

**STATE OF FLORIDA
DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES**

**DOAH CASE NO.: 09-1106
DMV CASE NO.: 09-0533
FINAL ORDER #: HSMV-09- 1583 -FOF-DMV**

**ZONGSHEN, INC. AND BIKER-BARN
SOURCE SALES, INC.,**

Petitioners,

vs.

ACTION MOTORSPORTS, INC.,

Respondent.

FINAL ORDER

This matter came before the Department for entry of a Final Order upon submission of a Recommended Order by William F. Quattlebaum, Administrative Law Judge of the Division of Administrative Hearings, a copy of which is attached and incorporated by reference in this order. The Department hereby adopts the Recommended Order as its Final Order in this matter.

Accordingly, it is hereby

ORDERED that Petitioner's, Zongshen, Inc. and Biker-Barn Source Sales, Inc., request to establish a new dealership for the sale of motorcycles manufactured by Zongshen Industrial Group (ZONG) at 924 Del Prado Boulevard South, Unit B, Cape Coral (Lee County), Florida 33990 is **DENIED**.

DONE AND ORDERED this 26th day of October, 2009, in Tallahassee, Leon County,
Florida.



CARL A. FORD, Director
Division of Motor Vehicles
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building
Tallahassee, Florida 32399

Filed with the Clerk of the
Division of Motor Vehicles
this 28th day of October, 2009.
Nalini Vinayak, Dealer License Administrator

NOTICE OF APPEAL RIGHTS

Judicial review of this order may be had pursuant to section 120.68, Florida Statutes, in the District Court of Appeal for the First District, State of Florida, or in any other district court of appeal of this state in an appellate district where a party resides. In order to initiate such review, one copy of the notice of appeal must be filed with the Department and the other copy of the notice of appeal, together with the filing fee, must be filed with the court within thirty days of the filing date of this order as set out above, pursuant to Rules of Appellate Procedure.

CAF/vlg

Copies furnished:

Howard Chappell, Esquire
Law Offices of Howard Chappell
1514 Cumberland Court
Fort Myers, Florida 33919

Joe Arguinzoni
Biker-Barn Source Sales, Inc.
924 Del Prado Boulevard South, Unit B
Cape Coral, Florida 33990

Patricia Fornes
Zongshen, Inc.
3511 Northwest 113th Court
Miami, Florida 33178

Michael J. Alderman, Esquire
Department of Highway Safety and Motor Vehicles
Neil Kirkman Building, Room A-432
2900 Apalachee Parkway
Tallahassee, Florida 32399-0635

William F. Quattlebaum
Administrative Law Judge
Division of Administrative Hearings
The Desoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399

Nalini Vinayak
Dealer License Administrator

Florida Administrative Law Reports
Post Office Box 385
Gainesville, Florida 32602

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ZONGSHEN, INC. AND BIKER-BARN)
SOURCE SALES, INC.,)
)
Petitioners,)
)
vs.) Case No. 09-1106
)
ACTION MOTORSPORTS, INC.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On September 2, 2009, an administrative hearing in this case was held by video teleconference in Fort Myers and Tallahassee, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner Zongshen, Inc.:

(No appearance)

For Petitioner Biker-Barn Source Sales, Inc.:

(No appearance)

For Respondent: Howard Chappell, Esquire
Law Offices of Howard Chappell
1514 Cumberland Court
Fort Myers, Florida 33919

STATEMENT OF THE ISSUE

The issue in the case is whether an application for a new point franchise motor vehicle dealership filed by Zongshen, Inc., and Biker-Barn Source Sales, Inc., should be approved.

PRELIMINARY STATEMENT

By notice published in the Florida Administrative Weekly (Volume 35, Number 5; February 6, 2009), the Department of Highway Safety and Motor Vehicles (Department) gave notice that Zongshen, Inc. (Zongshen), was seeking to establish a new point motor vehicle dealership in Cape Coral, Lee County, Florida, with Biker-Barn Source Sales, Inc. (Biker-Barn), for the line-make "Zongshen Industrial Group (ZONG)." A challenge to the establishment of the dealership was filed with the Department by an existing motorcycle dealership, Action Motorsports, Inc. (Respondent).

