

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GALAXY POWERSPORTS, LLC,)
d/b/a JCL INTERNATIONAL, LLC,)
AND KITAI POWERSPORTS, INC.,)
)
Petitioners,)
) Case No. 08-5717
vs.)
)
ROAD POWER USA, LLC,)
)
Respondent.)
_____)

CORRECTED RECOMMENDED ORDER

Pursuant to notice, this cause was heard by Barbara J. Staros, Administrative Law Judge with the Division of Administrative Hearings, on May 7, 2009, by video teleconference with sites in Jacksonville and in Tallahassee, Florida.

APPEARANCES

For Petitioner: No Appearance

For Respondent: No appearance

STATEMENT OF THE ISSUE

The issue is whether Petitioners should be allowed to establish a new point dealership for the sale of motorcycles manufactured by Zhejiang Xingyue Vehicle Co., Ltd. (ZXYV), in Jacksonville Beach, Florida.

FINDINGS OF FACT

1. On October 10, 2008, the Department of Highway Safety and Motor Vehicles (Department) published a notice in the Florida Administrative Weekly. The notice advised that Galaxy Powersports, LLC d/b/a JCL International, LLC, intends to allow the establishment of Kitai Powersports, Inc., as a dealership for the sale of motorcycles manufactured by Zhejiang Xingyue Vehicle Co., Ltd. (ZXYV) at 228 North 3rd Street, Jacksonville Beach, Duval County, Florida, on or after October 3, 2008.

2. By letter received by the Department on October 31, 2008, Respondent, Roadpower USA LLC, opposed the establishment of the dealership selling the same products as Roadpower USA, LLC, within .5 miles from its established dealership.

3. On November 14, 2008, the Department referred this matter to the Division of Administrative Hearings to conduct an evidentiary hearing.

4. By Initial Order entered November 14, 2008, Petitioners and Respondent were required to provide certain information for the scheduling of the final hearing in this cause. None of the parties responded to the Initial Order.

5. A Notice of Hearing by Video Teleconference was entered on December 12, 2008, scheduling this case for final hearing on May 7, 2009, at 9:00 a.m. An Order of Pre-hearing Instructions was entered that same date, which required the parties to

exchange witness lists and copies of exhibits no later than seven days prior to the final hearing. Copies of the witness lists were also required to be filed with the Division of Administrative Hearings. No witness lists have been filed.

6. At 9:00 a.m. on May 7, 2009, the final hearing was convened. The only persons present were the court reporter, who was at the Jacksonville site, and the undersigned, who was at the Tallahassee site.

7. The undersigned waited until approximately 9:25 a.m., but neither the Petitioners nor the Respondent appeared for the final hearing. The hearing was adjourned at approximately 9:30 a.m. No one on behalf of Petitioners or Respondent contacted the undersigned's office with any explanation of their non-appearance before the hearing was adjourned, or thereafter.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding pursuant to Sections 320.699, 120.569, and 120.57(1), Florida Statutes (2008).

9. Section 320.642, Florida Statutes (2008), sets forth the procedure for establishing proposed motor vehicle dealerships or permitting the relocations of such dealerships. Pursuant to this statute, the burden of proof to support a new dealership is on the Petitioners. By failing to appear and

present evidence at the final hearing, they have failed to meet their burden of proof.

RECOMMENDATION

Based on the forgoing Findings of Fact and Conclusions of Law, it is

ORDERED:

That the Department of Highway Safety and Motor Vehicles enter a final order denying Petitioners' application for the new point dealership at issue in this case.

DONE AND ENTERED this 10th day of July, 2009, in Tallahassee, Leon County, Florida.



BARBARA J. STAROS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of July, 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.