

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