

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

4
5
6 STATE OF CALIFORNIA
7 NEW MOTOR VEHICLE BOARD

8
9 In the Matter of the Protest of)
10 SBD, INC., dba ORANGE COUNTY)
11 SUZUKI,)

Protest No. PR-916-87

12 Protestant,

DECISION

13 vs.

14 U.S. SUZUKI MOTOR CORPORATION,

15 Respondent.)

16
17 PROCEDURAL BACKGROUND

18 1. By letter dated September 1, 1987, U.S. Suzuki Motor
19 Corporation, a California corporation (Suzuki), sent notice
20 pursuant to California Vehicle Code section 3060¹ to SBD,
21 Inc., a California corporation, dba Orange County Suzuki
22 (OCS), of Suzuki's intention to terminate OCS's franchise.
23 Termination was to become effective 60 days from receipt of
24 the notice by OCS. Section 3060(b) provides that a
25 "franchisee may file a protest with the board within 30 days
26 after receiving a 60 day notice...."

27
28 ¹ Unless otherwise indicated, all references are to the
California Vehicle Code.

1 2. On September 3, 1987, a copy of the notice of
2 termination was received by the New Motor Vehicle Board.

3 3. A protest conforming with the Board's regulations was
4 filed on behalf of OCS on October 2, 1987.

5 4. On October 5, 1987, the Board mailed notice of OCS's
6 protest to Suzuki.

7 5. On October 16, 1987, Suzuki filed its notice of
8 appearance with the Board.

9 6. A Noticed Pre-Hearing Conference was held on October
10 16, 1987, before an administrative law judge for the Board.
11 Pursuant to stipulation by counsel made during that
12 conference, the protest was set for a hearing scheduled to
13 commence on December 15, 1987.

14 7. A hearing was held before Kenneth Cameron,
15 Administrative Law Judge of the Board on December 15, 1987.
16 OCS was represented by Guido R. Smith, Esq., 505 City Parkway
17 West, Suite 1000, Orange, California. Suzuki was represented
18 by Peter C. Freeman, Esq., of Duffern H. Helsing, Inc., 505
19 North Tustin Ave., Suite 150, Santa Ana, California.

20 8. On April 14, 1988, the New Motor Vehicle Board
21 considered the Proposed Decision of Judge Cameron. As the
22 result of deficiencies perceived by the Board in the proposed
23 decision, the Board rejected the proposed decision.

24 9. On April 20, 1988, the Board issued an Order Rejecting
25 Proposed Decision and gave the parties until April 29, 1988,
26 to submit written argument in this matter.

27
28

1 guidelines which he stated required full frontage glass walls
2 for the showroom.

3 17. On July 10, 1987, OCS signed a 10-year lease for the
4 new facility.

5 18. On July 12, 1987, OCS sent to Suzuki written notice
6 of intention to relocate to the new facility.

7 19. Between July 16, 1987, and August 13, 1987, Suzuki
8 notified OCS in writing four times that Suzuki would not
9 approve the relocation. The only reason for the refusal to
10 approve the new location was the purported failure of the
11 facility to have sufficient glass to satisfy Suzuki's
12 guidelines. The letters described the guideline as requiring
13 "full frontage glass walls," and "full frontage glass in the
14 showroom." One letter indicated that Suzuki refused to
15 approve the relocation because the facility has "no showroom
16 windows." In fact Suzuki's guidelines, as contained in its
17 "Dealer Development Guide" ("DDG") require only that the front
18 of the building be "largely constructed of glass."

19 20. Contrary to one of Suzuki's letters, the building
20 does have showroom windows. One of the four letters from
21 Suzuki states that "there is no question about the location of
22 the proposed facility ... it is a good location. However we
23 feel very strongly about this point in that a showroom with
24 windows in a retail establishment selling Suzuki motorcycles
25 is very necessary."

26 21. In addition to misstating the standards as contained
27 in the DDG, Suzuki effectively kept OCS from determining the
28 basis for the purported guidelines in that Suzuki never

1 disseminated the DDG to its dealers. The DDG was developed in
2 1986 by Suzuki for use by its national and regional sales
3 managers and was intended to be an internal document. OCS was
4 not supplied with a copy of the DDG until after the
5 commencement of the termination proceedings.