By letter dated February 27, 2009, the Department forwarded the challenge to the Division of Administrative Hearings. An Initial Order was issued on March 2, 2009, directing the parties to identify dates upon which the parties were available for hearing. The Respondent filed a response to the Initial Order. The hearing was scheduled in accordance with the Respondent's response and with Subsection 320.699(2), Florida Statutes (2009).

Neither Petitioner appeared or was otherwise represented at the hearing. The Respondent was represented by counsel and had one exhibit admitted into evidence. No transcript of the hearing was filed. No proposed recommended orders were filed.

FINDINGS OF FACT

1. Biker-Barn is seeking to establish a new point franchise motor vehicle dealership at 924 Del Prado Boulevard South, Cape Coral, in Lee County, Florida, for line-make ZONG.

2. The Respondent is an existing franchise dealer for ZONG-manufactured vehicles and is located within 12.5 miles of the proposed new point motor vehicle dealership location. The majority of the Respondent's vehicle sales come from within a 12.5-mile radius of the proposed dealership.

3. The Respondent timely filed a protest of the proposed Biker-Barn dealership.

4. There is no evidence that the Respondent 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. (2009).

6. Subsection 320.642(2)(a), Florida Statutes (2009), 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 Zongshen and Biker-Barn. See §§ 320.60(8) and 320.61, Fla. Stat. (2009).

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. See § 320.642(2)(a)2., Fla. Stat. (2009). The Petitioners have failed to establish that the Respondent is not providing adequate representation of the ZONG line-make.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department enter a final order denying the Petitioners' application for establishment of the new point franchise motor vehicle dealer franchise.

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

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of October, 2009.

COPIES FURNISHED:

Jennifer Clark
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building, Room A-308
2900 Apalachee Parkway
Tallahassee, Florida 32399-0635

Howard Chappell, Esquire
Law Offices of Howard Chappell
1514 Cumberland Court
Fort Myers, Florida 33919

Joe Arguinzoni
Biker-Barn Source Sales, Inc.
924 Del Prado Boulevard South, Unit B
Cape Coral, Florida 33990

Patricia Fornes
Zongshen, Inc.
3511 Northwest 113th Court
Miami, Florida 33178

Carl A. Ford, Director
Division of Motor Vehicles
Highway Safety and Motor Vehicles
Neil Kirkman Building, Room B-439
2900 Apalachee Parkway
Tallahassee, Florida 32399-0500

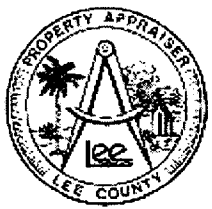
Robin Lotane, General Counsel
Highway Safety and Motor Vehicles
Neil Kirkman Building
2900 Apalachee Parkway
Tallahassee, Florida 32399-0500

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.

Exhibit "A"

Lee County Property Appraiser's Aerial Photography Web Site



Select a plug-in

- Native plug-in
 - Java plug-in
 - HTML only
- Which plug-in?

Select an application

- Simple Viewer
- Tax Map Viewer
- Linked Viewer
- Overlay Viewer
- Coordinate Viewer
- Scale Viewer
- Measurement Viewer

Help

Usage Instructions

Measurement Viewer Application

This application allows you to determine the distance between two points. Using the pointer tool, click on any two points and distance will be calculated and displayed in the tools panel on the right hand side.



Toolbar:

Progress: 100%

Choose an image: 2008 1st Qtr Hi-Res 2 foot

Overview: Drag the mouse pointer around this overview window to update the main image window.

Measurement

View as latitude/longitude

Point 1
X: 81:52:16.5W
Y: 26:34:9.3N

Point 2
X: 81:56:28.6W
Y: 26:38:4.3N

Distance
Len: 32968.67296195656

Units: FEET

RECEIVED FEB 25 2009

DMV AGENCY CLERK

RESPONDENT'S EXHIBIT #1