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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

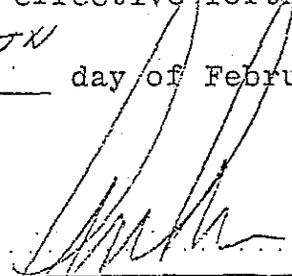
In the Matter of the Protests of	)	
HONDA DEL REY,	)	Protest No. PR-699-84
BILL KRAUSE SPORTS CYCLES, INC.,	)	Protest No. PR-700-84
Protestants,	)	
vs.	)	
AMERICAN HONDA MOTOR CO., INC.,	)	
Respondent.	)	
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SANTA MONICA SPORTS CENTER,	)	
INCORPORATED,	)	
Interested Individual.	)	
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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 5<sup>TH</sup> day of February, 1985.

  
\_\_\_\_\_  
ALLAN E. CONE  
President  
New Motor Vehicle Board

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NEW MOTOR VEHICLE BOARD

In the Matter of the Protests of )  
 )  
Michnor Motors, Inc. dba ) Protest No. PR-699-84  
HONDA DEL REY, and )  
Sports Cycles Center, Inc. dba ) Protest No. PR-700-84  
BILL KRAUSE SPORTS CYCLES )  
 )  
Protestants, )  
 )  
vs. ) PROPOSED DECISION  
 )  
AMERICAN HONDA MOTOR CO., INC., )  
 )  
Respondent. )  
 )  
\_\_\_\_\_  
SANTA MONICA SPORTS CENTER, INC., )  
 )  
Interested Individual. )  
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PROCEDURAL BACKGROUND

1. Respondent, American Honda Motor Co., Inc. (American Honda) proposed to establish Santa Monica Sports Center, Inc. (Santa Monica Sports Center) as an additional dealership at 2110 Broadway, Santa Monica, California.

2. Protestants are Michnor Motors, Inc. dba Honda Del Rey (Honda Del Rey), 4421 South Sepulveda Blvd., Culver City, California, and Sports Cycles Center, Inc. dba Bill Krause Sports Cycles (Sports Cycles), 1257 South La Brea Avenue, Inglewood, California. On September 12, 1984, each filed a protest with the New Motor Vehicle Board (Board) pursuant to Vehicle Code section 3062.<sup>1/</sup>
3. The proposed dealership, Santa Monica Sports Center, requested and was granted "interested individual" status pursuant to section 3066.
4. The Board issued an order consolidating the Honda Del Rey and Sports Cycles protests on September 17, 1984.
5. A hearing was held on November 28, 29, and 30, 1984 before George R. Coan, Administrative Law Judge for the Board.
6. Honda Del Rey and Sports Cycles were represented by Cris C. Vaughan of the Law Offices of Gary L. Hall. American Honda was represented by Robert W. Dickerson of the Law Offices of Lyon & Lyon. Santa Monica Sports Center appeared and was represented by one of its owners, John Winslett.

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

ISSUES PRESENTED

7. Protestants contend there is good cause for not allowing the establishment of Santa Monica Sports Center, as an additional franchisee for the following reasons:

- (a) The protestants' investments are permanent, and the proposed franchisee's investment would not be permanent [Sec. 3063(a)];
- (b) The establishment of the additional franchise would adversely affect the retail motor vehicle business and the consuming public in the relevant market area<sup>2/</sup> [Sec. 3063(b)];
- (c) The establishment of the additional franchise would be injurious to the public welfare [Sec. 3063(c)];
- (d) The American Honda franchisees in the relevant market area are providing adequate competition and convenient consumer care for the owners of Honda products, including adequate sales and

<sup>2/</sup>Vehicle Code Section 507 defines the "relevant market area" as "any area within a radius of 10 miles from the site of a potential new dealership."

service facilities, equipment, supply of vehicle parts and qualified service personnel [Sec. 3063(d)]; and

- (e) The proposed establishment would not increase competition and would therefore not be in the public interest [Sec. 3063(e)].

