

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GALAXY POWERSPORTS, LLC, d/b/a)
JCL INTERNATIONAL, LLC, and)
FLORIDA SPORT TRUCKS, INC.,)
d/b/a FST MOTORSPORTS,)
)
Petitioners,)
)
vs.) Case No. 08-5731
)
WEST COAST CYCLE, INC.,)
)
Respondent.)
_____)

CORRECTED RECOMMENDED ORDER OF DISMISSAL

Pursuant to notice, this cause was heard by Linda M. Rigot, the assigned Administrative Law Judge of the Division of Administrative Hearings, on May 7, 2009, by video teleconference with sites in Tampa and in Tallahassee, Florida.

APPEARANCES

For Petitioners: No appearance

For Respondent: No appearance

STATEMENT OF THE ISSUE

The issue presented is whether Petitioners should be allowed to establish a new point dealership for the sale of motorcycles manufactured by Zhejiang Taizhou Wangye Power Co. Ltd. (ZHEJ) in Tampa, Florida.

FINDINGS OF FACT

1. On October 17, 2008, the Department of Highway Safety and Motor Vehicles published a notice in the Florida Administrative Weekly. The notice announced that Galaxy Powersports, LLC, d/b/a JCL International, LLC, intends to allow the establishment of Florida Sport Trucks, Inc., d/b/a FST Motorsports as a dealership for the sale of motorcycles manufactured by Zhejiang Taizhou Wangye Power Co. Ltd. (ZHEJ) at 2301 South 50th Street, Tampa, Hillsborough County, Florida 33619, on or after October 3, 2008.

2. By letter received by the Department on October 31, 2008, Respondent West Coast Cycle, Inc., opposed the establishment of the dealership selling the same products as West Coast Cycle, Inc., less than 1/2 mile from its location.

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

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 that Initial Order.

5. By Notice of Hearing by Video Teleconference entered December 12, 2008, this matter was scheduled for final hearing on May 7, 2009, at 9:30 a.m. By Order of Pre-hearing

Instructions entered that same date, the parties were required 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. To date, no witness lists have been filed.

6. By Amended Notice of Hearing by Video Teleconference entered April 17, 2009, the commencement time of the final hearing was changed to 8:30 a.m., but the date and location for the final hearing remained the same.

7. At 8:30 a.m. on May 7, 2009, the final hearing was convened. Only the undersigned and the court reporter were present.

8. The undersigned waited until 9:00 a.m., but neither the Petitioners nor Respondent appeared for the final hearing. Further, neither the Petitioners nor the Respondent, or anyone on their behalf, contacted the undersigned regarding their non-appearance or late appearance before the final hearing adjourned. Since the final hearing was adjourned, there has been no contact or explanation from either Petitioners or Respondent regarding their non-appearance.

CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the subject matter hereof and the parties hereto. §§ 120.569 and 120.57(1), Fla. Stat.

10. Pursuant to Section 320.642, Florida Statutes, the burden of proof to support a new dealership is on the Petitioners. They have failed to meet their burden of proof by their failure to appear and present evidence at the final hearing.

RECOMMENDATION

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

RECOMMENDED that a final order be entered denying the application for the establishment of the new point dealership at issue in this case.

DONE AND ENTERED this 2nd day of July, 2009, in
Tallahassee, Leon County, Florida.

Linda M. Rigot

LINDA M. RIGOT
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd 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 Corrected Recommended Order of Dismissal. Any exceptions to this Corrected Recommended Order of Dismissal should be filed with the agency that will issue the Final Order in this case.