

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SNYDER COMPUTER SYSTEMS, INC.,)
d/b/a WILDFIRE MOTORS AND PC)
SCOOTER AND CYCLE, LLC,)
)
Petitioners,)
)
vs.) Case No. 09-2383
)
MOTO IMPORT DISTRIBUTORS, LLC,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held on July 2, 2009, in Tallahassee, Florida, before Robert S. Cohen, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioners Snyder Computer Systems, Inc., d/b/a Wildfire Motors and PC Scooter and Cycle, L.L.C.:

No appearance

For Respondent Moto Import Distributors, L.L.C.:

Barry Wayne Wooten, pro se
12202 Hutchison Boulevard, Suite 72
Panama City Beach, Florida 32407

STATEMENT OF THE ISSUE

Whether the application of Snyder Computer Systems, Inc., d/b/a Wildfire Motors and PC Scooter and Cycle, L.L.C., to

establish an additional franchised dealership for the sale of Zhejiang Summit Huawin Motorcycle Co. Ltd. (POPC) motorcycles to be located at 3401 East Business Highway 98, Panama City, Bay County, Florida 32401, should be granted.

PRELIMINARY STATEMENT

By publication in the April 17, 2009, Florida Administrative Law Weekly, Petitioners provided notice of their intent to establish a dealership for the sale of POPC motorcycles at 3401 East Business Highway 98, Panama City, Florida 32401. Pursuant to Section 320.642, Florida Statutes (2008), Respondent Moto Import Distributors, L.L.C., timely filed a protest of the establishment of the proposed dealership with the Department of Highway Safety and Motor Vehicles (Department).

The Department forwarded the letter of protest to the Division of Administrative Hearings for assignment of an administrative law judge to conduct a formal hearing.

At the hearing, Petitioners did not appear nor did they submit any testimonial or documentary evidence. Respondent presented the testimony of Barry Wayne Wooten and offered two exhibits, which were admitted into evidence.

Since Petitioners did not appear, Respondent was informed that a proposed recommended order was not necessary.

FINDINGS OF FACT

1. Respondent is a licensed motor vehicle dealer in Florida and an existing POPC dealer located at 12202 Hutchison Boulevard, Suite 72, Panama City Beach, Florida 32407.

2. There was no evidence which demonstrated Petitioners' market share in the motorcycle market. There was no evidence presented analyzing the motorcycle market in the Panama City area. Likewise, there was no evidence presented regarding anticipated growth in the market area. This type of evidence is generally presented by the distributor or manufacturer of the product. As indicated, Petitioners did not appear at the hearing. Given this lack of evidence, the market share for Petitioners' motorcycles cannot be established.

3. Mr. Wooten, Respondent's CEO, established that Petitioners' proposed location is within 25 miles of Respondent's current location.

4. Respondent has the ability to adequately serve the needs of the population of Bay County, including Panama City and Panama City Beach through its sales and service of the POPC motorcycles.

5. In the current economy, the entry of Petitioners into the POPC marketplace would have a significant negative financial impact on Respondent's ability to maintain its sales, service, and customer base.

6. Respondent has expended significant sums on advertising, both in print and online, and could not afford to continue to advertise the POPC line if Petitioners' application were approved.

7. Respondent already works seven days a week to maintain his market share, and would suffer significant financial losses if Petitioners' application were approved.

8. Respondent provides low prices for the products it sells and would be forced out of business if Petitioners' application were approved.

9. Petitioners seek to sell the identical motorcycles sold by Respondent, and the Bay County market is not sufficiently large to support a new entrant.

10. If Petitioners' application is approved, Respondent will be forced to close its business in Panama City Beach.

11. Respondent is in good standing with the distributors of the products it sells.

12. Respondent's license with the State of Florida is active and in good standing.

13. There are no barriers to access for customers seeking to purchase the products offered by Respondent. Respondent's location is centrally located for customers in Bay County, including Panama City and Panama City Beach.

CONCLUSIONS OF LAW

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

15. The scope of the inquiry in the case is set forth in Section 320.642, Florida Statutes (2008), which provides in pertinent part:

(1) Any licensee who proposes to establish an additional motor vehicle dealership or permit the relocation of an existing dealer to a location within a community or territory where the same line-make vehicle is presently represented by a franchised motor vehicle dealer or dealers shall give written notice of its intention to the department.

* * *

(2)(a) 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.

(b) In determining whether the existing franchised motor vehicle dealer or dealers are providing adequate representation in the

community or territory for the line-make, the department may consider evidence which may include, but is not limited to:

1. The impact of the establishment of the proposed or relocated dealer on the consumers, public interest, existing dealers, and the licensee; provided, however, that financial impact may only be considered with respect to the protesting dealer or dealers.
2. The size and permanency of investment reasonably made and reasonable obligations incurred by the existing dealer or dealers to perform their obligations under the dealer agreement.
3. The reasonably expected market penetration of the line-make motor vehicle for the community or territory involved, after consideration of all factors which may affect said penetration, including, but not limited to, demographic factors such as age, income, education, size class preference, product popularity, retail lease transactions, or other factors affecting sales to consumers of the community or territory.
4. Any actions by the licensees in denying its existing dealer or dealers of the same line-make the opportunity for reasonable growth, market expansion, or relocation, including the availability of line-make vehicles in keeping with the reasonable expectations of the licensee in providing an adequate number of dealers in the community or territory.
5. Any attempts by the licensee to coerce the existing dealer or dealers into consenting to additional or relocated franchises of the same line-make in the community or territory.
6. Distance, travel time, traffic patterns, and accessibility between the existing dealer or dealers of the same line-make and the location of the proposed additional or relocated dealer.
7. Whether benefits to consumers will likely occur from the establishment or

relocation of the dealership which cannot be obtained by other geographic or demographic changes or expected changes in the community or territory.

8. Whether the protesting dealer or dealers are in substantial compliance with their dealer agreement.

9. Whether there is adequate interbrand and intrabrand competition with respect to said line-make in the community or territory and adequately convenient consumer care for the motor vehicles of the line-make, including the adequacy of sales and service facilities.

10. Whether the establishment or relocation of the proposed dealership appears to be warranted and justified based on economic and marketing conditions pertinent to dealers competing in the community or territory, including anticipated future changes.

11. The volume of registrations and service business transacted by the existing dealer or dealers of the same line-make in the relevant community or territory of the proposed dealership.

16. The burden of proof in this proceeding is on Petitioners. § 320.642(2)(a)2., Fla. Stat. (2008). In order to prevail, Petitioners must establish by a preponderance of the evidence that the existing franchised dealer is not providing adequate representation of the same line-make motor vehicles in the designated community or territory.

17. Having weighed the statutory criteria enumerated in Subsection 320.642(2), Florida Statutes (2008), in light of the facts found herein, Petitioners have not met their burden of proving by a preponderance of the evidence that the existing

POPC dealer is providing inadequate representation to the Panama City/Bay County territory. By not appearing at the hearing, Petitioners presented no evidence to demonstrate the benefits of establishing the proposed dealership would outweigh any negative impact on the existing dealer. Moreover, Respondent fully demonstrated that it would suffer severe financial loss and possible closure of its business if Petitioners' application were approved. Therefore, the establishment of Petitioners' dealership at 3401 East Business Highway 98 in Panama City should be denied.

RECOMMENDATION

Based upon 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 establishment of Petitioners' dealership at 3401 East Business Highway 98, Panama City, Florida.

DONE AND ENTERED this 6th day of July, 2009, in
Tallahassee, Leon County, Florida.



ROBERT S. COHEN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 6th 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.