

Request for Reconsideration after Final Action

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SERIAL NUMBER	85104423
LAW OFFICE ASSIGNED	LAW OFFICE 109
MARK SECTION (no change)	
ARGUMENT(S)	
<p>Responsive to the Office Action mailed on April 17, 2012 in the above-captioned matter, Applicant respectfully requests reconsideration of this case. In the first Office Action (dated November 28, 2010), the Examining Attorney refused registration on the grounds that: (1) there was a likelihood of confusion under Section 2(d), with prior registered marks; (2) the identification of goods required clarification; and (3) there were multiple classes of goods identified, but only one class was described and the fees paid for. Applicant timely responded to this Non-Final Office Action by entering an amendment of goods and addressing the Examining Attorney's Section 2(d) refusal. In response, the Examining Attorney issued the first Final Office Action (mailed on June 27, 2011), which continued to refuse registration on the grounds that the identification of goods required further clarification. Further, the refusal of registration under Section 2(d) was withdrawn, as the Examining Attorney had "carefully considered applicant's arguments with regard to [the issue of likelihood of confusion] and finds them persuasive." See Final Office Action, dated June 27, 2011, at p. 2.</p> <p>Thereafter, on December 27, 2011, Applicant filed a Request for Reconsideration amending the identification of goods, which was acceptable to the Examining Attorney because she approved the instant mark for publication on December 28, 2011. See Exhibit A. Subsequently, on January 20, 2012, the Examining Attorney completed the publication/issue review. See Exhibit B. No further activity occurred on Applicant's file until February 3, 2012, when the application was inexplicably withdrawn from publication and the Examining Attorney's previous allowance was withdrawn on March 16, 2012. See Exhibit C. On April 17, 2012, nearly four (4) months after the instant application was approved for publication, the current additional Final Office Action was issued.</p> <p>In light of Applicant successfully overcoming all of the refusals set forth in the Examining Attorney's November 28, 2010 Non-Final Office Action and June 27, 2011 Final Office Action, as evidenced by</p>	

the Examining Attorney's approval of the instant mark for publication on December 28, 2011, Applicant respectfully submits that the instant application is in condition for allowance, as previously determined by the Examining Attorney and requests that the Examining Attorney *again* withdraw her refusal to register the instant mark based on an alleged likelihood of confusion and, *again*, approve the instant mark for publication and registration.

ARGUMENT

Applicant hereby requests that the Examining Attorney again withdraw her refusal under Section 2(d) for alleged likelihood of confusion for, inter alia, the following reasons: (1) Applicant's mark NUART CAN AM is not confusingly similar to the two cited prior registered marks, CAN-AM EXOTICS and CAN-AM, because, taken as a whole, the additional word NUART is sufficient to distinguish Applicant's mark from the two cited marks; (2) Applicant's goods are not closely related to the registrants' goods because the goods are not identical and do not originate from the same sources; (3) the high sophistication of the buyers and price point of the goods weigh against a likelihood of confusion; (4) the number and nature of similar marks in use on similar or related goods weighs against a likelihood of confusion; and (5) there is no likelihood of confusion between Applicant's mark and the two cited registrations based on the representations made in the consent agreement between the prior registrants that their respective marks and the "goods and/or services in connection with which they are either used or intended to be used, are sufficiently different to avoid confusion as to either source of origin or sponsorship" and "to date, no instance of actual confusion has been brought to the attention of either party." See Exhibit D.

For the foregoing reasons, Applicant respectfully requests that the Examining Attorney withdraw her refusal based on a likelihood of confusion and pass Applicant's NUART CAN AM mark to publication.

I. APPLICANT'S MARK IS NOT CONFUSINGLY SIMILAR TO THE CITED REGISTERED MARKS BECAUSE APPLICANT'S MARK IS DISSIMILAR FROM THE PRIOR MARKS AS TO APPEARANCE, SOUND, CONNOTATION AND COMMERCIAL IMPRESSION.

A mark is confusingly similar to another mark if, among other things, there is a similarity in sight, sound, meaning or connotation and commercial impression. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973).

Here, in the first instance, Applicant's mark contains a word that the two cited registrations do not have, NUART, for which Applicant received a Notice of Allowance from the Trademark Office on April 24, 2012. See Exhibit E. Additionally, with regard to the word(s) that Applicant's mark allegedly has in common with the two cited registrations, Applicant's mark lacks the hyphen between the words CAN and AM contained in the two cited registrations. Therefore, there are at least two major

differences between the appearance of Applicant's mark and that of the two cited registrations, in addition to the order of the words in the cited registration CAN-AM EXOTICS compared to that of Applicant's mark NUART CAN AM.

Further, Applicant's mark does not sound like the two cited registrations mainly because of the additional word NUART that is present in Applicant's mark, but is lacking from the two cited registrations, and the order of the words in CAN-AM EXOTICS versus NUART CAN AM.

Moreover, the additional word in Applicant's mark causes it to have a different connotation or meaning than the two cited registrations. Finally, Applicant's mark does not have the same commercial impression as the two cited registrations due to the additional and different word in Applicant's mark, which word has a commercial impression of its own, as evidenced by the Trademark Office's issuance of a Notice of Allowance for the NUART mark. See Exhibit E.

As such, in light of Applicant's argument that its applied-for mark is not similar to the two cited prior registrations with regard to its appearance, sound, connotation or commercial impression, and therefore, does not create a likelihood of confusion for consumers, Applicant respectfully submits that the NUART CAN AM mark is eligible to pass to publication and registration.

A. Applicant's Mark Has A Different Appearance Than The Two Cited Marks.

It is well-established that "[t]he test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison, but whether the marks are sufficiently similar that there is a likelihood of confusion as to the source of the goods or services." TMEP § 1207.01(b); see *In re Iolo Techs., LLC*, 95 U.S.P.Q.2d 1498, 1499 (TTAB 2010). It is also true that a comparison of the marks in question must take into account '[a]ll relevant facts pertaining to appearance, sound, and connotation . . . before similarity as to one or more of those factors may be sufficient to support a finding that the marks are similar or dissimilar.' TMEP § 1207.01(b); *Recot, Inc. v. M.C. Becton*, 214 F.3d 1322, 1329, 54 U.S.P.Q.2d 1894, 1899 (Fed. Cir. 2000). Further, "on the issue of trade-mark infringement words are not to be compared syllable by syllable, vowel by vowel and consonant by consonant. Instead they are to be compared as ordinary purchasers of [the goods] would compare them, that is, on the basis of similarities in their general appearance both in construction and in over-all impression on the eye." *Coca-Cola Co. v. Snow Crest Beverages*, 162 F.2d 280, 283-84, 73 U.S.P.Q. 518 (1st Cir. 1947) (affirming the trial court's decision that the POLAR COLA mark did not infringe the COCA-COLA mark on the basis of likelihood of confusion).

Here, the mere fact that all three marks contain the words "CAN AM" does not in and of itself render the marks similar enough to rise to the level of being confusingly similar, especially insofar as there are many marks in existence that contain identical wording to other marks, but were registered

nonetheless and co-exist in the marketplace without confusion.

Further, the Examining Attorney asserts that Applicant's mark and the two cited registrations contain identical wording, however Applicant still maintains that the wording that the three marks have in common, CAN AM, is not a significant part of its mark. Applicant is not in a position to determine whether or not CAN AM is an important part of the two cited marks.

By way of example, unlike the small difference of one letter (the letter "y" versus the letter "d") between the marks at issue in *In re Digirad Corp.*, "ray" as compared to "rad", here, Applicant's NUART before CAN AM as compared to one cited registrant's EXOTICS after CAN-AM and the other cited registrant's CAN-AM alone differ greatly from one another visually, as well as with regard to their sound. *In re Digirad Corp.*, 45 U.S.P.Q.2d 1841 (TTAB 1998).

Moreover, there is a difference in punctuation between the three marks. Applicant's mark does not contain any punctuation, whereas the "identical wording" noted by the Examiner, CAN-AM, does contain punctuation in the two cited registrations, specifically, a hyphen between CAN and AM. A difference in punctuation amounts to an additional difference between the allegedly common portion of Applicant's mark and the two cited marks.

Even more important than the difference in punctuation between and the word order of the marks is the fact that Applicant's mark contains an *entirely different* word than the two cited marks, NUART, which word is inherently distinctive as evidenced by the Trademark Office's issuance of a Notice of Allowance for the NUART mark on April 24, 2012. See Exhibit E.

Therefore, Applicant respectfully submits that its NUART CAN AM mark does not look like the two cited registrations and should not be denied registration on that basis.

B. Applicant's Mark Does Not Sound Like The Two Cited Marks.

For reasons akin to why Applicant's mark does not look like the two cited marks, Applicant's mark does not sound like the two cited marks either. Although the three marks have the wording CAN AM in common (aside from the difference in punctuation referenced above), CAN AM is not a dominant part of Applicant's mark.

The Examining Attorney argues that CAN-AM is the dominant portion of the mark CAN-AM EXOTICS because EXOTICS is arguably descriptive and was disclaimed by the registrant. See Final Office Action, dated April 17, 2012, at p. 3. Similarly, CAN-AM makes up the entirety of the second cited registered mark. Nevertheless, Applicant respectfully disagrees with the statement that CAN AM is the dominant portion of Applicant's NUART CAN AM mark.

Further, Applicant also respectfully disagrees with the Examining Attorney's statement that "In creating its mark, the applicant has merely added the term 'NUART' to the registrants' respective marks." *Id.* Applicant believes that this basic generalization made by the Examining Attorney is simply incorrect.

Marks must be compared in their entireties and in connection with the particular goods or services for which they are used. TMEP § 1207.01(b); *See In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 U.S.P.Q. 749, 750-51 (Fed. Cir. 1985). The determination that there is a likelihood of confusion cannot be made based on the dissection of only part of a mark. *Id.* Instead, the ultimate conclusion that a mark is likely to confuse should rest on the mark in its entirety, although more or less weight can be placed on a particular feature of a mark. *Id.*

Here, the additional word NUART precedes the words CAN AM, which Applicant's mark allegedly has in common with the two cited marks. This fact alone further evidences the fact that the marks do not sound the same.

As such, Applicant respectfully submits that its mark does not sound like the two cited registrations and should not be denied registration on that basis.

C. Applicant's Mark Does Not Have The Same Connotation Or Exude The Same Commercial Impression As The Two Cited Marks.

The connotation of a mark is determined by its relationship to the goods or services in connection with which it is used. TMEP § 1207.01(b)(v). Typically, "[t]he focus is on the recollection of the average purchaser who normally retains a general, rather than specific, impression of trademarks." *Id.* (citations omitted).

There are many examples of marks that are more similar in appearance and sound than Applicant's mark and the two cited marks at issue in the instant case that were found not to be confusingly similar. For example, GREEN LEAF and BLACK LEAF were found not to be confusingly similar although the two marks only had one word difference (a suggestive color word) and the marks were both for plant and garden sprays. *See Smith v. Tobacco By-Products & Chemical Corp.*, 243 F.2d 188, 113 U.S.P.Q. 339 (C.C.P.A. 1957). In that case, it was found that "the word 'Leaf,' as applied to a plant spray is not arbitrary, but is definitely suggestive of the use to which the product is to be put." *Id.* at 340. Similarly, HEALTHY CHOICE and HEALTH SELECTIONS, both marks for food products bearing only slight differences between the marks, but with the same basic connotation, were also found not to be confusingly similar. *See ConAgra, Inc. v. George A. Hormel & Co.*, 990 F.2d 368, 26 U.S.P.Q.2d 1316 (8th Cir. 1993). The Eighth Circuit has also found no likelihood of confusion where identical words were used for closely related goods and services. *Id.* at 1318 (citing *Comidas Exquisitos, Inc. v. O'Malley & McGee's Inc.*, 775 F.2d 260, 227 U.S.P.Q. 811 (8th Cir. 1985) (Carlos

McGee's and Carlos McGee's for restaurants not likely to cause public confusion due to their distinct geographic markets and lack of intention to expand into the market of the other respective mark holder)).

In the instant case, the CAN AM portion of the mark at issue, NUART CAN AM, is suggestive of the sport of car racing. To wit, Can-Am was the name of a sports car racing series that existed from 1966 to 1986. See Exhibit F. Applicant intends to use the NUART CAN AM mark in connection with automobiles and structural parts therefor, as stated in its application for registration. A reasonable consumer would perceive the term NUART to mean that the goods and/or services offered under the mark consist of innovative design or creation, while the CAN AM portion of Applicant's mark suggests a particular type of race car based upon a clean sheet design or the creation of an automobile product not derived from anything else. This strongly suggestive reference in the mind of an ordinary consumer makes the difference between a mark that is likely to confuse and one that is not. Here, Applicant respectfully submits that NUART, the differing portion of its mark from the two cited registrations, places its mark in condition to be allowed because it enables the ordinary consumer to, inter alia, differentiate its mark from the two cited registrations.

Therefore, Applicant respectfully disagrees that the addition of NUART to the wording CAN AM does not distinguish it from the cited marks. In fact, NUART is uniquely associated with Applicant's products and services and is the dominant portion of its mark, not CAN AM. Of note, the registrant of the CAN-AM EXOTICS mark confirmed during the prosecution of its mark that "[t]he dominant portion of the cited [Registrant's] mark is clearly the term EXOTICS." See Exhibit G, at p. 5. Applicant would like to offer that the dominant portion of its mark is NUART, not CAN AM, thereby exuding a different connotation and a different overall impression than the two cited marks, CAN-AM EXOTICS and CAN-AM.

II. APPLICANT'S GOODS ARE NOT CLOSELY RELATED TO THE CITED REGISTRANTS' GOODS NOR DO THEY ORIGINATE FROM THE SAME SOURCES.

Contrary to the Examiner's point of view, Applicant's goods and those of the two cited registrants are not identical (nor are they necessarily closely related) and are not derived from identical sources. In fact, Applicant's goods are markedly distinguishable from the cited registrants' goods, making it unlikely that a consumer would be confused by Applicant's use of the NUART CAN AM mark in connection with its goods. Therefore, in light of the fact that Applicant disagrees with the Examiner's contention that "[t]he applicant's goods are closely related to the registrants' goods because they are identical and originate from the same sources" and that the Examiner did not provide concrete evidence in support of her claim that Applicant's goods and those of the cited registrants are identical and originate from the same sources, Applicant respectfully requests the withdrawal of this argument from the Examiner's argument for refusal of Applicant's registration under Section 2(d).

Generally, goods or services are seen as related or similar where they are interchangeable for all significant uses. *Vitarroz Corp. v. Borden, Inc.*, 644 F.2d 960, 209 U.S.P.Q. 969 (2d Cir. 1981) (holding BRAVO'S crackers unrelated to BRAVOS tortilla chips).

Here, Applicant intends to use the mark in question in connection with clean sheet prototype sports cars for racing series. In contrast, the cited registrants are currently using or intend to use their respective marks in connection with street grade replica cars or all-terrain vehicles, rather than sports cars for racing series. Therefore, not only are Applicant's and the cited registrants' trade channels dissimilar due to the marked difference in products, but so are their intended purchasers.

Although Applicant acknowledges the Examiner's inclusion of numerous examples of automobile manufacturers that make and sell a variety of vehicles, including passenger automobiles, all-terrain vehicles, motorcycles, etc., this does not necessarily signify that the same consumer will be in the market for all vehicle types made or sold by a given manufacturer. Further, the registration of a mark for use in connection with a variety of goods in a particular class of goods is also not an indication that all goods in a particular class will be targeted toward the same consumer. Therefore, the Examiner's attachments to the most recent Final Office Action respectfully do not go very far to prove the point that the Applicant's use of the NUART CAN AM mark in connection with sports cars for racing series is closely related to the first cited registrant's use of the CAN-AM EXOTICS mark in connection with street grade replica cars (not sports cars and not for racing) and the second cited registrant's use of the CAN-AM mark in connection with all-terrain vehicles and motorcycles (not cars and more for recreational use rather than racing).