#### FINDINGS OF FACT

#### FACTS RELATING TO THE PERMANENCY OF INVESTMENT. [Sec. 3063(a)]

8. Honda Del Rey deals exclusively in products distributed by American Honda. Honda Del Rey has been owned and operated by the DuBow family since 1965 and has been at its present location since the late 1960's. Since 1977, all of the stock of the corporation has been owned by Nettie DuBow who is the president. She is also the person responsible for the day-to-day operation of the dealership.
9. The Honda Del Rey facility and the land on which it is located is owned by Nettie DuBow individually, and leased by her to the corporation. In 1984, DuBow obtained loans totaling \$125,000 to finance construction of new facilities on the property. At that time, she increased the rent from \$2,000 per month to the present \$5,000 per month.

10. For the past one and one-half years Honda Del Rey has recognized that its current facilities were inadequate for its business needs. At the request of American Honda, Honda Del Rey is currently expanding its facilities by two and one-half to three times. The land on which the dealership is located is large enough to allow expansion.
  
11. Construction for expansion of Honda Del Rey began in May 1984 and is not yet completed. DuBow undertook the expansion with knowledge of American Honda's intention to establish the additional dealership in Santa Monica.
  
12. Sports Cycles Center, dba Bill Krause Sports Cycles, is a corporation, the shares of which are owned equally by Vance Griffiths, Diana Griffiths, Chuck Mangus and Stephanie Mangus. Vance Griffiths is currently president and general manager. Stephanie Mangus is vice president and also owns a separate small business. Chuck Mangus is treasurer of the corporation. He is also a licensed CPA and has run two small automobile repair firms. Diana Griffiths, an attorney and licensed insurance agent, is secretary of the corporation.

13. Sports Cycles has existed at its present location since at least 1971. In 1979, the dealership was purchased by the present shareholders from the former owner, Bill Krause, as an on-going business. The total cost for the business was \$651,262.92 of which \$250,000 represented good will. At the time of purchase, \$216,262.92 was paid in cash, leaving a remaining balance of \$435,000 owed to Bill Krause. Pursuant to a repayment schedule included in the purchase agreement, this balance has since been reduced by approximately \$5,000.00 each month.
  
14. In addition to being a Honda franchisee, Sports Cycles holds franchises for Kawasaki, Yamaha, and Harley-Davidson products. Sports Cycles did not attempt to allocate the purchase price of the dealership among the various franchises.
  
15. The land upon which Sports Cycles is located is owned by Bill Krause. Sports Cycles is in its 6th year of a 15 year lease on this property. The current rental agreement is for \$4,500 a month and includes an escalation clause.

16. Sports Cycles has been listed for sale with a broker for approximately one year.
17. The proposed dealership, Santa Monica Sports Center, is to be located at 2110 Broadway, Santa Monica, California. The corporation was formed solely for the purpose of applying for a Honda franchise, and if established, will deal exclusively in Honda products. John Winslett and Fred Leffler each owns 50% of the stock and each has several years of experience in the motorcycle business.
18. Santa Monica Sports Center has obtained dealership facilities, zoning variance approval, and a business license.

FACTS RELATING TO THE EFFECT ON THE RETAIL  
MOTOR VEHICLE BUSINESS AND THE CONSUMING  
PUBLIC IN THE RELEVANT MARKET AREA. [Sec. 3065(b)]

19. The following indicates American Honda's present and former dealerships in the relevant market area and their current status:

<u>Dealership</u>	<u>Location</u>	<u>Status</u>
1. Honda Del Rey	Culver City	Existing (protestant)
2. Bill Krause Sports Cycles	Inglewood	Existing (protestant)
3. Honda of Hollywood	Hollywood	Existing
4. Sherman Oaks Honda	Sherman Oaks	Existing
5. California Honda	West L.A.	Defunct as of 11/11/82
6. Honda West (AKA Talbot Sweeney, Inc. and formerly Thrifty-Lad)	Santa Monica/ Marina Del Rey	Defunct as of 6/12/83

