

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. 09-4759
)
SEMINOLE SCOOTERS, INC., d/b/a)
SEMINOLE SALES,)
)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice a hearing was conducted on March 2, 2010, by video teleconference between St. Petersburg, Florida, and Tallahassee, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioners: No Appearance

For Respondent: David B. Dubin, Sales Manager
Seminole Scooters, Inc.
6239 Park Boulevard
Pinellas Park, Florida 33781

STATEMENT OF THE ISSUE

Whether the Petitioners' proposed dealership should be approved.

PRELIMINARY STATEMENT

The Florida Department of Highway Safety and Motor Vehicles forwarded the instant case to the Division of Administrative Hearings for formal proceedings on August 28, 2009. Thereafter, the case was scheduled for hearing and the parties were provided notice of the hearing location and time.

At the hearing, the Respondent, Seminole Scooters, Inc. d/b/a Seminole Sales, appeared and was represented by its sales manager, David B. Dubin. The Petitioners, Universal Parts, Inc., d/b/a PartsForScooters.Com and Eco Green Machine, LLC, d/b/a Eco Green Machine did not appear. Mr. Dubin testified and presented evidence in opposition to the proposed dealership. No evidence was presented in support of the proposed dealership.

A transcript of the proceeding was not filed. The parties were granted ten days from the hearing date within which to file proposed recommended orders. The Respondent's proposal filed on March 3, 2010, has been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. On August 14, 2009, in the Florida Administrative Weekly, Volume 35, Number 32, a Notice of Publication for a New Point Franchise Motor Vehicle Dealer in a County of More than 300,000 Population was published. The notice provided that Universal Parts, Inc., d/b/a PartsForScooters.com, intended to

establish Eco Green Machine, LLC d/b/a Eco Green Machine as a dealership for the sale of motorcycles manufactured by Taizhou Zhongneng Motorcycle Co. Ltd. (ZHNG) at 7000 Park Boulevard, Pinellas Park, Florida 33781, on or after September 4, 2009. This proposed dealership was considered a "new point" as it did not previously exist.

2. On August 23, 2009, the Respondent timely filed a protest of the establishment of the Petitioners' dealership. Respondent alleged that it currently services customers for the line-make proposed by the Petitioners and that its location is within 12.5 miles of the location proposed by the Petitioners.

3. The evidence presented established that the Respondent's dealership is within two miles of the proposed site. Mr. Dubin verified the driving distance and presented the measured distance as computed by the website Googlemaps.com as Respondent's Exhibit 1.

4. The Respondent has served the area for not less than five years and has successfully promoted the vehicles proposed to be sold by the line-make proposed by the Petitioners.

5. The Respondent established that its sales are within 12.5 miles of the proposed dealership.

6. The Respondent established that it currently markets the motorcycle to be sold by the proposed dealership. More specifically, the Respondent offered testimony that it has an

agreement for the same line-make vehicle to be sold by the proposed dealer.

7. Notice of the formal hearing was provided to all parties of record at their addresses of record.

CONCLUSIONS OF LAW

8. 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 (2009).

9. Section 320.605, Florida Statutes (2009), 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.

10. Section 320.642, Florida Statutes (2009), 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)

11. The Respondent established as a matter of law that it has standing to protest the proposed dealership. The Petitioners presented no evidence to support a conclusion that the Respondent has failed to provide adequate representation of

the line-make motor vehicles in the community or territory surrounding the proposed site.

12. The record in this cause is devoid of any evidence supporting the proposed dealership.

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 the approval of the Petitioners' proposed dealership.

DONE AND ENTERED this 6th day of April, 2010, in Tallahassee, Leon County, Florida.



J. D. PARRISH
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of April, 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.