As such, Applicant respectfully requests that the Examining Attorney withdraw her refusal under Section 2(d) on the basis that Applicant's goods are closely related to the two cited registrant's goods.

III. APPLICANT'S AND THE CITED REGISTRANTS' RESPECTIVE PURCHASERS ARE UNLIKELY TO PURCHASE THE OTHERS' PRODUCT WITHOUT KNOWLEDGE AND AWARENESS OF WHOSE PRODUCT THEY ARE BUYING GIVEN THE HIGH COST OF APPLICANT'S GOODS AND THE SOPHISTICATION OF APPLICANT'S TARGET PURCHASERS.

Even where there may be 'marginal customer overlap' because the relevant consumers are those who are interested in purchasing recreational motor vehicles, including "automobiles and structural parts therefor; automobile chassis; [and] automobile bodies" (Appl. Serial No. 85/104,423), or "Automobiles and structural parts therefor" (Reg. No. 3,163,329), or "Land motor vehicles, namely, all terrain vehicles, motorcycles, three-wheeled motorized vehicles, scooters and structural parts therefor; engines for land vehicles, namely, all terrain vehicle engines, motorcycle engines, three-wheeled vehicle engines, scooter engines and structural parts therefor; Motorcycles and parts therefor" (Reg. No.

3,686,113) in Class 12, 'this overlap is inconsequential in view of the complexity and cost of goods and the buyers' sophistication.' *In re Digirad Corp.*, 45 U.S.P.Q.2d 1841, 1842 (TTAB 1998).

Further, the instant case is unlike the case cited by the Examiner, *In re Davey Prods. Pty Ltd.*, where it was found that there was no basis on which to find that the goods at issue were so expensive or that the purchasers of the goods in question were "so knowledgeable and careful in purchasing the goods, that the likelihood of confusion arising from the use of identical marks on such goods would be significantly mitigated." *In re Davey Prods. Pty Ltd.*, 92 U.S.P.Q. 1198, 1204 (TTAB 2009).

Moreover, it is well-established that "there is always less likelihood of confusion where goods are expensive and purchased after careful consideration." *Astra Pharmaceutical Prods., Inc. v. Beckman Instruments, Inc.*, 718 F.2d 1201, 220 U.S.P.Q. 786, 790 (1st Cir. 1983). A similar finding was made in *Electronic Design & Sales, Inc. v. Electronic Data Systems Corp.*, where the court found no likelihood of confusion due to 'differences in the relevant purchasers and trade channels, the sophistication of the relevant purchasers, and the care with which both parties' goods are purchased.' *In re Digirad Corp.*, 45 U.S.P.Q.2d at 1844 (quoting *Electronic Design & Sales, Inc. v. Electronic Data Systems Corp.*, 954 F.2d 713, 21 U.S.P.Q.2d 1388 (Fed Cir. 1992)).

Even if it is found that the relevant purchasers of Applicant's intended goods and the cited registrants' goods are the same (which Applicant believes they are not), it is well-settled that the sophistication of those purchasers is often dispositive because "sophisticated consumers may be expected to exercise greater care." *Electronic Design & Sales, Inc. v. Electronic Data Systems Corp.*, 21 U.S.P.Q.2d at 1392. Even where the type of goods sold by mark holders is very similar (unlike the instant case where they are not), a significant difference in price can be enough to dispel the possibility of consumer confusion. See 4 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, §23:97 (4th ed. Thomson West 2008) (citing to *AM General Corp. v. Daimler Chrysler Corp.*, 311 F.3d 796, 65 U.S.P.Q.2d 1001 (7th Cir. 2002) (purchasers of expensive HUMMER sports utility vehicles selling for more than \$50,000 were found unlikely to be confused by a grille design similar to that used in plaintiff's JEEP vehicles)).

Therefore, Applicant respectfully submits that the relevant purchasers of goods under the Applicant's NUART CAN AM mark are very sophisticated purchasers and these purchasers will spend a minimum of approximately \$485,000.00 to buy an automobile bearing Applicant's mark. See Exhibit H, at p. 2; also see Exhibit I, at p. 2. On the other hand, purchasers of goods bearing the registered CAN-AM mark may spend as little as \$6,799.00 to purchase one of that registrant's all-terrain vehicles or motorcycles. See Exhibit J. Moreover, it is unclear how much the buyer for goods in connection with the CAN-AM EXOTICS mark will spend to purchase goods bearing that mark. Further, CAN-AM EXOTICS appears to be exclusively associated with component parts for vehicles, not relevant to purchasers of Applicant's nearly \$500,000.00 ready-made racing vehicles. Moreover, the domain name

of CAN-AM EXOTICS appears to be for sale and all of the links lead to sponsored links to unrelated websites, which calls into question whether that registrant's mark is still in use in commerce and relevant to the instant inquiry. See Exhibit K.

Therefore, Applicant believes that the dissimilarity between the purchasers of Applicant's and the cited registrants' goods combined with the extremely high cost of goods intended to bear Applicant's mark is great enough to avoid a likelihood of confusion and requests that the Examiner withdraw her Section 2(d) refusal on that basis.

IV. THE NUMBER AND NATURE OF SIMILAR MARKS IN USE ON SIMILAR GOODS WEIGHS HEAVILY AGAINST LIKELIHOOD OF CONFUSION BETWEEN APPLICANT'S MARK AND THE CITED REGISTRANTS' MARKS.

Where it can be established that "the consuming public is exposed to third-party use of similar marks on similar goods, it is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection." TMEP § 1207.01(d)(iii) (quoting *Palm Bay Imps., Inc. v. Veuve ClicquotPonsardin Maison Fondée en 1772*, 396 F.3d 1369, 1373-74, 73 U.S.P.Q.2d 1689, 1693 (Fed. Cir. 2005)).

A query on the Google® search engine consisting of "CAN AM" and "automobile" returned 3,180,000 results. The first 50 results thereof are attached hereto as Exhibit L. The first result, a YouTube video® featuring a "Rare 1977 Pontiac Lemans Can Am – 6.6V8 Muscle Car" is but one example of the common nature of the words CAN AM for use in connection with automobiles given the history of the words. See Exhibit F. CAN AM, whether depicted hyphenated or not, has long been associated with the sport of car racing and the vehicles associated therewith.

A. The Cited Registrations Deserve Only A Narrow Scope Of Protection.

It holds that where similar marks are used by multiple sources in the same field, the scope of protection afforded to each mark is correspondingly narrowed. See *Data Concepts Inc. v. Digital Consulting Inc.*, 4 U.S.P.Q.2d 1672, 1676 (6th Cir. 1998); see also *Amstar Corp. v. Domino's Pizza, Inc.*, 205 U.S.P.Q. 969, 975 (5th Cir. 1980). Thus, the existence of multiple similar marks where related goods are involved indicates that the consuming public is accustomed to distinguishing between the marks and are capable of doing so, without a likelihood of confusion. See *General Mills, Inc. v. Kellogg Co.*, 3 U.S.P.Q.2d 1442, 1445 (8th Cir. 1987).

In the instant case, the Examining Attorney initially refused registration on grounds that there was a likelihood of confusion with U.S. Registration Nos. 3,163,329, 2,883,129 and 3,686,113. Since then, the '129 registration has been cancelled, leaving the '329 and the '113 registrations as the remaining cited registrations. The '329 registration for the mark CAN-AM EXOTICS is for use in connection with automobiles and structural parts therefor in Class 012 and the '113 registration for the

mark CAN-AM is for use in connection with land motor vehicles, namely, all terrain vehicles, motorcycles, three-wheeled motorized vehicles, scooters and structural parts therefor; engines for land vehicles, namely, all terrain vehicle engines, motorcycle engines, three-wheeled vehicle engines, scooter engines and structural parts therefor; motorcycles and parts therefor in Class 12, as well as goods and services in Classes 9, 28, 35, 37, 39, 40, 41 and 42. In contrast, Applicant's mark NUART CAN AM is for use in connection with automobiles and structural parts therefor; automobile chassis; automobile bodies in Class 12, in addition to goods in Class 7.

Given the fact that there are many common law uses of the words CAN AM, in addition to the fact that the classes of goods in Applicant's application are not entirely covered by the cited registrations, Applicant respectfully submits that the cited registrations are entitled to only a narrow scope of protection and should not be used to bar Applicant's registration.

V. THE CONSENT AGREEMENT IS PROBATIVE EVIDENCE THAT THERE IS NO LIKELIHOOD OF CONFUSION BETWEEN APPLICANT'S MARK AND THE CITED REGISTERED MARKS.

A consent agreement is 'but one factor to be taken into account with all of the other relevant circumstances bearing on the likelihood of confusion referred to in §2(d).' TMEP § 1207.01(d)(viii) (quoting *In re N.A.D. Inc.*, 754 F.2d 996, 224 U.S.P.Q. 969, 971 (Fed. Cir. 1985)). Additionally, it is difficult to find subjectively that confusion will occur when those directly concerned with its occurrence state that it will not occur. TMEP § 1207.01(d)(viii) (citing to *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973)).

Here, the Examining Attorney uses the consent agreement between the two cited registrants to refute the Applicant's argument that the wording CAN AM is weak and diluted. See Final Office Action, dated April 17, 2012, at p. 4. In turn, Applicant would also like to use the same consent agreement to proffer that there is no likelihood of confusion among the three marks. As supported by the court in *In re E.I. du Pont de Nemours & Co.*, the fact that the cited registrants "agree that the respective parties' mark, as well as the goods and/or services in connection with which they are either used or intended to be used, are sufficiently different to avoid confusion as to either source of origin or sponsorship" should be conclusive evidence that Applicant's NUART CAN AM mark is sufficiently different from the cited marks to avoid confusion as well. If the Trademark Office accepted an agreement between the two cited registrants attesting to the fact that CAN-AM EXOTICS and CAN-AM are sufficiently different to avoid confusion, surely the Examiner should accept Applicant's argument that its mark NUART CAN AM is sufficiently different from each cited mark to avoid confusion, especially given the arguments presented above.

CONCLUSION

Applicant believes that it has overcome the Examining Attorney's reinstated refusal to register the

instant mark based on an alleged likelihood of confusion, given that: (1) Applicant has demonstrated that its mark is dissimilar in appearance, sound, meaning and commercial impression from the two cited marks; (2) Applicant's goods are not closely related to the prior registrants' goods; (3) Applicant's intended purchasers are highly sophisticated, the intended goods are very expensive and necessitate the exercise of care when purchasing them; (4) there are a number of common law uses of the CAN AM portion of Applicant's mark; and (5) the language of the consent agreement between the two cited registrants weighs in favor of also registering Applicant's mark.

Accordingly, Applicant respectfully requests reconsideration of the decision to make final the refusal to approve Applicant's mark for publication and registration. Applicant believes the arguments for overcoming the Examining Attorney's refusal to register the instant mark place the instant application in condition for allowance of which early notice thereof is respectfully sought. Should any additional fees be required, please charge Deposit Account No. 062425.

EVIDENCE SECTION

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DESCRIPTION OF EVIDENCE FILE	Exhibits A thru L
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Kenya L. Williams/
SIGNATORY'S NAME	Kenya L. Williams
SIGNATORY'S POSITION	California attorney of record
SIGNATORY'S PHONE NUMBER	310-824-5555
DATE SIGNED	10/15/2012
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Oct 15 18:04:16 EDT 2012
TEAS STAMP	USPTO/RFR-38.75.14.34-201 21015180416592094-8510442 3-4903b46a17fae5a6d4c6a8d fa658c6f4651-N/A-N/A-2012 1015172939710964

**Request for Reconsideration after Final Action
To the Commissioner for Trademarks:**

Application serial no. **85104423** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

Responsive to the Office Action mailed on April 17, 2012 in the above-captioned matter, Applicant respectfully requests reconsideration of this case. In the first Office Action (dated November 28, 2010), the Examining Attorney refused registration on the grounds that: (1) there was a likelihood of confusion under Section 2(d), with prior registered marks; (2) the identification of goods required clarification; and (3) there were multiple classes of goods identified, but only one class was described and the fees paid for. Applicant timely responded to this Non-Final Office Action by entering an amendment of goods and addressing the Examining Attorney's Section 2(d) refusal. In response, the Examining Attorney issued the first Final Office Action (mailed on June 27, 2011), which continued to refuse registration on the grounds that the identification of goods required further clarification. Further, the refusal of registration under Section 2(d) was withdrawn, as the Examining Attorney had "carefully considered applicant's arguments with regard to [the issue of likelihood of confusion] and finds them persuasive." See Final Office Action, dated June 27, 2011, at p. 2.

Thereafter, on December 27, 2011, Applicant filed a Request for Reconsideration amending the identification of goods, which was acceptable to the Examining Attorney because she approved the instant mark for publication on December 28, 2011. See Exhibit A. Subsequently, on January 20, 2012, the Examining Attorney completed the publication/issue review. See Exhibit B. No further activity occurred on Applicant's file until February 3, 2012, when the application was inexplicably withdrawn from publication and the Examining Attorney's previous allowance was withdrawn on March 16, 2012. See Exhibit C. On April 17, 2012, nearly four (4) months after the instant application was approved for publication, the current additional Final Office Action was issued.

In light of Applicant successfully overcoming all of the refusals set forth in the Examining Attorney's November 28, 2010 Non-Final Office Action and June 27, 2011 Final Office Action, as evidenced by the Examining Attorney's approval of the instant mark for publication on December 28, 2011, Applicant respectfully submits that the instant application is in condition for allowance, as previously determined by the Examining Attorney and requests that the Examining Attorney *again* withdraw her refusal to register the instant mark based on an alleged likelihood of confusion and, *again*, approve the instant mark for publication and registration.

ARGUMENT

Applicant hereby requests that the Examining Attorney again withdraw her refusal under Section 2(d) for alleged likelihood of confusion for, inter alia, the following reasons: (1) Applicant's mark NUART CAN AM is not confusingly similar to the two cited prior registered marks, CAN-AM EXOTICS and CAN-AM, because, taken as a whole, the additional word NUART is sufficient to distinguish Applicant's

mark from the two cited marks; (2) Applicant's goods are not closely related to the registrants' goods because the goods are not identical and do not originate from the same sources; (3) the high sophistication of the buyers and price point of the goods weigh against a likelihood of confusion; (4) the number and nature of similar marks in use on similar or related goods weighs against a likelihood of confusion; and (5) there is no likelihood of confusion between Applicant's mark and the two cited registrations based on the representations made in the consent agreement between the prior registrants that their respective marks and the "goods and/or services in connection with which they are either used or intended to be used, are sufficiently different to avoid confusion as to either source of origin or sponsorship" and "to date, no instance of actual confusion has been brought to the attention of either party." See Exhibit D.

For the foregoing reasons, Applicant respectfully requests that the Examining Attorney withdraw her refusal based on a likelihood of confusion and pass Applicant's NUART CAN AM mark to publication.

I. APPLICANT'S MARK IS NOT CONFUSINGLY SIMILAR TO THE CITED REGISTERED MARKS BECAUSE APPLICANT'S MARK IS DISSIMILAR FROM THE PRIOR MARKS AS TO APPEARANCE, SOUND, CONNOTATION AND COMMERCIAL IMPRESSION.

A mark is confusingly similar to another mark if, among other things, there is a similarity in sight, sound, meaning or connotation and commercial impression. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973).