6 22. On August 15, 1987, OCS commenced moving to the new
7 location.

8 23. On September 1, 1987, Suzuki issued its notice of
9 termination.

10

11

ISSUES PRESENTED

12

13 24. Whether OCS transacted an adequate amount of
14 business, as compared to the business available to OCS.
15 (Section 3061(a)).

16 25. Whether OCS made a substantial necessary investment
17 and incurred obligations to perform its part of the franchise.
18 (Section 3061(b)).

19 26. Whether the investment made by OCS was permanent.
20 (Section 3061(c)).

21 27. Whether it is injurious or beneficial to the public
22 welfare for the OCS franchise to be modified or replaced or
23 the business of OCS disrupted. (Section 3061(d)).

24 28. Whether OCS has adequate motor vehicle sales and
25 service facilities, equipment, vehicle parts, and qualified
26 service personnel to reasonably provide for the needs of the
27 consumers for the motor vehicles handled by OCS and has been

28

1 and is rendering adequate services to the public. (Section
2 3061(e)).

3 29. Whether OCS fails to fulfill the warranty obligations
4 of the franchisor to be performed by OCS. (Section 3061(f)).

5 30. To what extent OCS has failed to comply with the
6 terms of the franchise. (Section 3061(g)).

7 31. The issue of damages was not before the Board in
8 these proceedings.

9
10 BURDEN OF PROOF

11
12 32. The burden of proving good cause to terminate the
13 franchise is on Suzuki. (Section 3066(b)).

14
15 FINDINGS OF FACT

16
17 AMOUNT OF BUSINESS TRANSACTED BY OCS AS
18 COMPARED TO THE BUSINESS AVAILABLE TO OCS
19 (SECTION 3061(a))

20 33. OCS is one of seven Suzuki motorcycle dealerships in
21 the Orange County market area.

22 34. OCS has operated as a Suzuki motorcycle dealer since
23 1973. The current dealership agreement, the subject of this
24 protest, has been in effect since April 16, 1985.

25 35. No evidence was introduced at the hearing to
26 establish that OCS's sales performance prior or subsequent to
27 Suzuki's notification of termination was less than
28 satisfactory.

1 INVESTMENT NECESSARILY MADE AND OBLIGATIONS INCURRED BY
2 OCS TO PERFORM ITS PART OF THE FRANCHISE
3 (SECTION 3061(b))

4 36. At the time OCS was first granted its franchise in
5 1973, monthly rental costs at the 1995 Harbor Boulevard
6 facility were \$1700.

7 37. In July of 1979, at the time the original lease for
8 the Harbor Boulevard facility had expired, OCS negotiated a
9 second lease for the premises. The term was for 3 years with a
10 3-year option. The option was exercised and the lease term was
11 extended through July, 1986. At the time the second lease
12 expired, OCS's rent had escalated to approximately \$3000 per
13 month.

14 38. In approximately May of 1986, the 1995 Harbor Blvd.
15 facility was sold. The new owners of the facility extended an
16 offer to OCS for continued rental of that premises on a
17 triple-net lease. The triple-net lease amounted to a total
18 monthly expenditure of \$5700 in rental fees, plus expenses for
19 maintenance, utilities and property taxes. This approximated a
20 doubling of OCS's rental costs for that premises.

21 39. From July, 1986, through July, 1987, OCS continued to
22 occupy the facility under a month to month lease. During this
23 one year period, OCS attempted, without success, to find a
24 satisfactory facility for relocation. One location on Victoria
25 Street in Costa Mesa, California, was unavailable due to the
26 Costa Mesa City Planning Commission's refusal to approve the
27 facility for use as a motorcycle dealership.

1 40. OCS found an alternative location at 1601 Newport
2 Boulevard, Costa Mesa, California. This site was approved by
3 the Costa Mesa City Planning Commission. On or about July 10
4 or 11, 1987, OCS entered into a ten year lease with the owner,
5 Win Corporation, a New York based real estate company.

6 41. OCS's ten year lease is on a flat rate, triple-net
7 basis for the entire facility. The monthly rental is \$8,000
8 with an escalator clause applicable to the latter part of the
9 term. OCS intends to use part of the premises to house a
10 convenience store, which will significantly reduce the rental
11 factor for the motorcycle operations.

