

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

GALAXY POWERSPORTS, LLC d/b/a	)	
JCL INTERNATIONAL, LLC, AND	)	
J & F SOUTH FLORIDA	)	
INVESTMENTS, INC. d/b/a	)	
TREASURE COAST SCOOTERS AND	)	
THINGS,	)	
	)	
Petitioners,	)	
	)	Case No. 09-3010
vs.	)	
	)	
WENMARK, INC. d/b/a ALL THE	)	
WHEEL TOYS,	)	
	)	
Respondent.	)	
	)	
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GALAXY POWERSPORTS, LLC, d/b/a	)	
JCL INTERNATIONAL, LLC AND J	)	
AND F SOUTH FLORIDA	)	
INVESTMENTS, INC., d/b/a	)	
TREASURE COAST SCOOTERS AND	)	
THINGS,	)	
	)	
Petitioners,	)	
	)	
vs.	)	Case No. 09-3024
	)	
WENMARK, INC., d/b/a ALL THE	)	
WHEEL TOYS,	)	
	)	
Respondent.	)	
	)	
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RECOMMENDED ORDER

As previously scheduled, a final hearing was held on October 6, 2009, at video teleconference sites in Fort Pierce and Tallahassee, Florida, before Administrative Law Judge

Eleanor M. Hunter of the Division of Administrative Hearings  
(DOAH).

APPEARANCES

For Petitioners: Galaxy Powersports LLC d/b/a  
JCL International, LLC; and

For Petitioner: Guy Young, pro se  
J & F South Florida Investments, Inc.  
d/b/a Treasure Coast Scooters and Things:  
7320 South US 1  
Port St. Lucie, Florida 34952

For Respondent: Mark Mourning, pro se  
WenMark Inc., d/b/a All The  
Wheel Toys  
1540 Northwest Federal Highway  
Stuart, Florida 34994

STATEMENT OF THE ISSUE

The issue is whether the Petitioners' proposal for a dealer  
to sell two new lines of motorcycles should be approved.

PRELIMINARY STATEMENT

Galaxy Powersports, LLC d/b/a JCL International LLC  
(Galaxy) published two separate "Notices of Publication for a  
New Point Franchise Motor Vehicle Dealer in a County of More  
than 300,000 Population" in the Florida Administrative Weekly on  
October 10, 2008. The notices stated an intent to permit J & F  
South Florida Investments, Inc. d/b/a Treasure Coast Scooters  
and Things (Treasure Coast) to sell two separate lines of  
motorcycles. On October 16, 2008, Respondent, WenMark Inc.,

d/b/a All The Wheel Toys, timely filed challenges to having the dealership sell both line-makes.

The Florida Department of Highway Safety and Motor Vehicles (the Department) forwarded that challenges to DOAH on June 3, 2009, and assigned DOAH Case Nos. 09-3010 and 09-3024. At the request of the parties, the cases were consolidated for hearing. Initially set for August 27, 2009, at the request of Guy Young, the hearing was rescheduled for October 6, 2009.

At the hearing, Petitioner presented the testimony of Mr. Young. Respondent presented the testimony of Mark Mourning and subsequently filed a 13-page Composite Exhibit, which was received into evidence.

A Transcript of the proceeding was not filed, as allowed on or before October 20, 2009. Neither party filed a proposed order, as they were permitted to do up to and including October 28, 2009.

#### FINDINGS OF FACT

1. On October 10, 2008, in the Florida Administrative Weekly, Volume 34, Number 41, two separate Notices of Publication for a New Point Franchise Motor Vehicle Dealer in a County of More than 300,000 Population were published.

2. The first notice provided, in relevant part, as follows:

Pursuant to Section 320.642, Florida

Statutes, notice is given that [Galaxy] intends to allow the establishment of [Treasure Coast] as a dealership for the sale of motorcycles manufactured by Taizhou Zhongneng Motorcycle Co. Ltd. (ZHNG) at 7320 South U.S. 1, Port St. Lucie (St. Lucie County) Florida 34952 on or after September 26, 2008.

3. The second notice provided, in relevant part, as follows:

Pursuant to Section 320.642, Florida Statutes, notice is given that [Galaxy] intends to allow the establishment of [Treasure Coast] as a dealership for the sale of motorcycles manufactured by Zhejiang Taizhou Wangye Power Co. Ltd (ZHEJ) at 7320 South U.S. 1, Port St. Lucie (St. Lucie County) Florida 34952 on or after September 26, 2008.

4. On October 16, 2008, Respondent filed the following letters of protest with the Department of Highway Safety and Motor Vehicles:

In regards to the intent of [Galaxy] to establish a Taizhou Zhongneng Motorcycle Co. Ltd. (ZHNG) with [Treasure Coast] for the sale of motorcycles at 7320 South U.S. 1, Port St. Lucie, Fl [sic] 34952. This letter represents a written complaint to their application for this dealership, because we already represent said dealership.

and

In regards to the intent of [Galaxy] to establish a Zhejiang Taizhou Wangye Power Co. Ltd (ZHEJ) with [Treasure Coast] for the sale of motorcycles at 7320 South U.S. 1, Port St. Lucie, Fl [sic] 34952. This letter represents a written complaint to their

application for this dealership, because we already represent said dealership.