Here, in the first instance, Applicant's mark contains a word that the two cited registrations do not have, NUART, for which Applicant received a Notice of Allowance from the Trademark Office on April 24, 2012. See Exhibit E. Additionally, with regard to the word(s) that Applicant's mark allegedly has in common with the two cited registrations, Applicant's mark lacks the hyphen between the words CAN and AM contained in the two cited registrations. Therefore, there are at least two major differences between the appearance of Applicant's mark and that of the two cited registrations, in addition to the order of the words in the cited registration CAN-AM EXOTICS compared to that of Applicant's mark NUART CAN AM.

Further, Applicant's mark does not sound like the two cited registrations mainly because of the additional word NUART that is present in Applicant's mark, but is lacking from the two cited registrations, and the order of the words in CAN-AM EXOTICS versus NUART CAN AM.

Moreover, the additional word in Applicant's mark causes it to have a different connotation or meaning than the two cited registrations. Finally, Applicant's mark does not have the same commercial impression as the two cited registrations due to the additional and different word in Applicant's mark, which word has a commercial impression of its own, as evidenced by the Trademark Office's issuance of a Notice of Allowance for the NUART mark. See Exhibit E.

As such, in light of Applicant's argument that its applied-for mark is not similar to the two cited prior registrations with regard to its appearance, sound, connotation or commercial impression, and therefore, does not create a likelihood of confusion for consumers, Applicant respectfully submits that the NUART CAN AM mark is eligible to pass to publication and registration.

A. Applicant's Mark Has A Different Appearance Than The Two Cited Marks.

It is well-established that "[t]he test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison, but whether the marks are sufficiently similar that there is a likelihood of confusion as to the source of the goods or services." TMEP § 1207.01(b); *see In re Iolo Techs., LLC*, 95 U.S.P.Q.2d 1498, 1499 (TTAB 2010). It is also true that a comparison of the marks in question must take into account '[a]ll relevant facts pertaining to appearance, sound, and connotation . . . before similarity as to one or more of those factors may be sufficient to support a finding that the marks are similar or dissimilar.' TMEP § 1207.01(b); *Recot, Inc. v. M.C. Becton*, 214 F.3d 1322, 1329, 54 U.S.P.Q.2d 1894, 1899 (Fed. Cir. 2000). Further, "on the issue of trade-mark infringement words are not to be compared syllable by syllable, vowel by vowel and consonant by consonant. Instead they are to be compared as ordinary purchasers of [the goods] would compare them, that is, on the basis of similarities in their general appearance both in construction and in over-all impression on the eye." *Coca-Cola Co. v. Snow Crest Beverages*, 162 F.2d 280, 283-84, 73 U.S.P.Q. 518 (1st Cir. 1947) (affirming the trial court's decision that the POLAR COLA mark did not infringe the COCA-COLA mark on the basis of likelihood of confusion).

Here, the mere fact that all three marks contain the words "CAN AM" does not in and of itself render the marks similar enough to rise to the level of being confusingly similar, especially insofar as there are many marks in existence that contain identical wording to other marks, but were registered nonetheless and co-exist in the marketplace without confusion.

Further, the Examining Attorney asserts that Applicant's mark and the two cited registrations contain identical wording, however Applicant still maintains that the wording that the three marks have in common, CAN AM, is not a significant part of its mark. Applicant is not in a position to determine whether or not CAN AM is an important part of the two cited marks.

By way of example, unlike the small difference of one letter (the letter "y" versus the letter "d") between the marks at issue in *In re Digirad Corp.*, "ray" as compared to "rad", here, Applicant's NUART before CAN AM as compared to one cited registrant's EXOTICS after CAN-AM and the other cited registrant's CAN-AM alone differ greatly from one another visually, as well as with regard to their sound. *In re Digirad Corp.*, 45 U.S.P.Q.2d 1841 (TTAB 1998).

Moreover, there is a difference in punctuation between the three marks. Applicant's mark does not contain any punctuation, whereas the "identical wording" noted by the Examiner, CAN-AM, does contain punctuation in the two cited registrations, specifically, a hyphen between CAN and AM. A difference in punctuation amounts to an additional difference between the allegedly common portion of Applicant's mark and the two cited marks.

Even more important than the difference in punctuation between and the word order of the marks is the fact that Applicant's mark contains an *entirely different* word than the two cited marks, NUART, which word is inherently distinctive as evidenced by the Trademark Office's issuance of a Notice of Allowance for the NUART mark on April 24, 2012. See Exhibit E.

Therefore, Applicant respectfully submits that its NUART CAN AM mark does not look like the two cited registrations and should not be denied registration on that basis.

B. Applicant's Mark Does Not Sound Like The Two Cited Marks.

For reasons akin to why Applicant's mark does not look like the two cited marks, Applicant's mark does not sound like the two cited marks either. Although the three marks have the wording CAN AM in common (aside from the difference in punctuation referenced above), CAN AM is not a dominant part of Applicant's mark.

The Examining Attorney argues that CAN-AM is the dominant portion of the mark CAN-AM EXOTICS because EXOTICS is arguably descriptive and was disclaimed by the registrant. See Final Office Action, dated April 17, 2012, at p. 3. Similarly, CAN-AM makes up the entirety of the second cited registered mark. Nevertheless, Applicant respectfully disagrees with the statement that CAN AM is the dominant portion of Applicant's NUART CAN AM mark.

Further, Applicant also respectfully disagrees with the Examining Attorney's statement that "In creating its mark, the applicant has merely added the term 'NUART' to the registrants' respective marks." *Id.* Applicant believes that this basic generalization made by the Examining Attorney is simply incorrect.

Marks must be compared in their entireties and in connection with the particular goods or services for which they are used. TMEP § 1207.01(b); *See In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 U.S.P.Q. 749, 750-51 (Fed. Cir. 1985). The determination that there is a likelihood of confusion cannot be made based on the dissection of only part of a mark. *Id.* Instead, the ultimate conclusion that a mark is likely to confuse should rest on the mark in its entirety, although more or less weight can be placed on a particular feature of a mark. *Id.*

Here, the additional word NUART precedes the words CAN AM, which Applicant's mark allegedly has in common with the two cited marks. This fact alone further evidences the fact that the marks do not sound the same.

As such, Applicant respectfully submits that its mark does not sound like the two cited registrations and should not be denied registration on that basis.

C. Applicant's Mark Does Not Have The Same Connotation Or Exude The Same Commercial Impression As The Two Cited Marks.

The connotation of a mark is determined by its relationship to the goods or services in connection with which it is used. TMEP § 1207.01(b)(v). Typically, "[t]he focus is on the recollection of the average purchaser who normally retains a general, rather than specific, impression of trademarks." *Id.* (citations omitted).

There are many examples of marks that are more similar in appearance and sound than Applicant's mark and the two cited marks at issue in the instant case that were found not to be confusingly similar. For example, GREEN LEAF and BLACK LEAF were found not to be confusingly similar although the two marks only had one word difference (a suggestive color word) and the marks were both for plant and garden sprays. *See Smith v. Tobacco By-Products & Chemical Corp.*, 243 F.2d 188, 113 U.S.P.Q. 339 (C.C.P.A. 1957). In that case, it was found that "the word 'Leaf,' as applied to a plant spray is not arbitrary, but is definitely suggestive of the use to which the product is to be put." *Id.* at 340. Similarly, HEALTHY CHOICE and HEALTH SELECTIONS, both marks for food products bearing only slight differences between the marks, but with the same basic connotation, were also found not to be confusingly similar. *See ConAgra, Inc. v. George A. Hormel & Co.*, 990 F.2d 368, 26 U.S.P.Q.2d 1316 (8th Cir. 1993). The Eighth Circuit has also found no likelihood of confusion where identical words were used for closely related goods and services. *Id.* at 1318 (citing *Comidas Exquisitos, Inc. v. O'Malley & McGee's Inc.*, 775 F.2d 260, 227 U.S.P.Q. 811 (8th Cir. 1985) (Carlos McGee's and Carlos McGee's for restaurants not likely to cause public confusion due to their distinct geographic markets and lack of intention to expand into the market of the other respective mark holder)).

In the instant case, the CAN AM portion of the mark at issue, NUART CAN AM, is suggestive of the sport of car racing. To wit, Can-Am was the name of a sports car racing series that existed from 1966 to 1986. *See Exhibit F.* Applicant intends to use the NUART CAN AM mark in connection with automobiles and structural parts therefor, as stated in its application for registration. A reasonable consumer would perceive the term NUART to mean that the goods and/or services offered under the mark consist of innovative design or creation, while the CAN AM portion of Applicant's mark suggests a particular type of race car based upon a clean sheet design or the creation of an automobile product not derived from anything else. This strongly suggestive reference in the mind of an ordinary consumer makes the difference between a mark that is likely to confuse and one that is not. Here, Applicant respectfully submits that NUART, the differing portion of its mark from the two cited registrations, places its mark in condition to be allowed because it enables the ordinary consumer to, *inter alia*, differentiate its

mark from the two cited registrations.

Therefore, Applicant respectfully disagrees that the addition of NUART to the wording CAN AM does not distinguish it from the cited marks. In fact, NUART is uniquely associated with Applicant's products and services and is the dominant portion of its mark, not CAN AM. Of note, the registrant of the CAN-AM EXOTICS mark confirmed during the prosecution of its mark that "[t]he dominant portion of the cited [Registrant's] mark is clearly the term EXOTICS." See Exhibit G, at p. 5. Applicant would like to offer that the dominant portion of its mark is NUART, not CAN AM, thereby exuding a different connotation and a different overall impression than the two cited marks, CAN-AM EXOTICS and CAN-AM.

II. APPLICANT'S GOODS ARE NOT CLOSELY RELATED TO THE CITED REGISTRANTS' GOODS NOR DO THEY ORIGINATE FROM THE SAME SOURCES.

Contrary to the Examiner's point of view, Applicant's goods and those of the two cited registrants are not identical (nor are they necessarily closely related) and are not derived from identical sources. In fact, Applicant's goods are markedly distinguishable from the cited registrants' goods, making it unlikely that a consumer would be confused by Applicant's use of the NUART CAN AM mark in connection with its goods. Therefore, in light of the fact that Applicant disagrees with the Examiner's contention that "[t]he applicant's goods are closely related to the registrants' goods because they are identical and originate from the same sources" and that the Examiner did not provide concrete evidence in support of her claim that Applicant's goods and those of the cited registrants are identical and originate from the same sources, Applicant respectfully requests the withdrawal of this argument from the Examiner's argument for refusal of Applicant's registration under Section 2(d).

Generally, goods or services are seen as related or similar where they are interchangeable for all significant uses. *Vitarroz Corp. v. Borden, Inc.*, 644 F.2d 960, 209 U.S.P.Q. 969 (2d Cir. 1981) (holding BRAVO'S crackers unrelated to BRAVOS tortilla chips).

Here, Applicant intends to use the mark in question in connection with clean sheet prototype sports cars for racing series. In contrast, the cited registrants are currently using or intend to use their respective marks in connection with street grade replica cars or all-terrain vehicles, rather than sports cars for racing series. Therefore, not only are Applicant's and the cited registrants' trade channels dissimilar due to the marked difference in products, but so are their intended purchasers.

Although Applicant acknowledges the Examiner's inclusion of numerous examples of automobile manufacturers that make and sell a variety of vehicles, including passenger automobiles, all-terrain vehicles, motorcycles, etc., this does not necessarily signify that the same consumer will be in the market for all vehicle types made or sold by a given manufacturer. Further, the registration of a mark for use in connection with a variety of goods in a particular class of goods is also not an indication that all goods in a

particular class will be targeted toward the same consumer. Therefore, the Examiner's attachments to the most recent Final Office Action respectfully do not go very far to prove the point that the Applicant's use of the NUART CAN AM mark in connection with sports cars for racing series is closely related to the first cited registrant's use of the CAN-AM EXOTICS mark in connection with street grade replica cars (not sports cars and not for racing) and the second cited registrant's use of the CAN-AM mark in connection with all-terrain vehicles and motorcycles (not cars and more for recreational use rather than racing).

As such, Applicant respectfully requests that the Examining Attorney withdraw her refusal under Section 2(d) on the basis that Applicant's goods are closely related to the two cited registrant's goods.

III. APPLICANT'S AND THE CITED REGISTRANTS' RESPECTIVE PURCHASERS ARE UNLIKELY TO PURCHASE THE OTHERS' PRODUCT WITHOUT KNOWLEDGE AND AWARENESS OF WHOSE PRODUCT THEY ARE BUYING GIVEN THE HIGH COST OF APPLICANT'S GOODS AND THE SOPHISTICATION OF APPLICANT'S TARGET PURCHASERS.

Even where there may be 'marginal customer overlap' because the relevant consumers are those who are interested in purchasing recreational motor vehicles, including "automobiles and structural parts therefor; automobile chassis; [and] automobile bodies" (Appl. Serial No. 85/104,423), or "Automobiles and structural parts therefor" (Reg. No. 3,163,329), or "Land motor vehicles, namely, all terrain vehicles, motorcycles, three-wheeled motorized vehicles, scooters and structural parts therefor; engines for land vehicles, namely, all terrain vehicle engines, motorcycle engines, three-wheeled vehicle engines, scooter engines and structural parts therefor; Motorcycles and parts therefor" (Reg. No. 3,686,113) in Class 12, 'this overlap is inconsequential in view of the complexity and cost of goods and the buyers' sophistication.' *In re Digirad Corp.*, 45 U.S.P.Q.2d 1841, 1842 (TTAB 1998).

Further, the instant case is unlike the case cited by the Examiner, *In re Davey Prods. Pty Ltd.*, where it was found that there was no basis on which to find that the goods at issue were so expensive or that the purchasers of the goods in question were "so knowledgeable and careful in purchasing the goods, that the likelihood of confusion arising from the use of identical marks on such goods would be significantly mitigated." *In re Davey Prods. Pty Ltd.*, 92 U.S.P.Q. 1198, 1204 (TTAB 2009).

Moreover, it is well-established that "there is always less likelihood of confusion where goods are expensive and purchased after careful consideration." *Astra Pharmaceutical Prods., Inc. v. Beckman Instruments, Inc.*, 718 F.2d 1201, 220 U.S.P.Q. 786, 790 (1st Cir. 1983). A similar finding was made in *Electronic Design & Sales, Inc. v. Electronic Data Systems Corp.*, where the court found no likelihood of confusion due to 'differences in the relevant purchasers and trade channels, the sophistication of the relevant purchasers, and the care with which both parties' goods are purchased.' *In re Digirad Corp.*, 45 U.S.P.Q.2d at 1844 (quoting *Electronic Design & Sales, Inc. v. Electronic Data Systems Corp.*, 954 F.2d

713, 21 U.S.P.Q.2d 1388 (Fed Cir. 1992)).

Even if it is found that the relevant purchasers of Applicant's intended goods and the cited registrants' goods are the same (which Applicant believes they are not), it is well-settled that the sophistication of those purchasers is often dispositive because "sophisticated consumers may be expected to exercise greater care." *Electronic Design & Sales, Inc. v. Electronic Data Systems Corp.*, 21 U.S.P.Q.2d at 1392. Even where the type of goods sold by mark holders is very similar (unlike the instant case where they are not), a significant difference in price can be enough to dispel the possibility of consumer confusion. See 4 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, §23:97 (4th ed. Thomson West 2008) (citing to *AM General Corp. v. Daimler Chrysler Corp.*, 311 F.3d 796, 65 U.S.P.Q.2d 1001 (7th Cir. 2002) (purchasers of expensive HUMMER sports utility vehicles selling for more than \$50,000 were found unlikely to be confused by a grille design similar to that used in plaintiff's JEEP vehicles)).

