

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PINELLAS POWERSPORTS, LLC,

Petitioner,

vs.

Case No. 13-4966

TROPICAL SCOOTERS, LLC,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

An administrative hearing in this case was scheduled for July 15, 2014, in Tallahassee, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: No Appearance

For Respondent: No Appearance

STATEMENT OF THE ISSUE

The issue in the case is whether Pacific Rim International West, Inc. (Pacific Rim), may establish a new franchise motor vehicle dealership at Tropical Scooters, LLC (Tropical), for the sale and service of motorcycles manufactured by Huzhou Daixi Zhenhua Technology Trade Co., Ltd. (DAIX).

PRELIMINARY STATEMENT

By letter to Pinellas Powersports, LLC (Powersports), dated November 15, 2013, the Department of Highway Safety and Motor Vehicles (Department) gave notice that Pacific Rim was seeking to establish a new franchise motor vehicle dealership in Largo, Florida, for the sale of motorcycles manufactured by DAIX.

Powersports filed a challenge to the establishment of the new dealership. By letter dated December 23, 2013, the Department forwarded the challenge to the Division of Administrative Hearings (DOAH). On December 26, 2013, 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 suggested hearing locations. 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.

Prior to the hearing, a pre-hearing conference was held on July 9, 2014, to determine the status of the dispute. Although it appeared at that time that Pacific Rim believed the dispute had been resolved, Powersports and Tropical disagreed. The Administrative Law Judge directed the parties to advise DOAH if the dispute was resolved so that the hearing could be cancelled, but that otherwise the hearing would proceed as scheduled. There

was no further communication from the parties prior to the hearing.

No party appeared at the time scheduled for commencement of the hearing. There were no witnesses or exhibits admitted into evidence. Subsequent to the scheduled hearing time, Powersports filed a letter stating that the dispute was resolved and it was withdrawing the protest.

#### FINDINGS OF FACT

1. There was no evidence presented at the hearing to establish that Powersports has a franchise agreement to sell or service DAIK motor vehicles. There was no evidence presented at the hearing that the Powersports dealership is physically located so as to meet the statutory requirements for standing to protest the establishment of the new franchise motor vehicle dealership.

#### CONCLUSIONS OF LAW

2. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2013).

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

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.

4. The licensee in this case is Pacific Rim. See §§ 320.60(8) and 320.61, Fla. Stat. (2009).

5. Powersports is the alleged existing franchised motor vehicle dealer. Powersports failed to present any evidence at the hearing to establish that it meets the statutory requirements to establish standing, by location or sales volume, to protest the establishment of the new franchise motor vehicle dealership at issue in this case.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law and upon the post-hearing notice filed by Powersports that the protest was withdrawn, it is RECOMMENDED that the Department enter a final order dismissing the protest filed in this case.

DONE AND ENTERED this 18th day of July, 2014, in Tallahassee, Leon County, Florida.

*William F. Quattlebaum*

---

WILLIAM F. QUATTLEBAUM  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 18th day of July, 2014.

COPIES FURNISHED:

Boyd Walden, Director  
Division of Motor Vehicles  
Department of Highway Safety  
and Motor Vehicles  
Neil Kirkman Building, Room B435  
2900 Apalachee Parkway  
Tallahassee, Florida 32399-0635

Steve Hurm, General Counsel  
Department of Highway Safety  
and Motor Vehicles  
Neil Kirkman Building, Room B432  
2900 Apalachee Parkway  
Tallahassee, Florida 32399-0500

Julie Baker, Chief  
Bureau of Issuance Oversight  
Division of Motorist Services  
Department of Highway Safety  
and Motor Vehicles  
Neil Kirkman Building, Room A338  
2900 Apalachee Parkway  
Tallahassee, Florida 32399-0635

Jennifer Clark, Agency Clerk  
Department of Highway Safety  
and Motor Vehicles  
Neil Kirkman Building, Room A430  
2900 Apalachee Parkway, MS 61  
Tallahassee, Florida 32399-0635

Mark W. Stanley  
Tropical Scooters, LLC  
11610 Seminole Boulevard  
Largo, Florida 33778-3206

Wendy Yu  
Pacific Rim International West, Inc.  
2181 East Francis Street  
Ontario, California 91761-7723

Rob Pelzel, General Manager  
Pinellas Powersports, LLC  
Suite A  
7000 Park Boulevard  
Pinellas Park, Florida 33781-3040

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.