

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LANCE POWERSPORTS, INC., AND )  
ECO MOTOR SPORTS AND SCOOTERS, )  
LLC, )  
 )  
Petitioners, )  
 )  
vs. ) Case No. 08-5066  
 )  
ACTION ORLANDO MOTORSPORTS, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on April 21, 2009, in Tallahassee, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioners: (No appearance)

For Respondent: James Sursely, pro se  
Action Orlando Motorsports  
306 West Main Street  
Apopka, Florida 32712

STATEMENT OF THE ISSUE

The issue in this case is whether an application for a motor vehicle dealership filed by Petitioners should be approved.

PRELIMINARY STATEMENT

By notice published in the Florida Administrative Weekly (Volume 34, Number 36; September 5, 2008), the Department of Highway Safety and Motor Vehicles (Department) gave notice that Lance Powersports, Inc., was seeking to establish a new point motor vehicle dealership in Longwood, Florida, with ECO Motor Sports and Scooters, LLC, "for the sale of motorcycles manufactured by Taizhou Zongneng Motorcycle Co. Ltd. (ZHNG)." A challenge to the establishment of the dealership was filed with the Department by an existing motorcycle dealership, Action Orlando Motorsports (Action Orlando).

By letter dated October 9, 2008, the Department forwarded the challenge to the Division of Administrative Hearings. The case was originally assigned to Administrative Law Judge William F. Quattlebaum, but was transferred to Administrative Law Judge Susan B. Harrell to conduct the final hearing. On October 13, 2008, an Initial Order was issued, directing the parties to identify the anticipated length of the hearing and dates upon which the parties were available. Petitioners did not file a response to the Initial Order. The hearing was scheduled in Tallahassee, Florida, for April 21, 2009, a date in accordance with Subsection 320.699(2), Florida Statutes (2008).

At the hearing, there was no appearance by, or on behalf of, either Petitioner. Respondent's owner, James Sursley,

testified on behalf of Respondent. No exhibits were offered into evidence. No transcript of the hearing was filed. No proposed recommended orders were filed.

FINDINGS OF FACT

1. Lance Powersports, Inc., is seeking to establish a new point motor vehicle dealership in Longwood, Florida, for motorcycles manufactured by ZHNG.

2. Action Orlando is an existing franchise motor vehicle dealer for line-make ZHNG, located within 12.5 miles of the proposed new point motor vehicle dealership location.

3. Action Orlando timely filed a protest of Lance Powersports, Inc.'s, proposed dealership.

4. There is no evidence that Acton Orlando is not providing adequate representation within the territory of the motor vehicles at issue in this proceeding.

CONCLUSIONS OF LAW

5. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2008).

6. Subsection 320.642(2)(a), Florida Statutes (2008), provides as follows:

An application for a motor vehicle dealer license in any community or territory shall be denied when:

1. A timely protest is filed by a presently existing franchised motor vehicle dealer with standing to protest as defined in subsection (3); and

2. The licensee fails to show that the existing franchised dealer or dealers who register new motor vehicle retail sales or retail leases of the same line-make in the community or territory of the proposed dealership are not providing adequate representation of such line-make motor vehicles in such community or territory. The burden of proof in establishing inadequate representation shall be on the licensee. (Emphasis supplied)

7. The licensees in this case are Petitioners Lance Powersports, Inc., and ECO Motor Sports and Scooters, LLC. See §§ 320.60(8) and 320.61, Fla. Stat. (2008).

8. As the licensees, the Petitioners have the burden of establishing compliance with applicable statutory requirements by a preponderance of the evidence presented at the hearing. § 320.642(2)(a)2., Fla. Stat. (2008). The Petitioners have failed to establish that Action Orlando is not providing adequate representation of motorcycles manufactured by ZHNG.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Highway Safety and Motor Vehicles enter a final order denying the application for establishment of the motor vehicle dealer franchise at issue in this case.

DONE AND ENTERED this 5th day of May, 2009, in Tallahassee,  
Leon County, Florida.

*Susan B. Harrell*

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SUSAN B. HARRELL  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 5th day of May, 2009.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.