

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

UNIVERSAL PARTS, INC., d/b/a )  
PARTSFORSCOOTERS.COM, AND ECO )  
GREEN MACHINE, LLC, d/b/a ECO )  
GREEN MACHINE, )  
 )  
Petitioners, )  
 )  
vs. ) Case No. 09-4758  
 )  
TROPICAL SCOOTERS, LLC, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

On February 10, 2010, an administrative hearing in this case was conducted by video teleconference between St. Petersburg and Tallahassee, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioners: (No appearance)

For Respondent: Michelle R. Stanley, pro se  
Tropical Scooters, LLC  
11610 Seminole Boulevard  
Largo, Florida 33778

STATEMENT OF THE ISSUE

The issue in the case is whether an application for a new point franchise motor vehicle dealership filed by Universal

Parts, Inc., d/b/a Partsforscooters.com, and Eco-Green Machine LLC, d/b/a Eco Green Machine (Petitioners), should be approved.

PRELIMINARY STATEMENT

By Notice published in the Florida Administrative Weekly (Volume 35, Number 32; August 14, 2009), the Department of Highway Safety and Motor Vehicles (Department) gave notice that Universal Parts, Inc., d/b/a Partsforscooters.com, was seeking to establish a new point franchise motor vehicle dealership for the sale of motorcycles manufactured by Taizhou Zhongneng Motorcycle Co. Ltd. (ZHNG) at Eco-Green Machine, LLC, at 7000 Park Boulevard, Suite A, Pinellas Park, Florida 33781.

Tropical Scooters, LLC (Respondent), filed a challenge to the establishment of the dealership. By letter dated August 28, 2009, the Department forwarded the challenge to the DOAH. On September 1, 2009, DOAH issued an Initial Order, directing the parties to identify the anticipated length of the hearing, dates upon which the parties were available for hearing, and a suggested hearing location. The Initial Order stated that the failure to respond would result in the hearing being scheduled in Tallahassee, Florida. No responses to the Initial Order were filed, and the hearing was scheduled accordingly.

The hearing venue was amended on March 4, 2010, to permit the parties to appear by a video teleconference location in St. Petersburg, Florida. At 4:37 p.m. on March 4, 2010, the

representative for Eco-Green Machine, LLC, filed a request for a continuance of the hearing, asserting illness precluded attendance at the hearing. The request, which is treated as a Motion for Continuance, was not forwarded to the Administrative Law Judge prior to the commencement of the hearing.

The motion failed to state whether other parties objected to a continuance, failed to indicate that other parties had been provided with a copy of the motion, and failed to suggest that the asserted illness constituted an emergency. See Fla. Admin. Code R. 28-106.104(4), 28-106.204(3), and 28-106.210. Accordingly, the motion is hereby denied.

At the hearing, the Respondent presented the testimony of one witness. No transcript of the hearing was filed. No proposed recommended orders were filed.

#### FINDINGS OF FACT

1. The Respondent has a franchise agreement to sell ZHNG motor vehicles, the line-make proposed to be sold by Eco Green Machine, LLC.

2. The Respondent's dealership is located 4.1763 miles from Eco Green Machine, LLC's, dealership.

3. There was no evidence presented at the hearing that the Respondent, or any other existing franchised dealer that registers new motor vehicle retail sales or leases of the ZHNG line-make within the community or territory of the proposed

dealership, are not providing adequate representation of the ZHNG motor vehicles.

CONCLUSIONS OF LAW

4. 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).

5. Section 320.642, Florida Statutes (2009), provides in relevant part as follows:

320.642 Dealer licenses in areas previously served; procedure.--

(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.

\* \* \*

(3) An existing franchised motor vehicle dealer or dealers shall have standing to protest a proposed additional or relocated motor vehicle dealer when 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

2. Any existing motor vehicle dealer or dealers of the same line-make can establish that during any 12-month period of the 36-month period preceding the filing of the licensee's application for the proposed dealership, such dealer or its predecessor made 25 percent of its retail sales of new motor vehicles to persons whose registered household addresses were located within a radius of 12.5 miles of the location of the proposed additional or relocated motor

vehicle dealer; provided such existing dealer is located in the same county or any county contiguous to the county where the additional or relocated dealer is proposed to be located.

6. The licensees in this case are the Petitioners. See §§ 320.60(8) and 320.61, Fla. Stat. (2009).

7. The Respondent is the existing franchised motor vehicle dealer within the territory. The evidence establishes that the Respondent meets the statutory requirements to establish standing, by location or sales volume, to protest the establishment of the new point franchise motor vehicle dealership at issue in this case.

8. There was no evidence presented to suggest that the Respondent is not providing adequate representation of the ZHNG motor vehicle 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 application filed by the Petitioners to establish a new point franchise motor vehicle dealership for the sale of ZHNG motorcycles.

DONE AND ENTERED this 30th day of March, 2010, in  
Tallahassee, Leon County, Florida.

*William F. Quattlebaum*

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WILLIAM F. QUATTLEBAUM  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 30th day of March, 2010.

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.