

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GALAXY POWERSPORTS, LLC, d/b/a)
JCL INTERNATIONAL, LLC, AND)
EXTREME MOTOR SALES,)
)
Petitioners,)
)
vs.) Case No. 09-2465
)
ACTION ORLANDO MOTORSPORTS,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case before Carolyn S. Holifield, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, on November 10, 2009, by video teleconference at sites in Orlando and Tallahassee, Florida.

APPEARANCES

For Petitioners: No appearance

For Respondent: James Sursely, Owner
Action Orlando Motor Sports
306 West Main Street
Apopka, Florida 32712

STATEMENT OF THE ISSUE

The issue is whether Petitioners should be permitted to establish an additional dealership for the sale of motorcycles

manufactured by Zhejiang Taizhou Wangye Power Company, Ltd.
("ZHEJ").

PRELIMINARY STATEMENT

On April 17, 2008, a notice was published in the Florida Administrative Weekly that pursuant to Section 320.642, Florida Statutes (2008),¹ Petitioner, Galaxy Powersports, LLC, d/b/a JCL International, LLC ("JCL International"), intended to allow the establishment of TGT Companies, d/b/a Extreme Motor Sales ("Extreme Motor Sales"), as a dealership for the sale of motorcycles by ZHEJ at 1918 Orange Blossom Trail, Apopka (Orange County), Florida ("Orange Blossom Trail location"). On May 7, 2008, Respondent, Action Orlando Motorsports ("Respondent"), filed with the Department of Highway Safety and Motor Vehicles ("Department") a "petition or complaint" protesting the establishment of the additional dealership at the proposed location. The matter was referred to the Division of Administrative Hearings on May 12, 2009, to conduct the final hearing.

This final hearing was scheduled for November 12, 2009. Petitioners and Respondent were provided with written notice in accordance with Subsection 120.569(2)(b), Florida Statutes. The notice, in the form of a Notice of Hearing, was mailed on June 10, 2009, to Petitioners and Respondent at their respective addresses of record.

The final hearing in this case was held, as noticed, on November 12, 2009. Despite the undersigned's waiting 15 minutes after the scheduled time of the hearing to convene the proceeding, Petitioners did not appear to present their case. Respondent appeared at hearing through its representative, James Sursely.

Respondent presented the testimony of James Sursely, owner of Action Orlando Motorsports, and offered and had three exhibits received into evidence.

The proceeding was recorded, but not transcribed. Neither of the parties submitted proposed recommended orders.

FINDINGS OF FACT

Based on the evidence adduced at hearing and the record as a whole, the following Findings of Fact are made:

1. On April 17, 2009, the Florida Administrative Weekly published a notice that JCL International intended to allow the establishment of Extreme Motor Sales as a dealership for the sale of motorcycles manufactured by ZHEJ at the Orange Blossom Trail location. The notice also stated that the "new point" location for the proposed dealership is in a "county of more than 300,000 population, according to the latest population estimates of the University of Florida, Bureau of Economic and Business Research."

2. Respondent is an existing franchised dealer of motorcycles manufactured by ZHEJ.

3. Respondent's dealership is located at 306 West Main Street in Apopka, Florida.

4. The driving distance between Respondent's dealership and the location of the new dealership that JCL International proposes to establish is 3.89 miles.

CONCLUSIONS OF LAW

5. The Division of Administrative Hearings has jurisdiction of the subject matter and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2009).

6. The Department is the agency responsible for regulating the licensing and franchising of motor vehicle dealers. §§ 320.60 through 320.70, Fla. Stat.

7. JCL International and Extreme Motor Sales are seeking the Department's approval of a proposal to establish a new dealership for the sale of motorcycles manufactured by ZHEJ at the Orange Blossom Trail location pursuant to Section 320.642, Florida Statutes.

8. Subsection 320.642(1), Florida Statutes, requires a motor vehicle dealer who proposes to establish an additional motor vehicle dealership within an area already represented by the same line-make vehicle to give written notice to the Department of its intent. The Department is then required to

publish the notice in the Florida Administrative Weekly.

§ 320.642, Fla. Stat.

9. Subsection 320.642(2)(a), Florida Statutes, provides that approval of a motor vehicle dealer's proposal to establish an additional dealership within an area where the same line-make dealer is represented shall be denied if:

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.

10. Subsection 320.642(3), Florida Statutes, sets forth the requirements an existing franchised motor vehicle dealer must meet in order to have standing to protest a proposed additional dealership. That section provides in pertinent part:

(3) An existing franchised motor vehicle dealer or dealers shall have standing to protest a proposed additional or relocated motor vehicle dealer where the existing motor vehicle dealer or dealers have a franchise agreement for the same line-make vehicle to be sold or serviced by the proposed additional or relocated motor vehicle dealer and are physically located so

as to meet or satisfy any of the following requirements or conditions:

* * *

(b) If the proposed additional or relocated motor vehicle dealer is to be located in a county with a population of more than 300,000 according to the most recent data of the United States Census Bureau or the data of the Bureau of Economic and Business Research of the University of Florida:

1. Any existing motor vehicle dealer or dealers of the same line-make have a licensed franchise location within a radius of 12.5 miles of the location of the proposed additional or relocated motor vehicle dealer; or

11. In this case, the evidence established that Respondent is an existing motor vehicle dealership which has a franchise agreement for the same line-make vehicles to be sold by the proposed additional motor vehicle dealership. The record also established that the proposed additional motor vehicle dealership is to be located in a county with a population of more than 300,000 according to the most recent data of the Bureau of Economic Research of the University of Florida. Finally, the evidence established that Respondent, the existing dealership, has a licensed franchise location within a radius of 12.5 miles of the location of the proposed additional motor vehicle dealer.

12. For the reasons stated in paragraph 11, Respondent has standing to file a protest in this case.

13. Where, as in this case, Respondent filed a protest and established that it has standing to do so, Petitioners, as licensees, must meet the burden of proof enunciated in Subsection 320.642(2)(a)2., Florida Statutes. According to that provision, Respondent must establish that the existing franchised dealership is not providing adequate representation of the line-make motor vehicles in the subject territory.

14. In this case, Petitioners, as licensees, failed to appear at the hearing after proper notice of the hearing was issued. Thus, no evidence was presented to establish that Respondent was not providing adequate representation of the line-make motor vehicles in the territory in which the proposed dealership intends to locate. Absent such evidence, Petitioners failed to meet their burden of proof.

15. Having failed to meet their burden of proof, the establishment of the proposed new dealership should be denied.

RECOMMENDATION

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

RECOMMENDED that the Department of Highway Safety and Motor Vehicles issue a final order denying Petitioners, Galaxy Powersports, LLC, d/b/a JCL International, LLC, and Extreme

Motor Sales, approval to establish a new ZHEJ motorcycle dealership at 1918 South Orange Blossom Trail, Apopka, Florida.

DONE AND ENTERED this 12th day of January, 2010, in Tallahassee, Leon County, Florida.

Carolyn S. Holifield

CAROLYN S. HOLIFIELD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of January, 2010.

ENDNOTE

1/ All statutory references are to Florida Statutes (2008), unless otherwise noted.

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.