5. Both letters made the following additional representations:

1. The proposed dealership would be within 20 miles of our dealership, as measured by straight line distance. They are 8.61 miles away per mapquest.
2. The proposed dealership is to be located within the contractual area outlined in our dealer agreement, as we have a 20 mile exclusivity.
3. We have made more than 25% of our retail sales to persons whose registered household addresses are within 20 straight line miles of the proposed dealership during the past 12 month period.

6. By letter dated October 22, 2008, the Department apparently tried to refer this matter to DOAH. For reasons that were not explained, however, this matter was not received at DOAH until it was referred again by letter dated June 3, 2009.

7. The protest filed by Respondent was timely.

8. The parties agreed that the population of St. Lucie County is over 300,000, and that Respondent's dealership is 8.61 miles from the proposed site.

9. Respondent has dealer agreements to sell various lines of motorcycles, including motorcycles manufactured by Zhejiang Taizhou Wangye Power Co., Ltd. (ZHEJ); and motorcycles manufactured by Taizhou Zhongneng Motorcycle Co. Ltd. (ZHNG).

10. At the hearing, Mr. Young agreed that the evidence showed that, as a dealer for Zhejiang Taizhou Wangye Power Co.

Ltd. (ZHEJ), Respondent has adequately promoted that line and has made 25 percent or more of its retail sales to household addresses within 12.5 miles of the proposed dealership.

11. At the hearing, Mr. Young said that the only motorcycles at issue were those manufactured by Taizhou Zhongneng Motorcycle Co. Ltd. (ZHNG). Specifically, he questioned whether the line represented sufficient numbers of sales within the territory.

12. Mr. Mourning explained that the ZHNG line was also called ZNEN before 2009. He produced records that confirm that Taizhou Zhongneng Motorcycle Co. Ltd., used ZNEN as the make of its vehicles in 2008. Taken together, his sales records for ZHNG and ZNEN motorcycles demonstrated that he also adequately and successfully represents that line in the territory.

#### CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. §§ 120.569, and 120.57(1), Fla. Stat (2008).

14. Section 320.605, Florida Statutes (2008), provides:

It is the intent of the Legislature to protect the public health, safety, and welfare of the citizens of the state by regulating the licensing of motor vehicle dealers and manufacturers, maintaining competition, providing consumer protection and fair trade and providing minorities with opportunities for full participation as motor vehicle dealers.

15. Section 320.642, Florida Statutes (2008), 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. Such notice shall state:

(a) The specific location at which the additional or relocated motor vehicle dealership will be established.

(b) The date on or after which the licensee intends to be engaged in business with the additional or relocated motor vehicle dealer at the proposed location.

(c) The identity of all motor vehicle dealers who are franchised to sell the same line-make vehicle with licensed locations in the county or any contiguous county to the county where the additional or relocated motor vehicle dealer is proposed to be located.

(d) The names and addresses of the dealer-operator and principal investors in the proposed additional or relocated motor vehicle dealership.

Immediately upon receipt of such notice the department shall cause a notice to be published in the Florida Administrative Weekly. The published notice shall state that a petition or complaint by any dealer with standing to protest pursuant to subsection (3) must be filed not more than 30 days from the date of publication of the notice in the Florida Administrative Weekly. The published notice shall describe and identify the proposed dealership sought to be licensed, and the department shall cause a copy of the notice to be mailed to those dealers identified in the licensee's notice under paragraph (c).

(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.

\* \* \*

(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. . . . (Emphasis added.)

16. Respondent established as a matter of law that it has standing to protest the proposed dealership's sale of the two new line-makes.

17. Petitioners waived at the formal hearing the notice of intent to sell and, therefore, its challenge to the adequacy of Respondent's sales and representation for line-makes of motorcycles manufactured by Zhejiang Taizhou Wangye Power Co. Ltd. (ZHEJ).

18. Petitioners presented no credible evidence to support a conclusion that the Respondent has not provided adequate representation of Taizhou Zhongneng Motorcycle Co. Ltd. (ZHNG) in the community or territory surrounding the proposed site. To the contrary, the evidence established that Respondent has provided adequate representation for the manufacture of the line-make, ZHNG, that was also previously called the ZHEN line-make.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Department of Highway Safety and Motor Vehicles enter a Final Order denying Treasure Coast's applications to become the licensee to sell motorcycles line-makes manufactured by Zhejiang Taizhou Wangye Power Co.

Ltd. (ZHEJ); and by Taizhou Zhongneng Motorcycle Co. Ltd. (ZHNG)  
at the proposed site.

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



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ELEANOR M. HUNTER  
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 November, 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.