

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TROPICAL SCOOTERS, LLC,

Petitioner,

vs.

Case No. 18-2025

PINELLAS POWERSPORTS, LLC; AND
MOTRAC MOTORCYCLES, LLC,

Respondents.

RECOMMENDED ORDER

On July 9, 2018, Administrative Law Judge Hetal Desai of the Division of Administrative Hearings (DOAH) held a final hearing in Largo, Florida.

APPEARANCES

For Petitioner: Michele R. Stanley, pro se
Tropical Scooters, LLC
11594 Seminole Boulevard
Largo, Florida 33778

For Respondent: No appearance

STATEMENT OF THE ISSUES

The issues in this case are whether Petitioner has standing to protest the establishment of an additional motorcycle dealership; and, if so, whether Petitioner is adequately representing this line of motorcycles in the relevant territory or community pursuant to section 320.642, Florida Statutes (2018).^{1/}

PRELIMINARY STATEMENT

On February 22, 2018, the Department of Highway Safety and Motor Vehicles (the Department) published notice in the Florida Administrative Register (Volume 44, Number 37, p. 898-899) of its intent to allow the establishment of Respondent Pinellas Powersports, LLC (Powersports), as a dealership for motorcycles produced by Sanmen County Youngfu Machine, Co., Ltd. (YNGF), and distributed by Respondent Motrac Motorcycles, LLC (Motrac). On March 22, 2018, Tropical Scooters, LLC (Tropical Scooters), filed a complaint protesting Respondents' application and the Department's intention to grant the application.

The Department referred the matter to DOAH on April 17, 2018, and requested a formal hearing. An Initial Order was issued on April 18, 2018, requesting the parties provide, among other information, dates and venue preferences for the hearing. Neither party submitted a response to the Initial Order.

On May 1, 2018, the undersigned set the matter for hearing and DOAH mailed a Notice of Hearing to the parties' representatives listed on the Department's referral letter. On May 16, 2018, an Amended Notice of Hearing was mailed by DOAH to the parties. No party objected to the hearing date of July 9, 2018.

At the hearing, Petitioner appeared and offered the testimony of its owner and corporate officer Michele R. Stanley;

it did not offer any evidence or exhibits. Respondents did not appear at the hearing.

At the conclusion of the final hearing, Petitioner was instructed about its right to order the transcript and provide a proposed recommended order (PRO), but no transcript was ordered. Petitioner submitted its PRO on July 19, 2018, which has been considered.

FINDINGS OF FACT

1. Tropical Scooters is located at 11594 Seminole Boulevard, Largo, Florida 33778. It has been in the business of selling scooters and other motorized vehicles for ten years.

2. Michele Stanley is the owner and manager of Tropical Scooters and she has knowledge regarding its purchasing and franchise agreements, inventory, and sales figures.

3. Although no franchise agreement was offered into evidence, Ms. Stanley testified Petitioner has an agreement with a distributor, Pacific Rim International, d/b/a Ice Bear ATV (Ice Bear), to sell YNGF motorcycles.

4. Ice Bear has been supplying Petitioner with YNGF motorcycles for approximately two and a half years. Tropical Scooters has had a good relationship with this distributor and has encountered no problems selling the YNGF line.

5. In the last 18 months, Tropical Scooters has sold 137 YNGF units and currently has 23 units at its showroom.

6. Ms. Stanley discovered that Respondents had applied with the Department to establish a YNGF motorcycle dealership at 9145 66th Street North, Pinellas Park, Florida 33782, from the February 22, 2018, notice published by the Department in the Florida Administrative Register.^{2/} Subsequently, Tropical Scooters filed a timely complaint with the Department challenging Respondents' application.

7. Ms. Stanley was familiar with the proposed location of the new dealership and stated that it was four miles "as the crow flies" from the Tropical Scooters showroom.

8. Tropical Scooters is an existing dealership that sells YNGF motorcycles and is within 12.5 of the location proposed by Powersports and Motrac for the new dealership. Therefore, Tropical Scooters has standing to bring this challenge pursuant to section 320.642(3).

9. There was no evidence that Tropical Scooters' representation of the YGNF line of motorcycles was inadequate in its community or territory as described in section 320.642(2)(b).

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over this proceeding pursuant to sections 120.569, 120.57(1), 320.642 and 320.699, Florida Statutes.

11. The Department is the agency responsible for regulating the licensing and franchising of motor vehicle dealers.

§§ 320.60-320.70, Fla. Stat.

12. The purpose of these regulations is "to prevent powerful manufacturers from taking unfair advantage of their dealers by overloading a market area with more dealers than can be justified by the legitimate interests of the manufacturer and its dealers, existing and prospective." Bill Kelley Chevrolet, Inc. v. Calvin, 322 So. 2d 50, 52 (Fla. 1st DCA 1975). As such, section 320.642 requires a determination as to "whether an additional (either new or relocated) dealership is justified, economically and otherwise, from the viewpoints of the existing dealers and the public, respectively." Gen. Motors Corp. v. Fla. Dep't of High. Saf. & Motor Vehs., 625 So. 2d 76, 78 (Fla. 1st DCA 1993).

13. As explained in section 320.642(2)(a), a challenge to a motor vehicle dealership application involves a two-part analysis: (1) the challenger's standing; and (2) the adequacy of existing representation of the same vehicle line. That section states in relevant part:

(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 . . . 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. (emphasis added).

14. Standing is further addressed in section 320.642(3), which provides in relevant part:

(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[.]

15. Tropical Scooters (as the “existing franchised motor vehicle dealer”) has the initial burden of establishing standing by a preponderance of the evidence. See Recovery Racing, LLC v. State Dep’t of High. Saf. & Motor Vehs., 192 So. 3d 665, 669 n.1 (Fla. 4th DCA 2016) (noting plain language of statute places the burden “squarely on the existing dealer” to show its standing).

16. Once standing is established, the burden shifts to Powersports and Motrac (as the applicants for the new dealer license) to establish by a preponderance of the evidence that Tropical Scooters (as the existing YNGF dealer) is not providing adequate representation of YNGF products. See § 320.642(2); Gen. Motors Corp., 625 So. 2d at 77 (noting subsection (2) requires a determination regarding the adequacy of existing representation in the community or territory to be based on evidence directed to 11 enumerated issues).

17. Here, regarding the first part of the analysis, Tropical Scooters met its burden of establishing standing.

18. As to the second part of the analysis, there was no evidence that Tropical Scooters was providing inadequate representation of the YNGF line of motorcycles.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered by the Department denying the new dealership application of Respondents

for the sale and service of Sanmen County Youngfu Machine Co., Ltd., vehicles at 9145 66th Street North, Pinellas Park, Pinellas County, Florida.

DONE AND ENTERED this 27th day of July, 2018, in Tallahassee, Leon County, Florida.



HETAL DESAI
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of July, 2018.

ENDNOTES

^{1/} Unless specifically stated otherwise, all references to Florida Statutes are to the 2018 version.

^{2/} Pursuant to section 90.202(5), Florida Statutes, the undersigned takes official recognition of the notice published in the Florida Administrative Register, which was provided by the Department with the referral to DOAH.

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.