Therefore, Applicant respectfully submits that the relevant purchasers of goods under the Applicant's NUART CAN AM mark are very sophisticated purchasers and these purchasers will spend a minimum of approximately \$485,000.00 to buy an automobile bearing Applicant's mark. See Exhibit H, at p. 2; also see Exhibit I, at p. 2. On the other hand, purchasers of goods bearing the registered CAN-AM mark may spend as little as \$6,799.00 to purchase one of that registrant's all-terrain vehicles or motorcycles. See Exhibit J. Moreover, it is unclear how much the buyer for goods in connection with the CAN-AM EXOTICS mark will spend to purchase goods bearing that mark. Further, CAN-AM EXOTICS appears to be exclusively associated with component parts for vehicles, not relevant to purchasers of Applicant's nearly \$500,000.00 ready-made racing vehicles. Moreover, the domain name of CAN-AM EXOTICS appears to be for sale and all of the links lead to sponsored links to unrelated websites, which calls into question whether that registrant's mark is still in use in commerce and relevant to the instant inquiry. See Exhibit K.

Therefore, Applicant believes that the dissimilarity between the purchasers of Applicant's and the cited registrants' goods combined with the extremely high cost of goods intended to bear Applicant's mark is great enough to avoid a likelihood of confusion and requests that the Examiner withdraw her Section 2(d) refusal on that basis.

IV. THE NUMBER AND NATURE OF SIMILAR MARKS IN USE ON SIMILAR GOODS WEIGHS HEAVILY AGAINST LIKELIHOOD OF CONFUSION BETWEEN APPLICANT'S MARK AND THE CITED REGISTRANTS' MARKS.

Where it can be established that "the consuming public is exposed to third-party use of similar marks on similar goods, it 'is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection.'" TMEP § 1207.01(d)(iii) (quoting *Palm Bay Imps., Inc. v. Veuve ClicquotPonsardin*

Maison Fondée en 1772, 396 F.3d 1369, 1373-74, 73 U.S.P.Q.2d 1689, 1693 (Fed. Cir. 2005)).

A query on the Google® search engine consisting of "CAN AM" and "automobile" returned 3,180,000 results. The first 50 results thereof are attached hereto as Exhibit L. The first result, a YouTube video® featuring a "Rare 1977 Pontiac Lemans Can Am – 6.6V8 Muscle Car" is but one example of the common nature of the words CAN AM for use in connection with automobiles given the history of the words. See Exhibit F. CAN AM, whether depicted hyphenated or not, has long been associated with the sport of car racing and the vehicles associated therewith.

A. The Cited Registrations Deserve Only A Narrow Scope Of Protection.

It holds that where similar marks are used by multiple sources in the same field, the scope of protection afforded to each mark is correspondingly narrowed. *See Data Concepts Inc. v. Digital Consulting Inc.*, 4 U.S.P.Q.2d 1672, 1676 (6th Cir. 1998); *see also Amstar Corp. v. Domino's Pizza, Inc.*, 205 U.S.P.Q. 969, 975 (5th Cir. 1980). Thus, the existence of multiple similar marks where related goods are involved indicates that the consuming public is accustomed to distinguishing between the marks and are capable of doing so, without a likelihood of confusion. *See General Mills, Inc. v. Kellogg Co.*, 3 U.S.P.Q.2d 1442, 1445 (8th Cir. 1987).

In the instant case, the Examining Attorney initially refused registration on grounds that there was a likelihood of confusion with U.S. Registration Nos. 3,163,329, 2,883,129 and 3,686,113. Since then, the '129 registration has been cancelled, leaving the '329 and the '113 registrations as the remaining cited registrations. The '329 registration for the mark CAN-AM EXOTICS is for use in connection with automobiles and structural parts therefor in Class 012 and the '113 registration for the mark CAN-AM is for use in connection with land motor vehicles, namely, all terrain vehicles, motorcycles, three-wheeled motorized vehicles, scooters and structural parts therefor; engines for land vehicles, namely, all terrain vehicle engines, motorcycle engines, three-wheeled vehicle engines, scooter engines and structural parts therefor; motorcycles and parts therefor in Class 12, as well as goods and services in Classes 9, 28, 35, 37, 39, 40, 41 and 42. In contrast, Applicant's mark NUART CAN AM is for use in connection with automobiles and structural parts therefor; automobile chassis; automobile bodies in Class 12, in addition to goods in Class 7.

Given the fact that there are many common law uses of the words CAN AM, in addition to the fact that the classes of goods in Applicant's application are not entirely covered by the cited registrations, Applicant respectfully submits that the cited registrations are entitled to only a narrow scope of protection and should not be used to bar Applicant's registration.

V. THE CONSENT AGREEMENT IS PROBATIVE EVIDENCE THAT THERE IS NO LIKELIHOOD OF CONFUSION BETWEEN APPLICANT'S MARK AND THE CITED REGISTERED MARKS.

A consent agreement is 'but one factor to be taken into account with all of the other relevant circumstances bearing on the likelihood of confusion referred to in §2(d).' TMEP § 1207.01(d)(viii) (quoting *In re N.A.D. Inc.*, 754 F.2d 996, 224 U.S.P.Q. 969, 971 (Fed. Cir. 1985)). Additionally, it is difficult to find subjectively that confusion will occur when those directly concerned with its occurrence state that it will not occur. TMEP § 1207.01(d)(viii) (citing to *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973)).

Here, the Examining Attorney uses the consent agreement between the two cited registrants to refute the Applicant's argument that the wording CAN AM is weak and diluted. See Final Office Action, dated April 17, 2012, at p. 4. In turn, Applicant would also like to use the same consent agreement to proffer that there is no likelihood of confusion among the three marks. As supported by the court in *In re E.I. du Pont de Nemours & Co.*, the fact that the cited registrants "agree that the respective parties' mark, as well as the goods and/or services in connection with which they are either used or intended to be used, are sufficiently different to avoid confusion as to either source of origin or sponsorship" should be conclusive evidence that Applicant's NUART CAN AM mark is sufficiently different from the cited marks to avoid confusion as well. If the Trademark Office accepted an agreement between the two cited registrants attesting to the fact that CAN-AM EXOTICS and CAN-AM are sufficiently different to avoid confusion, surely the Examiner should accept Applicant's argument that its mark NUART CAN AM is sufficiently different from each cited mark to avoid confusion, especially given the arguments presented above.

CONCLUSION

Applicant believes that it has overcome the Examining Attorney's reinstated refusal to register the instant mark based on an alleged likelihood of confusion, given that: (1) Applicant has demonstrated that its mark is dissimilar in appearance, sound, meaning and commercial impression from the two cited marks; (2) Applicant's goods are not closely related to the prior registrants' goods; (3) Applicant's intended purchasers are highly sophisticated, the intended goods are very expensive and necessitate the exercise of care when purchasing them; (4) there are a number of common law uses of the CAN AM portion of Applicant's mark; and (5) the language of the consent agreement between the two cited registrants weighs in favor of also registering Applicant's mark.

Accordingly, Applicant respectfully requests reconsideration of the decision to make final the refusal to approve Applicant's mark for publication and registration. Applicant believes the arguments for overcoming the Examining Attorney's refusal to register the instant mark place the instant application in condition for allowance of which early notice thereof is respectfully sought. Should any additional fees be required, please charge Deposit Account No. 062425.

EVIDENCE

Evidence in the nature of Exhibits A thru L has been attached.

Original PDF file:

[evi_2-38751434-172939710 . Exhibit A.pdf](#)

Converted PDF file(s) (5 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

Original PDF file:

[evi_38751434-172939710 . Exhibit B.pdf](#)

Converted PDF file(s) (5 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

Original PDF file:

[evi_38751434-172939710 . Exhibit C.pdf](#)

Converted PDF file(s) (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

Original PDF file:

[evi_38751434-172939710 . Exhibit D.pdf](#)

Converted PDF file(s) (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

Original PDF file:

[evi_38751434-172939710 . Exhibit E.pdf](#)

Converted PDF file(s) (4 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

Original PDF file:

[evi_38751434-172939710 . Exhibit F.pdf](#)

Converted PDF file(s) (9 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

[Evidence-8](#)

[Evidence-9](#)

Original PDF file:

[evi_38751434-172939710 . Exhibit G.pdf](#)

Converted PDF file(s) (17 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

[Evidence-8](#)

[Evidence-9](#)

[Evidence-10](#)

[Evidence-11](#)

[Evidence-12](#)

[Evidence-13](#)

[Evidence-14](#)

[Evidence-15](#)

[Evidence-16](#)

[Evidence-17](#)

Original PDF file:

[evi_38751434-172939710 . Exhibit H.pdf](#)

Converted PDF file(s) (7 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

Original PDF file:

[evi_38751434-172939710 . Exhibit I.pdf](#)

Converted PDF file(s) (11 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

[Evidence-8](#)

[Evidence-9](#)

[Evidence-10](#)

[Evidence-11](#)

Original PDF file:

[evi_38751434-172939710 . Exhibit J.pdf](#)

Converted PDF file(s) (14 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

[Evidence-8](#)

[Evidence-9](#)

[Evidence-10](#)

[Evidence-11](#)

[Evidence-12](#)

[Evidence-13](#)

[Evidence-14](#)

Original PDF file:

[evi_38751434-172939710 . Exhibit K.pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

Original PDF file:

[evi_38751434-172939710 . Exhibit L.pdf](#)

Converted PDF file(s) (6 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Kenya L. Williams/ Date: 10/15/2012

Signatory's Name: Kenya L. Williams

Signatory's Position: California attorney of record

Signatory's Phone Number: 310-824-5555

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to

withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 85104423

Internet Transmission Date: Mon Oct 15 18:04:16 EDT 2012

TEAS Stamp: USPTO/RFR-38.75.14.34-201210151804165920

94-85104423-4903b46a17fae5a6d4c6a8dfa658

c6f4651-N/A-N/A-20121015172939710964

EXHIBIT A

Trademark Snap Shot Publication Stylesheet
(Table presents the data on Publication Approval)

OVERVIEW

SERIAL NUMBER	85104423	FILING DATE	08/10/2010
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	STIGLITZ, SUSAN R	L.O. ASSIGNED	109

PUB INFORMATION

RUN DATE	12/29/2011		
PUB DATE	N/A		
STATUS	680-APPROVED FOR PUBLICATION		
STATUS DATE	12/28/2011		
LITERAL MARK ELEMENT	NUART CAN AM		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	NO	1 (a)	NO	1 (a)	NO
1 (b)	YES	1 (b)	YES	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	NUART CAN AM

MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Richard Nauert
ADDRESS	3334 East Coast Hwy. #340 Corona del Mar, CA 92707
ENTITY	01-INDIVIDUAL
CITIZENSHIP	United States of America

GOODS AND SERVICES

INTERNATIONAL CLASS	007
DESCRIPTION TEXT	Automobile parts, namely, automobile engine valve covers, engine parts in the nature of electronic fuel injection modules, intake manifolds, and engine management systems in the nature of electronic control modules that utilize input values calculated from sensor devices to control the fuel mixture, amount of fuel, ignition timing, and idle speed of an internal combustion engine
INTERNATIONAL CLASS	012
DESCRIPTION TEXT	automobiles and structural parts therefor; automobile chassis; automobile bodies

GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	007	FIRST USE DATE	NONE	FIRST USE IN COMMERCE DATE	NONE	CLASS STATUS	6-ACTIVE
INTERNATIONAL CLASS	012	FIRST USE DATE	NONE	FIRST USE IN COMMERCE DATE	NONE	CLASS STATUS	6-ACTIVE

MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
PSEUDO MARK	NEW ART CAN AM; IN YOU ART CAN AM

PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
12/28/2011	CNSA	P	APPROVED FOR PUB - PRINCIPAL REGISTER	016

12/27/2011	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	015
12/27/2011	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	014
12/27/2011	ERFR	I	TEAS REQUEST FOR RECONSIDERATION RECEIVED	013
06/27/2011	CNFR	O	FINAL REFUSAL MAILED	012
06/24/2011	CNFR	R	FINAL REFUSAL WRITTEN	011
06/01/2011	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	010
05/31/2011	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	009
05/31/2011	TROA	I	TEAS RESPONSE TO OFFICE ACTION RECEIVED	008
11/28/2010	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	007
11/28/2010	GNRT	F	NON-FINAL ACTION E-MAILED	006
11/28/2010	CNRT	R	NON-FINAL ACTION WRITTEN	005
11/25/2010	DOCK	D	ASSIGNED TO EXAMINER	004
08/17/2010	MPMK	O	NOTICE OF PSEUDO MARK MAILED	003
08/14/2010	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
08/13/2010	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	James Paul
CORRESPONDENCE ADDRESS	James Paul Fulwider Patton LLP 6060 Center Drive, Tenth Floor Los Angeles CA 90045
DOMESTIC REPRESENTATIVE	NONE

NuArt Can Am

EXHIBIT B

Trademark Snap Shot Publication & Issue Review Stylesheet
 (Table presents the data on Publication & Issue Review Complete)

OVERVIEW

SERIAL NUMBER	85104423	FILING DATE	08/10/2010
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	STIGLITZ, SUSAN R	L.O. ASSIGNED	109

PUB INFORMATION

RUN DATE	01/21/2012		
PUB DATE	N/A		
STATUS	681-PUBLICATION/ISSUE REVIEW COMPLETE		
STATUS DATE	01/20/2012		
LITERAL MARK ELEMENT	NUART CAN AM		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	NO	1 (a)	NO	1 (a)	NO
1 (b)	YES	1 (b)	YES	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	NUART CAN AM

MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Richard Nauert
ADDRESS	3334 East Coast Hwy. #340 Corona del Mar, CA 92707
ENTITY	01-INDIVIDUAL
CITIZENSHIP	United States of America

GOODS AND SERVICES

INTERNATIONAL CLASS	007
DESCRIPTION TEXT	Automobile parts, namely, automobile engine valve covers, engine parts in the nature of electronic fuel injection modules, intake manifolds, and engine management systems in the nature of electronic control modules that utilize input values calculated from sensor devices to control the fuel mixture, amount of fuel, ignition timing, and idle speed of an internal combustion engine
INTERNATIONAL CLASS	012
DESCRIPTION TEXT	automobiles and structural parts therefor; automobile chassis; automobile bodies

GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	007	FIRST USE DATE	NONE	FIRST USE IN COMMERCE DATE	NONE	CLASS STATUS	6-ACTIVE
INTERNATIONAL CLASS	012	FIRST USE DATE	NONE	FIRST USE IN COMMERCE DATE	NONE	CLASS STATUS	6-ACTIVE

MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
PSEUDO MARK	NEW ART CAN AM; IN YOU ART CAN AM

PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
01/20/2012	PREV	O	LAW OFFICE PUBLICATION REVIEW COMPLETED	018

01/17/2012	ALIE	A	ASSIGNED TO LIE	017
12/28/2011	CNSA	P	APPROVED FOR PUB - PRINCIPAL REGISTER	016
12/27/2011	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	015
12/27/2011	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	014
12/27/2011	ERFR	I	TEAS REQUEST FOR RECONSIDERATION RECEIVED	013
06/27/2011	CNFR	O	FINAL REFUSAL MAILED	012
06/24/2011	CNFR	R	FINAL REFUSAL WRITTEN	011
06/01/2011	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	010
05/31/2011	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	009
05/31/2011	TROA	I	TEAS RESPONSE TO OFFICE ACTION RECEIVED	008
11/28/2010	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	007
11/28/2010	GNRT	F	NON-FINAL ACTION E-MAILED	006
11/28/2010	CNRT	R	NON-FINAL ACTION WRITTEN	005
11/25/2010	DOCK	D	ASSIGNED TO EXAMINER	004
08/17/2010	MPMK	O	NOTICE OF PSEUDO MARK MAILED	003
08/14/2010	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
08/13/2010	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	James Paul
CORRESPONDENCE ADDRESS	James Paul Fulwider Patton LLP 6060 Center Drive, Tenth Floor Los Angeles CA 90045
DOMESTIC REPRESENTATIVE	NONE