12
13 PERMANENCY OF THE INVESTMENT (SECTION 3061(c))

14
15 42. To date, OCS has engaged in the remodeling of the
16 Newport Boulevard facility for adaptation to the needs of its
17 motorcycle dealership. At the time of the hearing, OCS had
18 incurred approximately \$41,000 in remodeling expenses.

19
20
21 WHETHER IT IS INJURIOUS OR BENEFICIAL TO THE PUBLIC
22 WELFARE FOR THE OCS FRANCHISE TO BE MODIFIED OR REPLACED
23 OR THE BUSINESS OF OCS DISRUPTED (SECTION 3061(d))

24 43. No evidence was offered by Suzuki as to whether the
25 public would be injured or benefited by the termination of the
26 OCS franchise.

27 44. No evidence was offered as to whether or not existing
28 dealers within a 10-mile radius of the Newport Boulevard

1 location would be entitled to protest OCS's relocation
2 pursuant to Section 3062. The unchallenged testimony at the
3 hearing was that the distance between the old and new
4 locations is under 1 mile (estimated at .95 miles driving
5 distance.) Both dealership locations are within the City of
6 Costa Mesa. Existing dealers would therefore have no right to
7 protest the relocation and no notice was required to be given
8 to them or the Board.

9
10 WHETHER OCS HAS ADEQUATE MOTOR VEHICLE SALES AND
11 SERVICE FACILITIES, EQUIPMENT, VEHICLE PARTS, AND QUALIFIED
12 SERVICE PERSONNEL TO PROVIDE REASONABLY FOR THE NEEDS OF
13 THE CONSUMERS FOR THE MOTOR VEHICLES HANDLED BY
14 OCS AND HAS BEEN AND IS RENDERING ADEQUATE
15 SERVICES TO THE PUBLIC (SECTION 3061(e))

16 45. OCS's new dealership facility comprises 5000 square
17 feet of an available 8400 square foot building. The 5000
18 square foot space is divided into two sections; showroom and
19 service.

20 46. The showroom comprises a room which is 48 feet wide
21 by 71 feet long. This area is again divided into areas for
22 display of motorcycles, display of accessories and offices for
23 both managerial and sales personnel. Additionally, the
24 Newport Boulevard facility includes a large amount of parking
25 space.

26 47. Since moving, OCS has maintained approximately
27 \$250,000 worth of merchandise at the Newport Boulevard
28 location. This figure breaks down as follows:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- \$80,000.00 worth of accessories.
- \$60,000.00 worth of Suzuki parts.
- \$45,000.00 worth of new motorcycles.
- \$45,000.00 worth of used motorcycles.
- \$25,000.00 worth of tools and equipment.

48. Suzuki dealer guidelines suggest that Suzuki dealerships should locate as close as possible to other competitive motorcycle brands.

49. The Newport Boulevard facility is directly across the street from Champion Honda-Kawasaki-Yamaha, one of the largest Japanese tri-line dealerships in Southern California.

50. Suzuki admitted in a letter dated August 13, 1987 to OCS that "There is no question about the location of the proposed facility ... it is a good location."

51. Suzuki has introduced no evidence to show that OCS was deficient in facilities, equipment, parts, qualified service personnel or that OCS was not rendering adequate service to the public.

WHETHER OCS FAILS TO FULFILL THE WARRANTY
OBLIGATIONS OF THE FRANCHISOR TO BE PERFORMED
BY OCS (SECTION 3061(f))

52. No evidence was presented by Suzuki to establish that OCS failed or fails to fulfill Suzuki's warranty obligations.

1 EXTENT OF OCS'S FAILURE TO COMPLY WITH THE TERMS
2 OF THE FRANCHISE (SECTION 3061(g))

3 53. The notice of termination sent by Suzuki to OCS
4 reads, in relevant part, as follows:

5
6 You are hereby advised that your Suzuki
7 motorcycle dealership is cancelled
8 because of your company's material
9 breach of its Suzuki Motorcycle Dealer
10 Agreement. Your company has breached the
11 Agreement dated April 16, 1985, by
12 relocating its Suzuki dealership, dba
13 Orange County Suzuki, to a different
14 location and different facility without
15 written approval from Suzuki, in
16 violation of Paragraph 1.1 of said
17 Suzuki Dealer Agreement.