20. The following indicates distances and drive times from the existing Honda dealerships to the proposed location:

<u>Dealership</u>	<u>DISTANCE</u>		
	<u>Straight-line Miles</u>	<u>Driving Miles</u>	<u>Driving (In Time Minutes)</u>
Honda Del Rey	4.1	5.4	9
Sports Cycles	9.0	10.8	20
Honda of Hollywood	9.4	10.5	25
Sherman Oaks	8.5	13.5	25

21. The economic and demographic characteristics of the relevant market area have remained stable between the years 1979 and 1983.

A. The total population within the relevant market area has remained relatively constant between 1980 and 1984. The following indicates the total population within the relevant market area as a percent of the County of Los Angeles.

	<u>Relevant Market Area</u>	<u>Market Area as % of County</u>
1980	1,204,788	16.11
1984(est)	1,259,776	16.28
1989(est)	1,325,077	16.41

B. Approximately 70 percent of motorcycle products are sold to persons in the 18 to 35-year-old age group. Two of the heavily populated cities within the relevant market area contain a high percentage of population within this group. The percentages are high in comparison to both Los Angeles County and California.

Percent of Population Between 18 to 35 Years Of Age

	<u>1979</u>	<u>1983</u>
Culver City	N.A.*	N.A.*
Inglewood	33.9%	36.6%
Santa Monica	32.1%	36.0%
Los Angeles Co.	30.6%	31.8%
California	30.8%	31.8%

\*Not Available

C. The proportional relationship of income levels within the relevant market area to income levels within the County of Los Angeles has remained constant. A projected estimate through 1989 indicates that no dramatic change in economic growth is expected.

22. In 1979, there existed two Honda dealerships, in addition to the protestants, within 5 miles of the proposed dealership. These dealerships have since gone out of business.
23. Despite the loss of these two dealerships, Honda Del Rey and Sports Cycles have shown no substantial increase in their sales penetration into the relevant market area.
24. The following reflects the ratio of American Honda dealerships per capita for various areas of California:

<u>Area</u>	<u>Ratio Dealer:Population</u>
California State	1:151,085
Los Angeles County	1:266,833
Relevant Market Area (current)	1:419,925
Relevant Market Area (assuming establishment of proposed dealership)	1:314,944

25. The percentage of total Honda units sold in the Southern California area<sup>3/</sup> has increased while the total Honda units sold within the relevant market area has decreased, as shown in the following chart.

<sup>3/</sup>The Southern California area includes, generally, that portion of California south of the northern Los Angeles County boundary.

<u>Period</u>	<u>% of Statewide Honda sales made in Southern California area</u>	<u>% of Southern California area Honda sales made in RMA</u>
1979	40.98	11.15
1980	39.73	10.32
1981	43.09	8.37
1982	45.64	8.80
1983	44.92	8.07

FACTS RELATING TO WHETHER ESTABLISHMENT OF THE ADDITIONAL  
FRANCHISE IS INJURIOUS TO THE PUBLIC WELFARE. [Sec. 3063(c)]

26. The City of Santa Monica has granted the proposed franchisee a zoning variance and a license to do business.
27. Honda Del Rey is 4.1 straight-line miles from the proposed dealership. Sports Cycles is 9.0 miles from the proposed dealership.
28. From 1971 through 1982, 3 Honda dealerships were located within 5 miles of the proposed dealership. One dealership closed in 1982. The closure did not result in an increased percentage of Honda Del Rey sales in the area. A second dealership closed in 1983. Only one Honda dealership, Honda Del Rey, is now located within 5 miles of the proposed dealership. The percentage of Honda Del Rey's sales in the 5-mile area continues to decline, and no

significant improvement is reflected in the sales of Sports Cycles into the 5 - mile area. (See chart in paragraph 29.)

29. The chart below shows the percent of total sales by Honda Del Rey and Sports Cycles within 5 and 10 miles of the proposed dealership for the years 1979 through June 1984.