NuArt Can Am

EXHIBIT C

STATUS DOCUMENTS

[Back to Search](#)

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Generated on: This page was generated by TSDR on 2012-09-12 18:34:08 EST

Mark: NUART CAN AM

NuArt Can Am

US Serial 85104423

Application Filing Date: Aug. 10, 2010

Number:

Register: Principal

Mark Type: Trademark

Status: A final Office action refusing registration has been sent (issued) because the applicant neither satisfied nor overcame all requirements and/or refusals previously raised. The applicant may respond by filing (1) a request for reconsideration; and/or (2) an appeal to the Trademark Trial and Appeal Board. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Apr. 17, 2012

Mark Information

[expand all](#)

Goods and Services

Basis Information (Case Level)

Current Owner(s) Information

Attorney/Correspondence Information

Prosecution History

Date	Description	Proceeding Number
Apr. 17, 2012	FINAL REFUSAL MAILED	
Apr. 17, 2012	FINAL REFUSAL WRITTEN	76487
Mar. 16, 2012	PREVIOUS ALLOWANCE COUNT WITHDRAWN	
Feb. 03, 2012	WITHDRAWN FROM PUB - OG REVIEW QUERY	76621
Jan. 20, 2012	LAW OFFICE PUBLICATION REVIEW COMPLETED	70138
Jan. 17, 2012	ASSIGNED TO LIE	70138
Dec. 28, 2011	APPROVED FOR PUB - PRINCIPAL REGISTER	
Dec. 27, 2011	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Dec. 27, 2011	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Dec. 27, 2011	TEAS REQUEST FOR RECONSIDERATION RECEIVED	
Jun. 27, 2011	FINAL REFUSAL MAILED	
Jun. 24, 2011	FINAL REFUSAL WRITTEN	76487
Jun. 01, 2011	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
May 31, 2011	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
May 31, 2011	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Nov. 28, 2010	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Nov. 28, 2010	NON-FINAL ACTION E-MAILED	6325
Nov. 28, 2010	NON-FINAL ACTION WRITTEN	76487
Nov. 25, 2010	ASSIGNED TO EXAMINER	76487
Aug. 17, 2010	NOTICE OF PSEUDO MARK MAILED	
Aug. 14, 2010	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Aug. 13, 2010	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

EXHIBIT D

CONSENT TO USE AND REGISTRATION

CONSENT AGREEMENT made as of February 28, 2006 by and among Can-Am Exotics Inc. with an address at 8040 S. Madison Street, Burr Ridge, Illinois, 60527, (the "Registrant") and Bombardier Recreational Products Inc. with an address at 726 St. Joseph Street, Valcourt, Quebec, Canada J0E 2L0 (the "Applicant").

WHEREAS, Registrant is the owner of U.S. Reg. No. 2,883,129 and U.S. Application Nos. 78/213,360 and 78/386,628 for the mark CAN AM, CAN AM EXOTICS and CAN-AM for the following goods in international class 12: "automobiles and structural parts therefor" and the following services in international class 41: "entertainment services in the nature of automobile races".

WHEREAS, Applicant has filed U.S. Application No. 78/616,926 for the mark CAN-AM for, among others, the following goods in international class 12: "land motor vehicles, namely: all terrain vehicles, motorcycles, three-wheeled motorized vehicles, scooters and structural parts therefor; engines for land vehicles, namely: all terrain vehicle engines, motorcycle engines, three-wheeled vehicle engines, scooter engines and structural parts therefor."; and the following services in international class 41: "entertainment in the nature of motorized vehicle races and competitions in the field of all terrain vehicle races, motorcycle races and three-wheeled motorized vehicle races".

NOW, THEREFORE, for good and valuable consideration, the receipt of which Registrant expressly acknowledges, Registrant hereby consents to the use and registration of Applicant's mark on the terms and conditions set forth hereafter:

(1) Registrant and Applicant agree that the respective parties' mark, as well as the goods and/or services in connection with which they are either used or intended to be used, are sufficiently different to avoid confusion as to either source of origin or sponsorship.

(2) Applicant hereby recognizes and acknowledges Registrant's right, title and interest in and to Registrant's mark, as well as any application or registration therefor, and will not in any way, directly or indirectly, do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of said right, title and interest.

(3) Registrant hereby recognizes and acknowledges Applicant's right, title and interest in and to Applicant's mark, as well as any application or registration therefor, and will not in any way, directly or indirectly, do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of said right, title and interest.

(4) Registrant and Applicant acknowledge that, to date, no instance of actual confusion has been brought to the attention of either party. Nevertheless, the parties agree to employ their best efforts to use their respective marks in a manner that does not cause actual confusion as to either source of origin or sponsorship. If, despite the parties' best efforts, such actual confusion shall be brought to the attention of both Registrant and Applicant, the party receiving such notice shall document the incident or incidents of confusion in writing and

forward a copy of the documentation to the other party within a reasonable period of time after the receipt of such notice. Following the receipt of notice of an incident or incidents of actual confusion, or the receipt of documentation of such an incident or incidents as the case may be, both parties shall take significant steps to independently mitigate or correct such actual confusion, including, by way of example, corresponding with the confused consumer to explain the independence of the parties and their respective marks and goods or providing samples of their respective uses. Each party shall provide the other party with copies of all correspondence or documentation relating to the mitigation or correction of actual confusion.

(5) Registrant and Applicant agree to take such further action and execute such further agreements that may be necessary to carry out the spirit of this agreement.

Can-Am Exotics Inc.

By: 
Name: John Gyan
Title: Director

Bombardier Recreational Products Inc.

By: 
Name: Christopher Dawson
Title: Vice-President, Strategic Planning
and Business Development

By: 
Name: Jennifer Millson
Title: Vice-President, General Counsel and
Corporate Secretary

EXHIBIT E

STATUS DOCUMENTS

Generated on: This page was generated by TSDR on 2012-09-26 18:47:20 EST

Mark: NUART

US Serial Number: 85104442

Application Filing Date: Aug. 10

Register: Principal

Mark Type: Trademark

Status: Notice of Allowance (NOA) sent (issued) to the applicant. Applicant must file a Statement of Use the NOA issuance date.

Status Date: Apr. 24, 2012

Publication Date: Feb. 28, 2012

Notice of Allowance Date: Apr. 24,

Mark Information

Mark Literal Elements: NUART

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Automobile parts, namely, automobile engine valve covers, engine parts in the nature of electronic fuel engine management systems in the nature of electronic control modules that utilize input values calculate mixture, amount of fuel, ignition timing, and idle speed of an internal combustion engine

International Class: 007 - Primary Class

U.S Class: 013, 019,

Class Status: ACTIVE

Basis: 1(b)

For: automobiles and structural parts therefor; automobile chassis; automobile bodies

International Class: 012 - Primary Class

U.S Class: 019, 021,

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

Filed Use: No	Currently Use: No
Filed ITU: Yes	Currently ITU: Yes
Filed 44D: No	Currently 44D: No
Filed 44E: No	Currently 44E: No
Filed 66A: No	Currently 66A: No
Filed No Basis: No	Currently No Basis: No

Current Owner(s) Information

Owner Name: Richard Nauert
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 Corona del Mar, CALIFORNIA 92625
 UNITED STATES
Legal Entity Type: INDIVIDUAL **Citizenship:** UNITEI

Attorney/Correspondence Information

Attorney of Record

Attorney Name: James Paul **Docket Number:** SWPTI

Correspondent

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Domestic Representative - Not Found

Prosecution History

Date	Description
Apr. 24, 2012	NOA MAILED - SOU REQUIRED FROM APPLICANT
Feb. 28, 2012	PUBLISHED FOR OPPOSITION
Feb. 08, 2012	NOTICE OF PUBLICATION
Jan. 20, 2012	LAW OFFICE PUBLICATION REVIEW COMPLETED
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Dec. 27, 2011	TEAS/EMAIL CORRESPONDENCE ENTERED
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May 31, 2011	TEAS/EMAIL CORRESPONDENCE ENTERED
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May 31, 2011	TEAS RESPONSE TO OFFICE ACTION RECEIVED
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Nov. 25, 2010	ASSIGNED TO EXAMINER
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Aug. 13, 2010	NEW APPLICATION ENTERED IN TRAM

TM Staff and Location Information

TM Staff Information

TM Attorney: STIGLITZ, SUSAN R

Law Office Assigned: LAW O

File Location

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Date in Location: Apr. 24

EXHIBIT F

Can-Am

From Wikipedia, the free encyclopedia

The **Canadian-American Challenge Cup** or **Can-Am**, was an SCCA/CASC sports car racing series from 1966 to 1986.

Contents

- 1 History
- 2 Notable drivers
- 3 Pioneering technology
- 4 Manufacturers
- 5 Decline and revival
- 6 Champions
 - 6.1 Under 2 Litre class champions
- 7 References
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Can-Am



The logo of the Can-Am Challenge Cup

Category	Sports car racing
Country or region	United States, Canada
Inaugural season	1966
Folded	1986

History

Can-Am started out as a race series for Group 7 sports racers with two races in Canada (**Can**) and four races in the United States of America (**Am**). The series was initially sponsored by Johnson Wax. The Series was governed by rules called out under the FIA Group 7 category with unrestricted engine capacity and few other technical restrictions.

The Group 7 category was essentially a *formule libre* for sports cars; the regulations were minimal and permitted unlimited engine sizes (and allowed turbocharging and supercharging), virtually unrestricted aerodynamics, and were as close as any major international racing series ever got to *anything goes*. As long as the car had two seats and bodywork enclosing the wheels, and met basic safety standards, it was legal. Group 7 had arisen as a category for non-homologated sports car 'specials' in Europe and for a while in the 1960s Group 7 racing was popular in the United Kingdom as well as a class in hillclimb racing in Europe. Group 7 cars were designed more for short-distance sprints than for endurance racing. Some Group 7 cars were also built in Japan by Nissan and Toyota, but these did not compete outside their homeland (though some of the Can-Am competitors went over to race against them occasionally).

SCCA sports car racing was becoming more popular with European constructors and drivers, and the United States Road Racing Championship for large-capacity sports racers eventually gave rise to the Group 7 Can-Am series. There was good prize and appearance money and plenty of trade backing; the series was lucrative for its competitors but resulted, by its end, in truly outrageous cars with well over 1000 horsepower (750 kW) (some teams claimed 1,500 hp (1,100 kW) in qualifying trim), wings, active downforce generation, very light weight and unheard of speeds. Similar Group 7 cars ran in the European Interserie series, but this was much lower-key than the Can-Am.

On-track, the series was initially dominated by Lola, followed by a period in which it became known as the 'Bruce and Denny Show', the works McLaren team dominating until the Porsche 917 was perfected and became almost unbeatable. After Porsche's withdrawal, Shadow dominated the last season before Can-Am faded away to be replaced by Formula 5000. Racing was rarely close - one marque was usually dominant - but the noise and spectacle of the cars made the series highly popular.

The energy crisis and the increased cost of competing in Can-Am meant that the series folded after the relatively lacklustre 1974 season; the single seater Formula 5000 series became the leading road-racing series in North America and many of the Can-Am drivers and teams continued to race in this. F5000's reign lasted for only two years, with a second generation of Can-Am following. This was a fundamentally different series based initially on converted Formula 5000 cars with closed-wheel bodies. There was also a 2L class based on Formula Two chassis. The second incarnation of Can-Am faded away as IMSA and CART racing became more popular in the early 1980s but remained active until 1987.

Can-Am remains a well-remembered form of racing due to its popularity at the time, the spectacular cars and the lineup of talented drivers. Can-Am cars remain popular in historic racing.

Notable drivers

Notable drivers in the original Can-Am series included virtually every acclaimed driver of the late 60s and early 70s. Chris Amon, Mario Andretti, Jack Brabham, John Cannon, Mark Donohue, Vic Elford, George Follmer, Masten Gregory, Dan Gurney, Jim Hall, Phil Hill, Denny Hulme, Jacky Ickx, Parnelli Jones, Roger McCluskey, Bruce McLaren, Paul Newman, Jackie Oliver, Sam Posey, Peter Revson, Pedro Rodríguez, Swede Savage, Jo Siffert, John Cordts, David Hobbs, Jackie Stewart and John Surtees all drove Can-Am cars at one time or another.

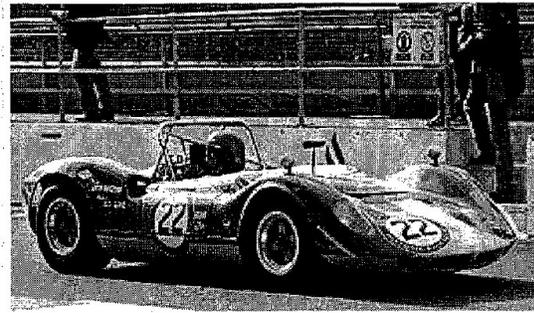
Pioneering technology

Can-Am was the birth place and proving ground for (what was at the time) outrageous technology. Can-Am cars were among the first race cars to sport wings, effective turbocharging, ground-effect aerodynamics, and aerospace materials like titanium. This led to the eventual downfall of the original series when costs got very much out of hand, but during its height Can-Am cars were at the cutting edge of racing technology and were frequently as fast as or even faster around laps of circuits used by both series than their contemporary Formula One cars. Noted constructors in the Can-Am Series included McLaren, Chaparral, Lola, BRM, Shadow and Porsche.

Manufacturers

McLaren cars were specially designed race cars. The Can-Am cars were developments of the sports cars which were introduced in 1964 for the North American sports car races. The development variants M1A and M1B were raced as factory cars in the 1966 with Bruce McLaren and Chris Amon as drivers. In 1967, specifically for the Can-Am series,

the McLaren team introduced a new model, the M6A. The McLaren M6A also introduced what was to become the trademark orange color for the team. The McLaren team was considered very "multi national" for the times and consisted of team owner and leader Bruce McLaren, fellow New Zealander Chris Amon and another "Kiwi" and the 1967



A McLaren M1A, one of the early Can-Am competitors that was equally at home in other sportscar series.

Formula One World Champion, Denny Hulme, Team Manager Teddy Mayer, Mechanics Tyler Alexander, Gary Knutson, Lee Muir, George Bolthoff, Frank Zimmerman, Tom Anderson, Alan Anderson, David Dunlap, Leo Beattie, Donny Ray Everett, and Haig Altoonian (all from the USA), Don Beresford, Alec Greaves, Vince Higgins, and Roger Bailey (UK), Tony Attard (Au), Cary Taylor, Jimmy Stone, Chris Charles, Colin Beanland, Alan McCall and Alistair Caldwell (NZ). The M6 series were a full aluminum monocoque design with no uncommon features but, for the times, there was an uncommon attention to detail in preparation by the team members. The M6 series of cars were powered by small block Chevy engines built by Al Bartz Engines in Van Nuys, CA., They were the model of reliability. This was followed in 1968 by the M8A, a new design based around the Chevy Mark IV "big block" engine as a stressed member of the chassis. McLaren went "in house" with their engine shop in 1969. The M8B, M8C, M8D and M20C were developments of that aluminum monocoque chassis. McLaren so dominated the 1967-1971 seasons that Can-Am was often called the "Bruce and Denny Show" after the drivers who very often finished 1-2. There was even a 1-2-3 finish at the Michigan International Speedway on September 28, 1969. McLaren 1st, Hulme 2nd, Gurney 3rd. Sadly, 9 months later, Bruce McLaren lost his life on June 2, 1970 at Goodwood when the rear bodywork of his prototype M8D detached during testing resulting in a totally uncontrollable car and a fatal high-speed crash. McLaren continued to succeed in Can-Am after Bruce's death with a number of other drivers, but the works Porsche effort with turbocharged flat-12 engines and a high development budget meant that they could not keep up with the 917. Although private McLarens continued in the series, the works team withdrew to concentrate on Formula One (and USAC, for several years). Team McLaren went on to become a several time F1 champion and is still very much a part of F1.

