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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of)
ARVIL SPARKS SALES,)
Protestant,)
vs.)
KAWASAKI MOTORS CORP., U.S.A.,)
Respondent.)

WESTMINSTER KAWASAKI,)
Interested Individual.)

Protest No. PR-739-85

PROPOSED DECISION

PROCEDURAL BACKGROUND

1. By letter dated March 11, 1985, Respondent, Kawasaki Motors Corporation, U.S.A. (Kawasaki) gave notice of its intention to establish Westminster Kawasaki (Westminster) as a Kawasaki franchisee at 13749 Beach Boulevard, Westminster, California. The notice was received by Protestant Arvil Sparks Sales and by the New Motor Vehicle Board (Board) on March 15, 1985.
2. On March 29, 1985, Arvil Sparks Sales, located at 607 West Katella Avenue, Orange, California, filed a protest with

the Board pursuant to California Vehicle Code section 3062.^{1/}

3. This matter was originally consolidated for purposes of hearing with the protests of Anaheim Honda-Kawasaki, PR-738-85; Santa Ana Kawasaki, PR-740-85; Sport & Court, Inc., dba V.I.P. Motorcycles, PR-741-85; and Tri-City Cycle Center, PR-742-85. Each of the above had also filed protests against the establishment but the protests were withdrawn prior to the hearing.
4. On April 10, 1985, the proposed dealership, Westminster, requested and was granted "interested individual" status pursuant to section 3066.
5. A hearing was held on October 21 and 22, 1985 before George R. Coan, Administrative Law Judge for the Board.
6. Arvil Sparks Sales was represented by Arvil Sparks, In Pro Per. Kawasaki was represented by Charles L. Crouch, III, and Robert G. Lane of the Law Offices of Paul, Hastings, Janofsky and Walker. Westminster was represented by Chris C. Vaughan of the Law Offices of Robert C. Maddox. No appearance was made on behalf of Westminster at the hearing.

^{1/}All references are to the California Vehicle Code unless otherwise indicated.

ISSUES PRESENTED

7. Arvil Sparks Sales contends there is good cause for not allowing the establishment of Westminster as an additional franchisee for the following reasons:

- (a) The investments of Arvil Sparks Sales 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^{2/} [Sec. 3063(b)];
- (c) The establishment of the additional franchise would be injurious to the public welfare [Sec. 3063(c)];
- (d) The Kawasaki franchisees in the relevant market area are providing adequate competition and convenient consumer care for the owners of Kawasaki products, including adequate sales and

^{2/}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. Arvil Sparks Sales is a single-line dealer representing Kawasaki. It has operated at its present location, 607 Katella Avenue, Orange, California, since February 28, 1983. Arvil Sparks Sales is a partnership consisting of Arvil Sparks and Robert Tripp.^{3/}

9. Arvil Sparks (Sparks) has been in the motorcycle business for 25 years. He has been an owner or part-owner of motorcycle dealerships for the past 20 years. Sparks previously owned a Yamaha/Triumph dealership in Anaheim (sold in 1981), a Honda dealership in Costa Mesa (sold in 1982) and a Yamaha dealership in Costa Mesa (sold in 1982).

^{3/}Robert Tripp was present throughout the proceeding but did not testify.

10. Sparks also owned a Kawasaki dealership from 1977 through 1981 at the location of his present Kawasaki dealership. In 1981, Sparks sold the Kawasaki dealership. The dealership, under new owners, did poorly and in 1982 the franchise was terminated by Kawasaki. Sparks returned and began operating as a used motorcycle dealer. In October of 1982, Sparks again requested a Kawasaki franchise. In February 1983, the present franchise was granted.

11. The Arvil Sparks Sales facility and land are leased from a third party. The lease runs until 1991.

12. The evidence presented as to the permanency of the investment of Arvil Sparks Sales was ambiguous and inconclusive. The total investment was estimated by Sparks to be approximately \$300,000, of which a substantial portion was non-permanent, such as inventory and parts.

13. The proposed dealership, Westminster, will be located at 13749 Beach Boulevard, Westminster, California. The dealer applicants are Tom Goldbrecht and Jim Osberg, who have operated Whittier Kawasaki since 1979.

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14. Goldbrecht and Osberg will also be operating a Honda franchise at the proposed location. Each dealership will be housed in a separate 16,000 square foot building. Goldbrecht and Osberg are leasing the facilities pursuant to a 20-year lease with a right of first refusal to purchase the property.