% of dealers' total sales  
registered within 5 and 10  
miles of the proposed location

<u>Year</u>	<u>Honda Del Rey</u>		<u>Sports Cycles</u>	
	<u>5 miles</u>	<u>10 miles</u>	<u>5 miles</u>	<u>10 miles</u>
1979	70.56%	85.94%	15.79%	63.16%
1980	70.41%	81.63%	18.33%	56.67%
1981	63.43%	77.99%	12.81%	52.31%
1982 <sup>4/</sup>	69.44%	82.20%	12.77%	67.78%
1983 <sup>5/</sup>	67.66%	80.67%	18.05%	55.53%
1984 thru June	66.08%	70.36%	15.36%	58.96%

30. Sports Cycles does not direct its sales efforts to the Santa Monica market as much as it does to the other markets surrounding the dealership.

FACTS RELATING TO WHETHER THE FRANCHISEES OF THE SAME LINE-MAKE IN THE RELEVANT MARKET AREA ARE PROVIDING ADEQUATE COMPETITION AND CONVENIENT CONSUMER CARE FOR OWNERS OF HONDA PRODUCTS, INCLUDING ADEQUATE SALES AND SERVICE EQUIPMENT, SUPPLY OF VEHICLE PARTS AND QUALIFIED SERVICE PERSONNEL. [Section 3063(d)]

<sup>4/</sup>California Honda closed as of 11/11/82.

<sup>5/</sup>Honda West closed as of 6/12/83.

31. Honda Del Rey is open six (6) days a week, from 8 a.m. to 6 p.m., for sales and service.
32. At the suggestion of American Honda, Honda Del Rey is in the process of expanding its facility. The size of the expanded facility will be two and one-half to three times the original size.
33. Due to lack of storage space, Honda Del Rey utilizes large lockable storage containers to store its motorcycle inventory.
34. Honda Del Rey was given permission by the city to use the storage containers until construction of its additional facilities is completed.
35. Representatives of American Honda encouraged Honda Del Rey to expand its facilities. Honda Del Rey would have expanded its facilities whether or not the proposed dealership was going to be established in Santa Monica.
36. DuBow is presently the only salesperson at Honda Del Rey. Over the past 5 years, although she has hired

sales personnel off and on, she was responsible for the majority of the sales. The salespersons hired remained only a short period of time.

37. During the past year, Honda Del Rey has experienced a high turnover of sales managers.

38. Honda Del Rey advertises in the Los Angeles Times, but does not advertise in local papers in the Santa Monica area where the new dealership is proposed to be established.

39. Sports Cycles is a multi-line dealership with Honda, Kawasaki, Yamaha and Harley-Davidson franchises.

40. Sports Cycles is open seven days a week for sales and parts and six days a week for service.

41. The percentage of facility space utilized by Sports Cycles for Honda units is set forth below:

Storage	40%
Outside display	40%
Showroom	25%
Service Area	50%

42. Despite efforts to do so, Sports Cycles has not been able to obtain enough mechanics to serve Honda customers adequately.
43. Eighty percent of the warranty work of Sports Cycles is done on motorcycles purchased at the dealership.
44. Although much evidence was introduced as to the size of both Honda Del Rey's and Sports Cycles' facilities, number of personnel etc., no evidence of an industry standard was introduced in order to determine whether the facilities were adequate to meet the existing needs of the relevant market area.