Jim Hall's **Chaparrals** were very innovative, following his success in the United States Road Racing Championship (USRRC). Jim Hall's 2 series Chaparrals (built and engineered with a high degree of covert support from Chevrolet's research and development division) were leaders in the application of aerodynamics to racecars culminating with the introduction of the 2E in 1966, the first of the high wing race cars. The 2E was a defining design, and the 2G was a development of that basic design. The FIA banned movable aerodynamic devices and Chaparral responded with the 2H 1969. The 2H broke new ground, seeking to reduce drag but didn't achieve much success. The 2J that followed was perhaps the ultimate example of what Group 7 rules could allow in a racing car. It was a twin-engined car, with the by-then usual big-block Chevrolet engine providing the driving force, and a tiny snowmobile engine powering a pair of fans at the back of the car. These fans, combined with the moveable Lexan 'skirts' around the bottom of the car created a vacuum underneath the car, effectively providing the same level of downforce as the huge wings of previous vehicles, without the drag. Although far too mechanically complex to survive in racing environments, the theory was sound, and would appear in Formula One a few years later, first in Colin Chapman's Lotus cars, and even more directly in the BT46B 'Fan Car' of 1978.

The **Lola** T-70, T-160-165, T-220, T-260, and T-310 were campaigned by the factory and various customers, and were primarily Chevy powered. The Lola T-70 driven by John Surtees won the first Can-Am championship in 1966. Lola continued to experiment with new designs versus McLaren which refined the design each year. The 1971 Lola T-260 had some success with Jackie Stewart taking two victories. In 1972 a radical new design, the Lola T-310, made its appearance. The T-310 was the longest and widest Can-Am car of the era versus the short stubby T-260. The T-310 was delivered late and suffered handling problems the entire year with its best finish a fourth at Watkins Glen.

British-born mechanic and engineer Peter Bryant designed the **Ti22** (occasionally known as the **Autocoast** after one of the team's major backers) as an American-built challenger to the British McLarens and Lolas. The car made extensive use of titanium in its chassis and suspension, and Bryant experimented with aerodynamics and with early use of carbon-fibre to reduce weight. Although the car was quick it did not achieve consistent success; problems with the team's funding saw Bryant move on to Don Nichols' UOP-sponsored **Shadow** team. The Shadow marque had made its debut with an astonishing car with tiny wheels and radiators mounted on top of the rear wing designed by Trevor Harris; this was unsuccessful, and more conventional cars designed by Bryant replaced them; Bryant was sidelined when Shadow moved into Formula One but after his departure turbocharged Shadow came to dominate as Porsche and McLaren faded from the scene.

The **Porsche 908** spyder was used in Can Am, but was underpowered (350 hp) and mainly used by underfunded teams. It did win the 1970 Road Atlanta race though when the more powerful cars fell out. The 917PA, a spyder version of the 917K Le Mans car, was raced, but its normally aspirated flat-12 was underpowered (530 hp). In 1971 the 917/10 was introduced. This was still not turbocharged, but was lighter and had cleaner body work, and Jo Siffert managed to finish fourth in the championship.

For 1972 the 917/10K with a turbo charged 900 horsepower 5 liter flat-12 was introduced. Prepared by Roger Penske and driven by Mark Donohue and George Follmer these cars won six of the nine races. In 1972 Porsche introduced an even more powerful car, the 917/30KL. Nicknamed the Turbopanzer this car was truly a monster. With 1100/1580 horsepower (820/1161 kW in race/qualifying spec) on tap from a 5.4 liter flat-12 and only weighing in at 1800 lb (816 kg) with better downforce this car won six of eight races in the 1973 championship ^[1]. The Porsche dominance was such that engine rules were changed to try to reduce the dominance of one marque by enforcing a fuel-consumption rule for 1974. This kind of alteration of rules to promote equality is not unknown in other forms of American motorsport. In 1975, after the demise of the category for which the car had been created, Mark Donohue drove this car to a closed course world speed record of 221 mph (356 km/h) at the Talladega Superspeedway (then called the *Alabama International Motor Speedway*). It was capable of over 250 mph (402 km/h) on the straights.



Porsche 917/30, in Stuttgart-Zuffenhausen Museum.

These marques dominated the series for most of its existence; other vehicles occasionally appeared but were essentially making up the numbers. Well-established European manufacturers like Ferrari and BRM appeared at various times with little success, March tried to get a share of the lucrative market in

1970-1 but couldn't establish themselves, and Ford flitted across the scene with a number of unsuccessful cars based on the GT40 and its successors. American specialist marques like McKee and Caldwell competed, alongside real exotica like the astonishing four-engined **Macs-It** special.

Decline and revival

1974 was the last year for the original Can-Am championship. Spiraling costs, a recession in North America following the oil crisis, and dwindling support and interest led to the series being cancelled and the last scheduled race of the 1974 season not being run.^[2] The Can-Am name still held enough drawing power to lead SCCA to introduce a revised Can-Am series in 1977 based on a closed-wheel version of the rules of the recently canceled Formula A/5000 series. This grew steadily in status, particularly during the USAC/CART wars of the late 70s and early 80s, and attracted some top road-racing teams and drivers and a range of vehicles including specials based on rebodied single seaters (particularly Lola F5000s) and also bespoke cars from constructors like March as well as smaller manufacturers. To broaden the appeal of the series a 2L class was introduced for the last several years - cars often being derived from F2/Formula Atlantic. The series peaked in the early 80s but as the CART Indycar series and IMSA's GTP championship grew in stature it faded away and was gone by 1986.

The name was once again revived in 1998, when the United States Road Racing Championship broke away from IMSA. Their top prototype class was named Can-Am, but the series would fold before the end of 1999 before being replaced by the Grand American Road Racing Championship. The Can-Am name would not be retained in the new series.

Eventually, the GTPs would evolve into Le Mans Prototypes, the top class of the American Le Mans Series. While significantly different from Can Am series vehicles, LMPs provide a high performance prototype pioneering new technologies, but limited compared to their spiritual predecessors of Can-Am by regulations in the name of cost control and safety. From 2004-09, the LMPs would be divided into the under 6000cc LMP1 class and the under 4000cc LMP2 class, comparable to the Can Am Series' 5000cc maximum.

Champions

Year	Driver	Team	Car
1966	 John Surtees	 Team Surtees	Lola T70-Chevrolet
1967	 Bruce McLaren	 Bruce McLaren Motor Racing	McLaren M6A-Chevrolet
1968	 Denny Hulme	 Bruce McLaren Motor Racing	McLaren M8A-Chevrolet
1969	 Bruce McLaren	 Bruce McLaren Motor Racing	McLaren M8B-Chevrolet
1970	 Denny Hulme	 Bruce McLaren Motor Racing	McLaren M8D-Chevrolet
1971	 Peter Revson	 Bruce McLaren Motor Racing	McLaren M8F-Chevrolet
1972	 George Follmer	 Penske Racing	Porsche 917/10
1973	 Mark Donohue	 Penske Racing	Porsche 917/30KL
1974	 Jackie Oliver	 Shadow Racing Cars	Shadow DN4A-Chevrolet
1975-6	No series		
1977	 Patrick Tambay	 Haas-Hall Racing	Lola T333CS-Chevrolet
1978	 Alan Jones	 Haas-Hall Racing	Lola T333CS-Chevrolet
1979	 Jacky Ickx	 Carl Haas Racing	Lola T333CS-Chevrolet
1980	 Patrick Tambay	 Carl Haas Racing	Lola T530-Chevrolet
1981	 Geoff Brabham	 Team VDS	Lola T530-Chevrolet / VDS 001-Chevrolet
1982	 Al Unser Jr.	 Galles Racing	Frissbee GR3-Chevrolet
1983	 Jacques Villeneuve	 Canadian Tire	Frissbee GR3-Chevrolet
1984	 Michael Roe	 Norwood/Walker	VDS 002-Chevrolet / VDS 004-Chevrolet
1985	 Rick Miasiewicz	 Mosquito Autosport	Frissbee GR3-Chevrolet
1986	 Horst Kroll	 Kroll Racing	Frissbee KR3-Chevrolet

Under 2 Litre class champions

Year	Driver	Team	Car
1979	 Tim Evans	 Diversified Engineering Services	Lola T290-Ford
1980	 Gary Gove	 Pete Lovely VW	Ralt RT2-Hart
1981	 Jim Trueman	 TrueSports	Ralt RT2-Hart
1982	 Bertil Roos	 Elite Racing	Marquey CA82-Hart
1983	 Bertil Roos	 Roos Racing School	Scandia B3-Hart
1984	 Kim Campbell	 Tom Mitchell Racing	March 832-BMW
1985	 Lou Sell	 Sell Racing	March 832-BMW

References

- ↑ http://www.wspr-racing.com/wspr/results/canam/canam1973.html 1973 Can Am results
- ↑ Lyons, Pete (1995). *Can-Am*. Osceola, Wisconsin: Motorbooks International. p. 240. ISBN 0-7603-0017-8.

External links

- CanAm History site (http://www.research-racing.de/CanAm1.htm)
- Can-Am History, by Michael Stucker (http://www.vintagerpm.com/category/can-am-history/)
- Bruce McLaren Trust Official site (http://www.bruce-mclaren.com)
- Can-Am Results 1966-1986 (http://www.classicscars.com/wspr/results/canam/nf_canam_home.html)
- CanamCircus by Stéphane Lebiez (http://www.canamcircus.com)
- Historic Can Am (http://www.historiccanam.com/)

Bibliography

- Can-Am, Pete Lyons, Motorbooks International
- Can-Am Races 1966-1969, Brooklands Books
- Can-Am Races 1970-1974, Brooklands Books
- Can-Am Racing Cars 1966-1974, Brooklands Books
- Can-Am Challenger, Peter Bryant, David Bull

Retrieved from "http://en.wikipedia.org/w/index.php?title=Can-Am&oldid=497161549"

Categories: Sports car racing series | Sports Car Club of America | Can-Am

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EXHIBIT G

TRADEMARK
Reference No. 35432007003

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In re the application of:	The Chassis Shop, Inc.)	
Serial No.:	78/213,360)	Trademark Law Office: 113
Filed:	February 11, 2003)	Examining Attorney:
)	Paula Mahoney
Mark:	CAN AM EXOTICS)	

CERTIFICATE OF MAILING

I hereby certify that this Response being deposited with the United States Postal Service by First Class Mail, postage pre-paid, on this date, in an envelope addressed to:

Box RESPONSES - NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

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Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Michael J. Tujeon
Michael J. Tujeon, #39,404

February 11, 2004
Date

RESPONSE TO OFFICE ACTION

In response to the Office Action electronically transmitted on August 11, 2003, please amend the application as indicated and consider the following remarks.

REMARKS

This is responsive to the Office Action electronically transmitted on August 11, 2003, wherein the Examining Attorney: (i) refused registration under Trademark Act §2(d); (ii) refused registration under Trademark Act §2(e)(2); and (iii) requested indication whether the marking "CAN AM" and "EXOTICS" have any significance in the relevant trade.

02-17-2004

U.S. Patent & TMO/TM Mail Rpt Dt #72

By this response, Applicant respectfully traverses the Examiner's refusals, and replies to the Examiner's request.

Applicant respectfully traverses the Examiner's refusals under §2(d) and respectfully submits that there is no likelihood of confusion for the reasons set forth below. Applicant further respectfully traverses the Examiner's refusals under §2(e)(2) and submits that Applicant's mark does not merely describe the services.

§2(d) Response

In determining likelihood of confusion, the Examining Attorney must compare the marks in their entireties as to appearance, sound, connotation and commercial impression. *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 1361 (C.C.P.A. 1973). The following *DuPont* factors in testing for likelihood of confusion in the subject application under §2(d) are most relevant:

1. Dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression;
2. Dissimilarity and nature of the goods as described in the subject application and the cited registrations;
3. The conditions under which and buyers to whom sales are made, i.e., "impulse" vs. careful, sophisticated purchasing; and
4. Registrant has abandoned the cited marks.

1. Dissimilarity of the Marks

When comparing two marks, it is imperative to look to the overall impression created by the marks and not merely compare individual features. The use of identical words, is often insufficient to conclude that marks are confusingly similar. *General Mills, Inc. v. Kellogg Co.*, 824 F.2d 622, 627 (8th Cir. 1987); see *Consolidated Cigar Corp. v. R.J. Reynolds Tobacco Co.*, 491 F.2d 1265 (C.C.P.A. 1974) (finding that DUTCHMASTERS and DUTCHAPPLE are not confusingly similar); see also *Colgate-Palmolive Co. v. Carter Wallace, Inc.*, 432 F.2d 1400 (C.C.P.A. 1970) (finding that PEAK and PEAK PERIOD are not confusingly similar); see also *Smith v. Tobacco By-Products and Chemical Corp.*, 243 F.2d 188 (C.C.P.A. 1957) (finding that GREENLEAF and BLACKLEAF are not confusingly similar).

In articulating reasons for reaching the conclusion on the issue of confusion, the Examining Attorney may state that, for rational reasons, more or less weight has been given to a particular feature of a mark. However, the ultimate conclusion rests on consideration of the marks in their entireties. *In re National Data Corp.*, 753 F.2d 1056, 1058, 224 U.S.P.Q. 749, 750-51 (Fed. Cir. 1985).

In terms of appearance, Applicant's mark does not resemble the registered mark. As the Examining Attorney has recognized, Applicant has applied to register the mark CAN AM EXOTICS, not the mark "Can Am" or "Can Am & Design" (collectively "Can Am"). Applicant respectfully submits that not only is there phonetic and visual distinction between CAN AM EXOTICS as that

mark is used in Applicant's mark and the mark "Can Am" as used in the registered marks. These differences in appearance and pronunciation make confusion unlikely. Clearly, a purchaser viewing the marks would see that the subject mark looks quite unlike the cited marks. As a result, the subject mark leaves a completely different impression in the mind of the purchasers than does the cited mark. This makes sense. After all, the subject mark indicates that the goods that will be offered under it derive from Applicant. Meanwhile, the cited mark indicates that the goods under it derive from Registrant.

In terms of commercial impression, Applicant's mark is suggestive (as discussed in more detail below) and wholly different from the registered mark such that there is no likelihood of confusion. The whole, in trademark law, is often greater than the sum of its parts. Common words in which no one may acquire a trademark because they are descriptive or generic may when used in combination, become a valid trademark. *Association of Co-operative Members, Inc. v. Farmland Industries, Inc.*, 684 F.2d 1134, 216 U.S.P.Q. 361 (5th Cir. 1982), cert. denied, 460 U.S. 1038, 75 L. Ed. 2d 788, 103 S. Ct. 1428 (1983), quoted with approval in *Taco Cabana Int'l, Inc. v. Two Pesos, Inc.* 932 F.2d 1113, 19 U.S.P.Q.2d 1253, 1258 (5th Cir. 1991), aff'd, 505 U.S. 763, 120 L. Ed. 2d 615, 112 S. Ct. 2753, 23 U.S.P.Q.2d 1091 (1992) (combination of descriptive elements of trade dress can itself be inherently distinctive: "[T]he existence of descriptive elements does not eliminate the possibility of inherent distinctiveness in the trade dress as a whole.").

Further, it is the likely reaction of customers to the total mark that is at issue, not the dissected parts. *In re Standard Elektrik Lorenz Aktiengesellschaft*, 371 F.2d 870, 152 U.S.P.Q. 563 (C.C.P.A. 1967). See *Ex Parte Maya de Mexico*, 103 U.S.P.Q. 158 (Comm'r Pat. 1954). The dominant portion of the cited mark is clearly the term EXOTICS. This is the part of the expression consumers remember as a distinctive portion of the total registered mark and associate with the goods offered in connection therewith.