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

15. The following indicates existing Kawasaki dealerships in the relevant market area:

V.I.P. MOTORCYCLES
7241 Orangethorpe Ave.
Buena Park, CA

TRI-CITY CYCLE CENTER
9041 Katella Ave.
Anaheim, CA

ANAHEIM HONDA/KAWASAKI
909 N. Anaheim Blvd.
Anaheim, CA

SANTA ANA KAWASAKI
1850 E. Edinger Ave.
Santa Ana, CA

ARVIL SPARKS SALES
607 W. Katella Ave.
Orange, CA

CHAMPION KAWASAKI
1777 Newport Blvd.
Costa Mesa, CA

16. Arvil Sparks Sales is approximately 8 straight-line miles from the proposed dealership.

17. The Kawasaki dealership closest to the proposed location is Tri-City Cycle Center, approximately 3.2 - 3.5 miles away.

18. Kawasaki's decision to establish the proposed dealership was based on inadequate representation and sales

penetration in the relevant market area, in particular that quadrant, in Orange County, bounded by Garden Grove Boulevard on the north, the Santa Ana River on the east, the Pacific Ocean to the southwest and the Orange/Los Angeles county line on the west.^{4/} While there are a number of competitors of Kawasaki located in the quadrant, there are no Kawasaki dealers therein.

19. The market share of Kawasaki in the quadrant is 10.44%. The market share in other areas of Orange County averages 12.10%.

20. A 1984 survey of buying power indicated that Orange County ranks sixth in population in the United States at 2.1 million.

21. The potential for vehicle sales in Orange County is indicated by the fact that a 1984 survey ranked the county fifth nationally with \$2.1 billion in automotive dealer sales.

22. In addition to other characteristics, Kawasaki studies have determined that motorcycle buyers have middle to higher than average incomes. Orange County ranked eighth

^{4/} Hereinafter referred to as the "quadrant".

nationally in metropolitan areas with incomes over \$35,000 and tenth nationally with incomes over \$50,000.

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

23. Arvil Sparks Sales is approximately 8 straight-line miles from the proposed dealership.

24. In 1984, Arvil Sparks Sales sold 120 new 2-wheel motorcycles. The majority of these sales were to buyers who lived close to the dealership in the cities of Orange and Anaheim, which are east and north of the quadrant respectfully.

25. The following indicates Kawasaki sales in the quadrant and those made by Arvil Sparks Sales:

	<u>Kawasaki a/ Sales</u>	<u>Arvil Sparks b/ Sales</u>	<u>Percentage of Sales Attri- butable to Protestant</u>
1984 2 Wheel	220	9	4.09%
1983 2 Wheel	259	8	3.09%
1984 ATV	26	1	3.85%

Source: a/ R. L. Polk Zip Code Analysis - Orange County

b/ Dealer Warranty Registration Report
(Includes motorcycles not reported by
R. L. Polk)

26. The market share of Kawasaki in the quadrant is 10.44% as compared to a 12.10% average in other areas of Orange County.

27. No evidence was presented by Arvil Sparks Sales indicating that the establishment of an additional franchise would be injurious to the public welfare.

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 KAWASAKI PRODUCTS, INCLUDING ADEQUATE SALES AND SERVICE FACILITIES, EQUIPMENT, SUPPLY OF VEHICLE PARTS AND QUALIFIED SERVICE PERSONNEL [Section 3063(d)]

28. No evidence was presented by Arvil Sparks Sales relating to adequacy of competition and convenient consumer care for owners of Kawasaki products in the relevant market area, including adequate sales and service facilities, equipment, supply of vehicle parts and qualified service personnel.

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

29. The applicants for the proposed dealership, Westminster, are Tom Goldbrecht and Jim Osberg, who have operated Whittier Kawasaki since 1979.

30. The dealership will be open seven days a week from nine a.m. until eight p.m.

31. No evidence was presented by Arvil Sparks Sales to show that the establishment would not increase competition and therefore would not be in the public interest.

DETERMINATION OF ISSUES

Protestant has failed to prove that there is good cause for not establishing Westminster Kawasaki as an additional Kawasaki franchisee, in that:

- (a) Protestant failed to prove that its investment is permanent, and that the proposed franchisee's investment would not be permanent [3063(a)];
- (b) Protestant 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) Protestant failed to prove that the establishment will be injurious to the public welfare [3063(c)];
- (d) Protestant failed to prove that there is adequate competition and convenient consumer care for the

owners of Kawasaki 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)]; and

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

In essence, the evidence of Protestant consisted of the opinion of Arvil Sparks and others as to the effect of the proposed establishment on the good cause factors enumerated in section 3063. Such opinion evidence, given all permissible inferences, fails to establish a prima facie case for Protestant. If a motion to dismiss were permitted in these proceedings and had been made at the end of Protestant's presentation of evidence, the motion would have been granted and there would have been no need for Respondent to present any evidence.

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ORDER

The Protest is overruled. Kawasaki is permitted to establish Westminster Kawasaki at 13749 Beach Boulevard, Westminster, California, as an 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 dates and recommend its adoption as the decision of the New Motor Vehicle Board.

DATED: November 6, 1985



GEORGE R. COAN
Administrative Law Judge
New Motor Vehicle Board