18 54. The dealer agreement between OCS and Suzuki, entered
19 into on or about April 16, 1985, was in effect at the time of
20 OCS's planned change of location. Paragraph 1.1 of the
21 agreement provides in pertinent part:

22 1.1 Location: Dealer will operate his
23 dealership, including showroom, sales,
24 service and parts, only in a permanent
25 facility that meets the requirements of
26 this Agreement, and only at the authorized
27 dealer location and address set forth above.
28 If authorized Dealer desires to change the
business location, it must provide Suzuki
with a minimum of thirty (30) days written
notice to allow Suzuki adequate time to
review the new facility. The notice should
be given on the attached form (page 14), as
soon as the Dealer gives a change of
location serious consideration. After Suzuki
reviews the new facility, Dealer must
receive from Suzuki written approval of the
new location before it makes a commitment to
move the dealership. Suzuki will not
unreasonably withhold written approval so
long as the new facility meets Suzuki's

1 requirements as published by Suzuki from
2 time to time.

3 9.1 Written Notice: If Dealer does not
4 conduct its business in accordance with the
5 requirements set forth herein, Suzuki may
6 terminate this agreement by giving to Dealer
7 written notice of termination.

8 9.2 Fifteen Days Written Notice: Suzuki
9 may terminate this agreement with 15 days
10 written notice after occurrence of any of
11 the following events
12 ...

13 (7) Moving the location of the dealership
14 without Suzuki's prior written authorization.

15 55. It is undisputed that OCS moved without first
16 receiving written approval of the new location. However, the
17 agreement also provides that Suzuki will not unreasonably
18 withhold written approval so long as the new facility meets
19 Suzuki's requirements as published by Suzuki from time to
20 time. The two issues raised by this provision are:

21 A. Whether Suzuki unreasonably withheld its
22 written approval; and,

23 B. Whether Suzuki has any requirements that were
24 published.

25 56. From the time its lease expired on the 1995 Harbor
26 Boulevard facility, in July of 1986, OCS began looking into
27 the possibility of relocating from that premises. In July of
28 1986, Saba A. Saba, sole owner of OCS, contacted Alan Parker,
Vice-President of Motorcycle Sales for Suzuki, regarding
relocating the OCS dealership.

57. In March or April of 1987, OCS located a facility on
Victoria Street in Costa Mesa, California and notified Tom

1 Green, Regional Sales Manager of Suzuki, regarding use of this
2 facility. OCS went before the Costa Mesa City Planning
3 Commission in May or June of 1987, with a proposal to use the
4 Victoria Street location as a motorcycle dealership. The
5 Commission rejected the proposal.

6 58. In May or June of 1987, OCS located the Newport
7 Boulevard facility and began negotiating to secure a lease for
8 the premises. On June 21 or 23, 1987, the Planning Commission
9 approved the use of the facility.

10 59. Suzuki was notified of OCS's intent to relocate to
11 1601 Newport Boulevard on July 9, 1987, at which time Tom
12 Green met with Vic Saba, Saba Saba's brother and the general
13 manager of Orange County Suzuki. Tom Green visually inspected
14 the proposed site. At this meeting, Green determined that the
15 facility did not comply with Suzuki's guidelines due to its
16 lack of sufficient showroom window space.

17 60. On July 10 or 11, 1987, OCS entered into a 10-year
18 lease for the Newport Boulevard facility.

19 61. On July 12, 1987, OCS sent written notice to Suzuki
20 of its intent to relocate to the Newport Boulevard facility.

21 62. On July 16, 1987, Tom Green sent a letter to OCS
22 confirming the disapproval of the Newport Boulevard premises
23 because "The facility does not meet guidelines specifying that
24 full frontage glass walls must be in the showroom."

25 63. By letter of July 30, 1987, OCS was again informed
26 that the denial of the relocation was due to the fact that
27 "...the facility does not meet guidelines specifying that full
28 frontage glass in the showroom is required" and "that showroom

1 windows are absolutely necessary." This letter was from
2 Suzuki's Vice President, Motorcycle Sales, Al Parker.