Therefore, Applicant respectfully submits that this factor weighs heavily in favor of Applicant since it is clear from the facts and case law above that Applicant's mark CAN AM EXOTICS is different than the cited marks as to appearance, sound, connotation and commercial impression.

2. Dissimilarity of the Goods

Applicant respectfully submits that the cited goods are in fact distinctly different in purpose and in function from Applicant's identified services. The cited goods are for:

"Motorcycles and structural parts for motorcycles."

Applicant's goods, on the other hand, are for:

"Automobiles and structural parts for automobiles."

Applicant respectfully traverses the Examiner's overbroad characterization of referring to the goods of each party as vehicles. None of the identified goods are so broadly recited.

Applicant further respectfully traverses the Examiner's assertion that the Applicant's goods move in the same channels of trade and may be encountered by the same potential purchasers as those identified goods by Registrant. The Examiner has provided no evidence to support the position that the goods are the kind that the public attributes to a single source as required by recent Federal Circuit decisions (emphasis added). Further, consumers must be credited with at least a modicum of intelligence. A consumer does not go out looking to purchase a vehicle as the Examiner implies. Rather, a consumer looks to purchase a car or a motorcycle with full knowledge and awareness of the differences and capabilities of both. As the Office is quick to note, the public is not knowledgeable about trademark registrations. Consequently, the Examiner's evidence which may rely upon trademark registrations is inadequate. Accordingly, Applicant requests a showing from the Examiner which supports her assertions. Applicant respectfully submits that the lack of evidence demonstrates that the services are in fact different and they are not the kind the public attributes to a single source.

Applicant contends that its goods and the Registrant's goods are not so related as to cause confusion. Where the goods are non-competing, the degree of similarity necessary to establish likelihood of confusion increases dramatically. *David Sherman Corp. v. Heubein, Inc.*, 340 F.2d 377 (8th Cir. 1968). Cases where courts have found likelihood of confusion between two non-competing goods, the relationship between the products was clear. *James Burrough Ltd. v. Sign of the Beefeater, Inc.*, 540 F.2d 266 (7th Cir. 1976) (liquor

with restaurant selling liquor); *Union Carbide Corp. v. Ever-Ready, Inc.*, 531 F.2d 366 (7th Cir. 1976) (batteries and lamps with light bulbs and lamps); *Scarves by Vera, Inc. v. Todo Imports, Ltd.*, 544 F.2d 1167 (2d Cir. 1976) (women's scarves and apparel with women's cosmetics and fragrances).

Applicant respectfully submits that the relationship between the goods provided the Applicant and the non-competing goods cited by the Examiner is not clear. "Motorcycles and structural parts for motorcycles" and "automobiles and structural parts for automobiles" are not competitive, as each is directed to a completely different use and they cannot be substituted for one another. Thus, Applicant's goods are clearly not related to the cited goods.

It is also not clear that the cited Registrant will ever participate in providing "automobiles and structural parts for automobiles" similar to that offered by the Applicant. This point is especially pertinent in view of the evidence that Registrant has abandoned the cited marks. Even though there may be a remote possibility that the cited Registrant may in the future time provide "automobiles and structural parts for automobiles" in addition to "motorcycles and structural parts for motorcycles" now provided at this time, the cited Registrant does not "intimate such a purpose." *See, S.C. Johnson & Sons, Inc. v. Johnson*, 175 F.2d 176, 180 (2d Cir. 1949).

Therefore, Applicant's goods are sufficiently different from the cited goods to avoid a likelihood of confusion.

Consequently, Applicant respectfully submits that this important factor weighs heavily in favor of Applicant since it is clear from the facts and case law

above that Applicant's goods are significantly different than the cited goods, they are not remotely related so as to avoid a likelihood of confusion and the public does not attribute such services to a single source.

3. Conditions Under Which And Buyers To Whom Sales Are Made

The purchasers of both the Applicant's and Registrant's goods are sophisticated and well-informed. When there is a decision made by a sophisticated, well-informed purchaser and the decision concerns an expensive product or service, or is made after careful examination of the service, it may be sufficient to negate a likelihood of confusion even between marks of great similarity. *In re Software Design, Inc.*, 220 U.S.P.Q 662 (T.T.A.B. 1983); *Litton Sys., Inc. v, Whirlpool Corp.*, 728 F. Supp. 1423 (Fed. Cir. 1984). Applicant respectfully submits that such sophisticated, well-informed purchasers of expensive products or services are in fact sophisticated and knowledgeable in the field of trademarks such that they are immune from source confusion.

Applicant contends that the conditions under which automobiles and structural parts for automobiles are purchased do not fall into any "impulse" category. Rather such services are obtained after careful and detailed analysis. This is a reasonable conclusion as pricing for Applicant's goods begins at approximately \$35,000.00 US. Purchasing decisions made with respect to automobiles and structural parts for automobiles involve a certain amount of investigation. This is also especially true with respect to motorcycles and structural parts for motorcycles. For example, Registrant's goods were last sold in the late 1980's for several thousands of dollars. The selection process

for and automobile or motorcycle is very intimate to each consumer and the actual purchase is quite expensive. Hence, their decisions will be well-informed and carefully thought out.

The purchaser is extremely observant as to which type of automobile or motorcycle they are selecting, how it will meet their needs requirements, what they will use the automobile or motorcycle for and how much it will cost. Obviously, well-informed and sophisticated purchasers of automobiles and motorcycles are knowledgeable not only of the source of their automobile and motorcycle, but also the trademark under which the automobile and motorcycle is provided. Further, the purchasing public must be credited with a modicum of intelligence as required by *Carnation Company v. California Growers*, 97 F.2d 80, 37 U.S.P.Q. 735, 736 (C.C.P.A. 1938).

Accordingly, Applicant respectfully submits that it would be strange for sophisticated, well-informed customers of these services to be confused about with whom they are dealing. *Amalgamated Bank of New York v. Amalgamated Trust & Savings Bank*, 842 F.2d 1270, 1274 (Fed. Cir. 1988); *Cohn v. Petsmart, Inc.*, (9th Cir. 2002).

Therefore, Applicant respectfully submits that this factor weighs heavily in favor of Applicant since it is clear from the facts and case law above that the purchasers of educational services in the form of workshops are sophisticated and careful enough such that a likelihood of confusion is highly improbable.

4. Registrant Abandoned Cited Marks

Applicant respectfully submits that Registrant has abandoned the cited marks. Trademark Act, 15 U.S.C. § 1127 sets forth the test:

A mark shall be deemed to be "abandoned" when either of the following occurs:

(1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for 3 consecutive years shall be prima facie evidence of abandonment. "Use" of a mark means the bona fide use of that mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.

Applicant's investigation of Registrant's use of the cited marks located internet websites which discuss in detail, Registrant's use of the cited marks. In particular, Applicant notes the following websites with compelling evidence:

www.motorcross.com/vintage/canam/canam.htm (Exhibit A)

www.motorcross.com/vintage/canam/canam20.htm (Exhibit B)

www.bombardier-atv.com/docs/75/0_US.htm (Exhibit C)

www.mxbikes.com/bikes/can-am/can-am.php (Exhibit D)

Exhibits A, B and D each detail the history of Registrants production of motorcycles under the cited mark. Production of such motorcycle ceased in 1987. In fact, such motorcycles are now referred to by the public as vintage motorcycles.

Exhibit C is a listing of Registrant's products most closely associated with motorcycles and structural parts for motorcycles. The cited marks are not used anywhere on Registrant's website. In fact, no motorcycles are offered by

Registrant and have not yet been offered since 1987. Finally, Registrant by its inaction over the many years has demonstrated no intent to resume use of the cited marks.

Therefore, Applicant respectfully submits that this factor weighs heavily in favor of Applicant since it is clear from the facts and law above that the cited registrations are abandoned and there can be no likelihood of confusion.

§2(e)(2) Response

Applicant respectfully traverses the Examiner's refusal to register the subject mark under §2(e)(2) because the subject mark merely describes the Applicant's goods. Here, the subject mark is used as a trademark, not as the name of the goods or services. Specifically, the CAN AM EXOTICS trademark (as a whole), functions to identify a particular source. The immediate effect of the trademark is not to describe, but it functions to indicate the origin or the source in which one may obtain automobiles and structural parts for automobiles. The mark does not tell the customer only what the goods are, nor does it tell the function or what their characteristics are, nor does it tell what the specific use is. Instead, the CAN AM EXOTICS mark illustrates that the goods come from a single producer. It is, therefore, not descriptive. See *Ex parte Heatube Corporation*, 109 USPQ 423 (Comm. Pats. 1956). (The mark HEATUBE may have been descriptive of heating tubes, but the Commissioner held it not to be descriptive of electrical heating units which were the goods for which registration was sought.)

Reconsideration of the refusal to register under §2(e)(2) is respectfully requested. A mark is not merely descriptive unless it aptly describes a principal characteristic, ingredient, feature or other important aspect of the involved services. As applied to automobiles and structural parts for automobiles, the mark CAN AM EXOTICS is at most suggestive.

The "CAN" portion of the mark is suggestive since it does not immediately identify specific goods or services. Rather, imagination, reflection or mental pause is required to deduce a quality or characteristic of the goods and/or services. *West & Co. v. Arica Inst., Inc.*, 557 F.2d 338, 195 USPQ 466 (2nd Cir. 1977). In determining that the "CAN" portion of the mark is descriptive, the Examiner refers to colloquial use of "Can Am" in stories which refer to events. However, the word "CAN" has a variety of meanings in standard English language usage and as shown in Webster's II New College Dictionary, a copy of which is attached hereto as Exhibit E:

1. used to indicate:
 - (a) mental or physical ability;
 - (b) possession of a given power right, or privilege; and
 - (c) possession of a given skill or capacity.
2. used to indicate possibility or probability;
3. used to request or grant permission;
4. a usually cylindrical metal container;
5. (a) an airtight container, usually made of tin-coated iron, in which foods or beverages are preserved; and

- (b) the contents of such a container.
- 6. a prison;
- 7. (a) a toilet; or
(b) a rest room.
- 8. the buttocks;
- 9. to seal in a can or jar for future use; preserve;
- 10. to make a recording of; and
- 11. (a) to dismiss from school or employment; or
(b) to quit or dispense with.

As seen above, the word "CAN" has a variety of meanings. See *In re Vaughn Furniture Co., Inc.*, 24 USPQ2d 1068 (TTAB 1992) (The mark PINE CRAFTS for furniture was approved for registration at least in part because of the various dictionary definitions, meanings and uses of "craft").

Moreover, the "AM" portion of the mark is suggestive since it does not immediately identify specific goods or services. Rather, imagination, reflection or a mental pause is required to deduce a quality or characteristic of the goods and/or services. *West & Co. v. Arica Inst., Inc.*, 557 F.2d 338, 195 USPQ 466 (2d Cir. 1977). In determining that the "AM" portion of the mark is descriptive, the Examiner refers to a colloquial use of "Can Am" in stories which refer to events. However, the word "AM" has a variety of meaning in standard English usage as shown in Webster's II New College Dictionary, a copy of which is attached hereto as Exhibit F:

- 1. first person singular present indicative of BE; or

2. symbol for AMERICIUM.

As seen above, the word "AM" has a variety of meanings. See *In re Vaughn Furniture Co., Inc.*, 24 USPQ2d 1068 (TTAB 1992) (The mark PINE CRAFTS for furniture was approved for registration at least in part because of the various dictionary definitions, meanings and uses of "craft").

Furthermore, the "EXOTICS" portion of the mark is suggestive since it does not immediately identify specific goods or services. Rather, imagination, reflection or a mental pause is required to deduce a quality or characteristic of the goods and/or services. *West & Co. v. Arica Inst., Inc.*, 557 F.2d 338, 195 USPQ 466 (2d Cir. 1977). In determining that the "EXOTICS" portion of the mark is descriptive, the Examiner assumes, without supporting evidence, that "Exotics" refers to high end automobiles and refers to a colloquial use of "EXOTIC." However, the word "EXOTICS" has a variety of meanings in the standard English language usage as shown Webster's II New College Dictionary, a copy of which is attached hereto as Exhibit G:

1. from another part of the world; foreign;
2. striking and charmingly different;
3. of or relating to striptease;
4. one that is exotic; and
5. a striptease performer.

As seen above, the word "EXOTICS" has a variety of meanings. See *In re Vaughn Furniture Co., Inc.*, 24 USPQ2d 1068 (TTAB 1992) (The mark PINE CRAFTS for furniture was approved for registration at least in part because of the various dictionary definitions, meanings and uses of "craft").

The fact that there are numerous definitions of the CAN, AM, and EXOTICS portions of the mark demonstrates the suggestiveness of the compound CAN AM EXOTICS trademark, since thought, perception or imagination is required to determine which of the many definitions is intended. As further evidence of suggestiveness of the subject mark, the Examiner's meaning ascribed thereto is additionally wholly independent from any above definition or meaning.

Moreover, as noted below, Applicant respectfully submits that the CAN AM EXOTICS mark is "unitary" and therefore, the various parts of the mark should not be dissected and analyzed separately. The mark as a whole, is CAN AM EXOTICS, and as such, it is at least a suggestive mark subject to trademark and/or service mark protection.

CONCLUSION

The Federal Circuit has reminded the TTAB that businessmen are in a much better position to know the real-life situation regarding consumers' recollection and likely confusion rather than bureaucrats or judges. *In re Four Seasons Hotels, Ltd.*, 26 U.S.P.Q.2d 1071 (Fed. Cir. 1993). Accordingly, the observations and determinations made by such businessmen carry greater weight. *Id.*

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Law Office: 113
Exam. Atty: Paula Mahoney

Applicant respectfully submits that it is the policy of the Trademark Office to register similar marks which do not create a likelihood of confusion. In fact, the legislative history of the Trademark Act states that one of the mainstays in trademark law is to encourage registrations. See *Amalgamated Bank*, 842 F.2d at 1273. In addition, the courts have reasoned that any person who believes he or she would be damaged by the registration will have an opportunity to oppose the registration of the mark and to present evidence to that effect upon publication of the mark. *Id.*

In view of the foregoing, Applicant respectfully submits that the instant application is in condition for allowance and a Notice of Publication is earnestly solicited.

If the Examiner is of the opinion that prosecution of this application can be expedited by direct contact, she is requested to contact Michael J. Turgeon at (312) 609-7716.