FACTS RELATING TO WHETHER THE ESTABLISHMENT OF AN ADDITIONAL FRANCHISE WOULD INCREASE COMPETITION AND THEREFORE BE IN THE PUBLIC INTEREST [3063(e)]

45. The majority of Honda motorcycles registered within the relevant market area were sold by dealers outside the relevant market area. The percentages for 1979 through June 1984 are as follows:

Sales of Honda Motorcycles Registered  
Within the Relevant Market Area

	<u>Total units sold to customers within the relevant market area by dealers IN the rele- vant market area (and percentage of total)</u>	<u>Total units sold to customers within the relevant market area by dealers OUT of the relevant market area (and percentage of total)</u>	<u>Total Units All Dealers</u>
1979	1,247 (36.41)	2,178 (63.59)	3,425
1980	943 (35.82)	1,690 (64.19)	2,633
1981	857 (33.54)	1,698 (66.46)	2,555
1982	946 (33.88)	1,846 (66.12)	2,792
1983	718 (21.34)	2,647 (78.66)	3,365
1984 thru June	426 (20.79)	1,623 (79.21)	2,049

46. There is an increasing percentage of Honda buyers within the relevant market area who are purchasing from dealers outside the relevant market area. The change in buying patterns coincided with the closures of California Honda in West Los Angeles and Honda West in Santa Monica in 1982 and 1983 respectively.

47. While Honda's percentage of sales in California and Southern California has increased, Honda's percentage of sales in both the 5-mile and 10-mile areas around the proposed dealership has decreased. This indicates a loss of Honda sales within the relevant market area.

48. Of all line-makes within Los Angeles County, American Honda has the largest percentage of market penetration.

LOS ANGELES COUNTY

<u>Year</u>	<u>Honda</u>	<u>Yamaha</u>	<u>Suzuki</u>	<u>Kawasaki</u>
1979	15630	6767	4168	3495
%	47.81	20.70	10.69	10.69
1980	11541	4881	3546	3163
%	46.23	19.55	14.20	12.67
1981	8513	4672	3125	3034
%	40.89	22.44	15.01	14.57
1982	9412	3476	3563	2722
%	46.40	17.14	17.57	13.42

No figures are available for 1983 and 1984

49. The following represents the number of motorcycle franchises of all line-makes presently within the relevant market area.

<u>Line-Make</u>	<u>No. of Dealers</u>
Honda	4
Yamaha	4
Kawasaki	4
Suzuki	3
Harley-Davidson	2
BMW	1

50. Santa Monica Sports Center was formed with the intention of applying for the American Honda franchise at the proposed location. The stock of Santa Monica Sports Center is owned by John Winslett and Fred Leffler.

51. Winslett is the service manager of Century Motor Sales, motorcycle division. He has held this position for two years. Prior to this, he was service manager for BMW motorcycles at Brown Motor Works.

52. Leffler has been the general service manager at Century Motor Sales for 3 years. He is responsible for bringing motorcycles to Century Motors. At present, Century is the number one BMW motorcycle dealership in the United States.

53. Both Leffler and Winslett intend to devote their full time to the dealership.

#### DETERMINATION OF ISSUES

Protestants have failed to prove that there is good cause for not establishing Santa Monica Sports Center as an additional American Honda franchisee, in that:

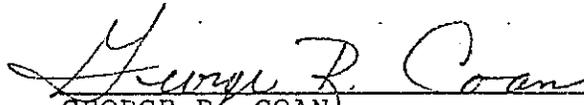
- (a) Protestants proved that their investments are permanent, but failed to prove that their investments will be adversely affected by the establishment [3063(a)];
  
- (b) Protestants failed to prove that the establishment will have an adverse effect on the retail motor vehicle business and the consuming public in the relevant market area [3063(b)];
  
- (c) Protestants failed to prove that the establishment will be injurious to the public welfare [3063(c)];
  
- (d) Protestants failed to prove that there is adequate competition and convenient consumer care for the owners of Honda vehicles in the relevant market area, including adequate motor vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel [3063(d)];
  
- (e) Protestants failed to prove that the establishment would not increase competition and that therefore the establishment would not be in the public interest [3063(e)].

ORDER

The Protests are overruled. American Honda is permitted to establish Santa Monica Sports Center, Incorporated, at 2110 Broadway, Santa Monica, California, as an additional franchisee.

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: January 31, 1985



GEORGE R. COAN  
Administrative Law Judge  
New Motor Vehicle Board