He indicated there was a serious question as to whether a controversy existed between the protestants and respondent or whether the controversy was one solely between the protestants and the interested individual.

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Determination of Issues

23. Honda maintained its position of neutrality throughout the proceedings.

24. Honda's neutrality is equivalent to a constructive withdrawal of its notice of intent to relocate Friedlander and constitutes an abandonment of its interest in the subject matter of these proceedings.

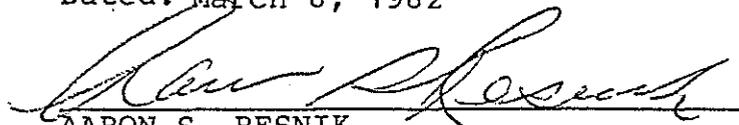
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The following proposed decision is respectfully submitted:

Honda is not permitted to relocate Herb Friedlander Imports, Inc.

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

Dated: March 8, 1982



AARON S. RESNIK  
Administrative Law Judge  
New Motor Vehicle Board