3 64. A second letter from Parker also stated that "There
4 is no question about the location of the proposed facility...
5 it is a good location. However, we feel very strongly about
6 this point in that a show room with windows in a retail
7 establishment selling Suzuki motorcycles is very necessary."

8 65. None of the letters indicated any reason other than
9 lack of compliance with Suzuki's guidelines for glass showroom
10 windows as a basis for denial of the requested location.

11 66. Actual moving commenced on or about August 15, 1987,
12 more than 30 days after OCS had given notice of its intention
13 to relocate.

14 67. In justifying its refusal to approve the new
15 location, Suzuki relies on the language of section 1.1 of the
16 franchise agreement conditioning such approval on requirements
17 "as published by Suzuki from time to time."

18 68. The guidelines relied on by Suzuki in this case were
19 embodied in a Suzuki document entitled Dealer Development
20 Guide (DDG.)

21 69. The DDG was developed in 1986, and intended to
22 further uniformity throughout all new and relocated
23 dealerships. The DDG, at page D-5, includes in pertinent part:

24
25 The facility exterior may be virtually
26 any type or design, provided it is
27 clean, well kept and attractive to
28 prospects and customers. Exterior
surfaces should be a neutral color with
tasteful Suzuki color coordinated
highlights. The front of the building
should be largely constructed of glass

1 to properly expose the showroom to
2 drive by and walk up traffic. The main
3 entrance should be a major visual focal
4 point of the dealership. The
5 front door should be kept clear of
6 vehicles and it should lit during
7 evening operational hours. Exterior
8 logo signage should be securely mounted
9 and kept lit during non-daylight hours.
10 (emphasis added.)

11 70. The DDG requires only that the front of the
12 building be "largely constructed glass." However, the
13 correspondence from Suzuki explicitly based denial of the
14 Newport Boulevard location on its lack of "full frontal glass
15 walls," "full frontage glass in the showroom," and "no
16 showroom windows."

17 71. The frontage of the facility on Newport
18 Boulevard is approximately 72 feet in length. The showroom
19 section of the facility is 48 feet in length. Of this 48 feet,
20 24 feet is glass. The total glass area is 11 feet high by 24
21 feet wide, equaling 264 square feet.

22 72. The DDG was never published nor distributed to
23 the individual franchisees. Rather, it was produced entirely
24 as an internal guide to be used by Suzuki personnel in
25 evaluating proposed facilities. It does not constitute a
26 published requirement under section 1.1 of the dealer
27 agreement.

28 73. The first time the true DDG provisions were
made known to OCS by Suzuki was sometime after receipt of the
franchise termination notice of September 1, 1987.

1 a) The franchise agreement required OCS to give 30
2 days written notice of its intention to relocate. OCS gave
3 Suzuki notice on July 12, 1987, and did not commence moving
4 until August 15, 1987. OCS thus complied with the notice
5 requirement.

6 b) Suzuki did not publish any guidelines as to the
7 necessity for glass in the showroom. Suzuki based its refusal
8 to approve the relocation on its Dealer Development Guide
9 ("DDG"), which was produced in 1986 but was never distributed
10 to its franchisees.

11 c) Suzuki's representative, both orally and in
12 writing, indicated that the denial of permission to relocate
13 was because of the failure to meet Suzuki's requirement that
14 the showroom have "full frontage glass." The unpublished DDG
15 requires only that the front of the building should be
16 "largely constructed of glass". The decision to deny
17 permission to relocate was therefore not only based upon a
18 standard that was never published but on a standard that does
19 not in fact exist.

20 d) Even if the DDG were determinative, OCS's
21 building does meet the DDG Guide that the front be "largely
22 constructed of glass." The front of the building is 78 feet of
23 which is 48 feet is showroom. Of the 48 feet of showroom
24 frontage, 24 feet is glass.

25 e) Suzuki unreasonably withheld its approval of the
26 new location.

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECISION

The Protest is sustained. Respondent Suzuki has not established good cause to terminate the franchise of Protestant OCS.

Dated: May 18, 1988

By Robert J. Beckus
ROBERT J. BECKUS
Vice-President
New Motor Vehicle Board