Respectfully submitted,

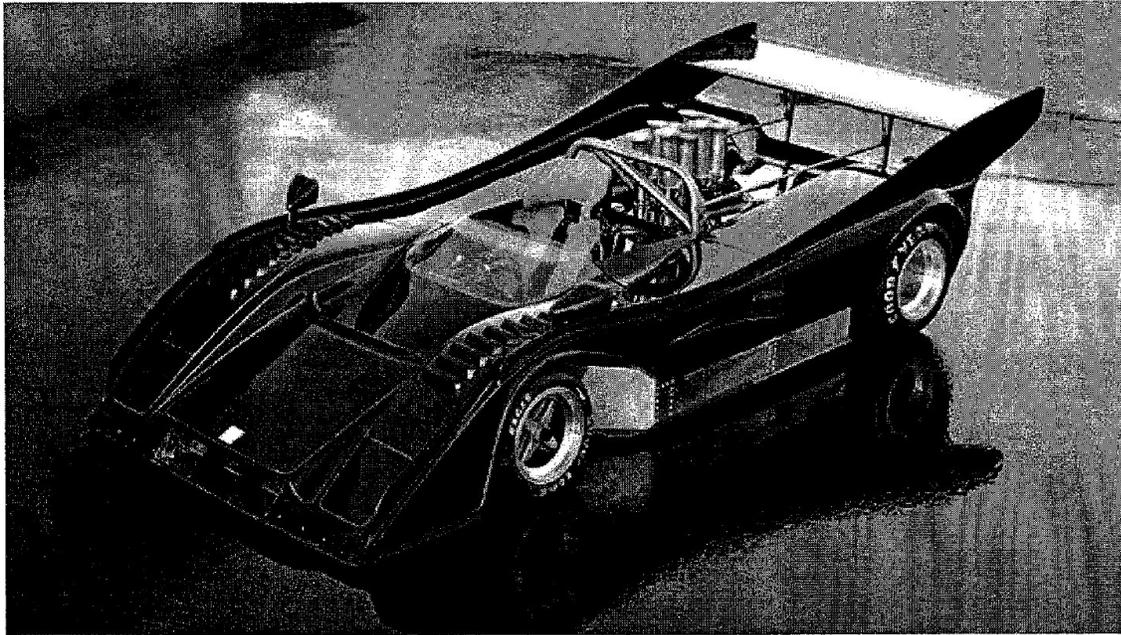

Michael J. Turgeon
Reg. No. 39,404

Dated: February 11, 2004

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222 N. LaSalle Street
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mturgeon@vedderprice.com

EXHIBIT H

TOP STORIES



MOTORSPORTS

The new series that will save auto racing in America

Velocity stacks. That's all you need to know about the new Heritage series for owner-drivers announced yesterday by the ALMS. More? How about 700+ horsepower, a big block V8 and a synchromesh gearbox with an "H" pattern. Be still our overflowing little, chrome hearts.

Indeed, the spirit of Canadian-American Challenge Cup (Can-Am) racing from the 1960 and 1970s is returning. If you don't know what that is, pull up a chair and watch this, and try not get all fap-py. The American Le Mans Series announced formation of the Unlimited Racing Championship (URC) as its new "Heritage Series," starting with the 2012 season. The URC will feature built-to-spec CanAm cars by NuArt.

BY MIKE SPINELLI

SEP 17, 2011 10:00 AM

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The cars are the product of Southwestern Performance, which built the chassis for every production Saleen S7. While they resemble Can-Am beasts of old, much of the tech is up to date, including aerodynamics and safety gear. They'll cost \$485,000 and, much like Ferrari's arrive-and-drive owner series, will be prepped and ready to race at each venue by the URC's organizing body.

The series will see these cars pitted against each other for eight races; two 30-minute races on four American Le Mans Series circuits beginning in 2012.

How will the new series save racing? Because velocity stacks.

Contact Mike Spinelli:

EMAIL THE AUTHOR

COMMENT

FACEBOOK

TWITTER

DISCUSSIONS

FEATURED ALL

Discussion now closed.



Bill Caswell

17 Sep 2011 11:33 AM

I was really fired up when I started reading this till I realized its really arrive and drive racing for rich guys in cool looking cars. You might as well just go to vintage events and watch the real Can Am cars. No sponsor is going to pay real cash to put a pro in a car for two 30 minute races so it will be pretty amateur. Yes it will be cool to see the first one in the paddock but the second one will get old...hey look a red one, hey that one's painted McLaren orange, hey a Penske 917-30 paint scheme...cool...or maybe not.

So with the only difference being the color of the car its going to suck. Sure it will be cool if you are at a ALMS race to see these cars go by while your waiting for the big show but this generally disappoints me. Let them build the primary customer chassis but publish a set of rules. Let me weld up my own junk in my garage and drop a big block crate motor in and go racing. Then it gets interesting. Cam Am rocked because of the freedom of design and engineering, not because of velocity stacks, and rich guy arrive and drive spec racing.



BtheD19, Formula J treble World Champion @Bill Caswell

Exactly my thoughts. This is an excellent idea being executed in exactly the wrong way. I understand why, though, b/c when I first saw the announcement yesterday simply referencing Can-Am, I thought "Who is insane enough to bring back an open-prototype series in this economy?" And then I read the details. Unfortunately it's stillborn. I honestly don't see there being more than a couple of these cars in the field; for that kind of money you can get a solid start in the GT class and do real racing.

promoted by IFTNFS



Hombre3000 @Bill Caswell

I think you're on the right track with the chassis thing. I'd much rather see something open-ended than another spec series, in this context.



Stangmanpaul @Bill Caswell

I'm right there with you. I want to see more individual ingenuity when it comes to racecars. I want to get a bunch of people like Smokey Yunik and Colin Chapman (with more emphasis on safety) building the cars they want to build, limited only by some safety constraints, tire size, and maybe a power to weight ratio. Or better yet, a displacement to weight ratio, no power adders

promoted by IFTNFS



IFTNFS @Bill Caswell

Well said!! Time to start a new series - Cas-Am?



egoods @IFTNFS Jalop-am



Bill Caswell @BtheD19, Formula J treble World Champion

no doubt. This is like Ferrari releasing another \$1mm car. Cool thanks. But its for like 50 guys. This is probably for 8-12. sucks. im just jealous and would love to drive one. Hey maybe we should go do a story on it?!?!



Bill Caswell @IFTNFS

Cas-Am! I'll lay out some rules. Its pretty easy. And will have a bunch of my own madness built it. Drivers will be penalized for leaving the after party before 1am! Drivers repeatedly driving like a\$\$holes will be required to paint their helmets pink so you can tell who to avoid!



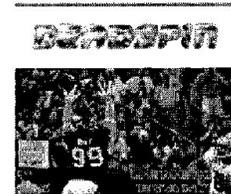
'Real People' In Car Ads Make Me Hate



Lindsay Lohan's Call to Her Father Has



I'm Jeff Atwood, Cofounder of Stack



How The NFL's Best Defensive Lineman Is

Myself And Everybody Else



This Dog Is a Cooler Video Game Hero Than Master Chief

Been Released: 'Dad, [Mom's] on Cocaine...'



How to Shut Down Reddit's CreepShots Once and for All: Name Names

Exchange, and This Is How I Work



Physicists say there may be a way to prove that we live in a computer simulation

Changing The Way The Game Is Played



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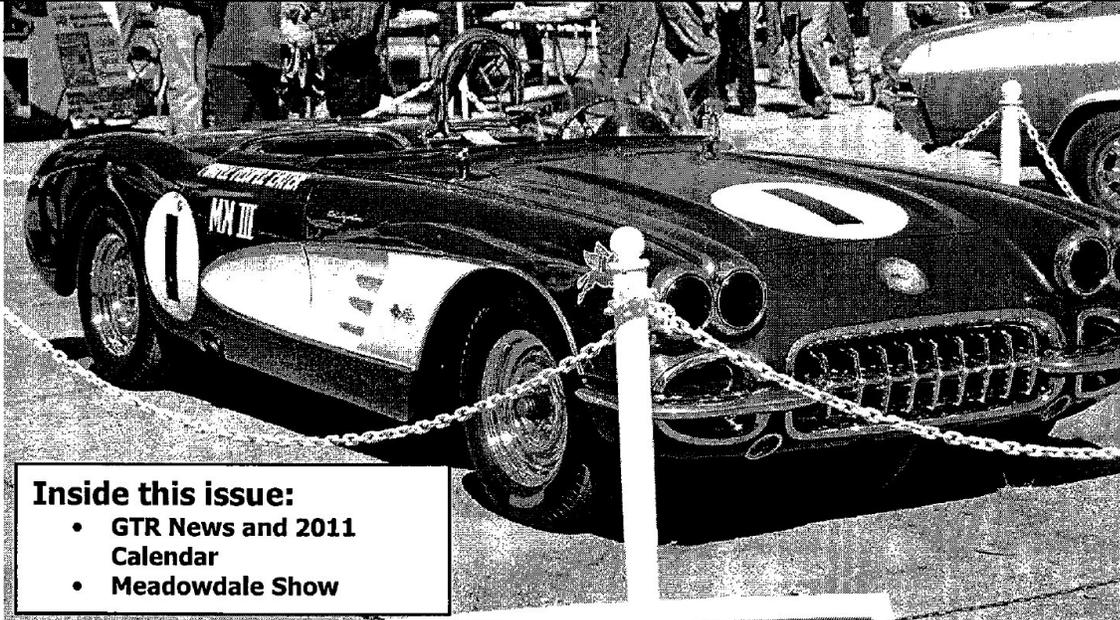
EXHIBIT I



GTR Newsletter

October 2011

The Newsletter of IPMS Grand Touring and Racing Auto Modelers



Inside this issue:

- GTR News and 2011 Calendar
- Meadowdale Show

GTR Auto Modelers

Based in the Chicago, IL Northwest Suburbs
2002/2003 IPMS/USA Region 5 Chapter of the Year
2007 and 2008 IPMS/USA Region 5 Newsletter of the Year
2011 Meetings: Every 1st Saturday @ 7:00 p.m.

**October Meeting at Algonquin Township Building,
Rt. 14 about one mile east of Rt. 31**

Location alternates between member's homes and the Algonquin Township Building

Your current GTR Officers are:

President: Tim Leicht	815-344-9109	benzwrench@msn.com
Vice President: Steve Jahnke	847-516-8515	stevejahnke@comcast.net
Secretary/Contact: Chuck Herrmann	847-516-0211	gtrchab@yahoo.com

The GTR Newsletter is edited by Chuck Herrmann

Please send all correspondence, newsletters, IPMS information, articles, reviews, comments, praise, criticism to:
Chuck Herrmann 338 Alicia Drive Cary, IL 60013

Unless indicated, all articles written by the editor. All errors, misspellings and inaccuracies, while the editor's responsibility, are unintentional. Feel free to copy for any other nonprofit use.

Check out the GTR Auto Modelers website at: www.gtrautomodelers.freeservers.com

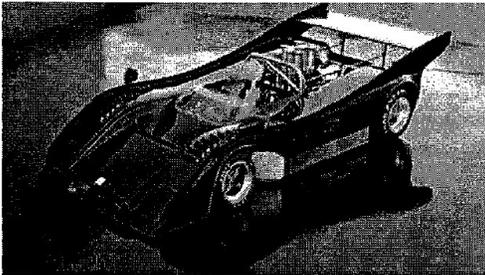
GTR Mailbag



by Chuck Herrmann

REAL WORLD

New URC Series Announced



The American Le Mans Series announced its association with the Unlimited Racing Championship (URC) as the new "Heritage Series" for the 2012 season and beyond. The URC will feature identically built NuArt CanAm cars reminiscent of the "glory days" of the original Canadian-American Challenge Cup (Can-Am) from the 1960-70s.

The NuArt CanAm cars are purpose-built from the ground up and engineered for safety, aerodynamics, driver comfort and speed. (*Driver comfort?? They must anticipate lots of gentleman drivers*). The cars 700+ horsepower, big block V-8 motors and state-of-the-art aerospace quality components with an emphasis on safety.

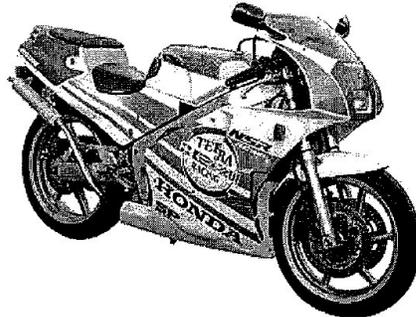
The new URC Series will feature identically prepared NuArt CanAm cars, racing against one another on original historical Can-Am circuits around North America. The format includes eight races; two 30-minute races on four American Le Mans Series circuits beginning in 2012. Cars will be fully prepped for the owner/driver by the URC series organizer and ready to race at each venue. Initial cars are offered at \$485,000.

INDUSTRY NEWS

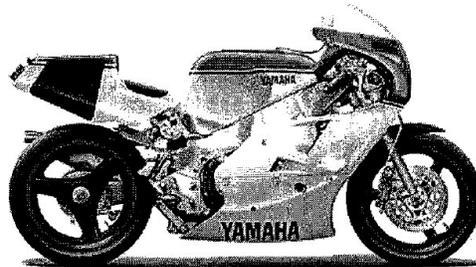
This year is the 51st edition of the All-Japan Mokei ("Model") Hobby Show! Scheduled for October 13-16 at Makuhari Messe in Chiba, Japan, it will focus on new hobby products being released this fall and winter. Details are from Hobby Link Japan (www.hlj.com).

New kits of interest include:

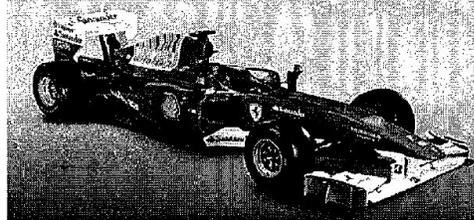
Aoshima: 1/12 Honda '89 NSR250R SP Motorcycle Kit 05005



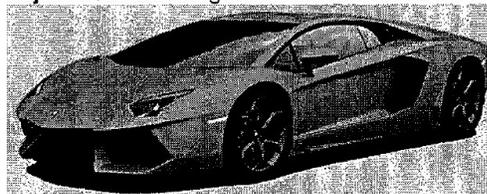
Fujimi: 1/12 Yamaha YZF750 1987 Lucky Strike - Roberts Kit 14136



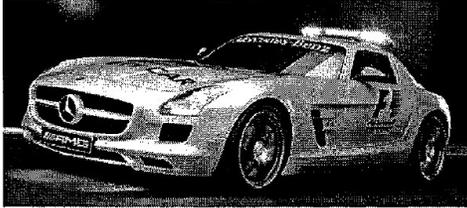
Fujimi: 1/20 Ferrari F10 Japan GP Kit 09087



Fujimi: 1/24 Lamborghini Aventador Kit 12397



Fujimi: 1/24 Mercedes Benz SLS F1 Safety Car Kit 12398



Hasegawa: 1/24 BMW Mini Crossover Kit CD21



Model Expo

The iHobby Expo will be held Oct 20-23 at the Stevens Expo Center in Rosemont IL. Public days are Saturday and Sunday 10/22-23. On Saturday there is a Model Display, free admission if you bring in a model, with voting to award trophies for various categories. Hopefully we will have some of the details around new products and industry happenings next issue.

This is the last year in Chicago, next year it is moving to Cleveland. For details see www.ihobbyexpo.com.

MEDIA



The Sept/Oct issue of *Car Culture Deluxe* magazine has a three page feature on "George Barris: King of the Customizers...and Models" and his impact on the model car industry. Also in the editorial they discuss the current state of the hot model car hobby.

RANDOM THOUGHTS

By Les Whitfield

I was watching a European news program on PBS when they brought up the new CFL (compact FLORESCENT light bulbs). It seems that day 60 watt incandescent bulbs are outlawed (Sept.1) in the EU and the price of CFL's are going up 25%. The public thinks there is a conspiracy. The public is hoarding the bulbs because they believe the old style gives off a better light. Philips (French manufacturer) stated the rare earth minerals needed to produce them has gone up 8 times. Another conspiracy? China is reported to have the largest quantity of rare earth minerals.

American Wheels Chinese Roads is a new book reviewed in the 17 August 2011 issue of *WSJ*. The book mentions how the GM executives decided to save the Buick brand because of its importance in China. I mentioned in a previous column, how the LaCrosse was partially designed in China to reflect their tastes because more than half of them were sold in China. The last Emperor had a fondness for Buicks (along with Harley Earl).

Michael Waltrip Racing competed in this year's 24 Hour of Le Mans in a Ferrari GT. Next year they hope to be involved in the Grand Am Rolex series with a pair of Ferrari F458's.

What's with all these horse's patooties driving around with their bright lights on?

Ferrari announced the introduction of the F458 Spider. The vehicle will not have a collapsible top but one similar to the last iteration of the Superamerica, where the glass top pivots behind the seats and lays flat behind the occupants.

I have received word VW will begin producing the BlueSport in two to three years. This is the mid-engine diesel roadster that was its concept a few years ago. I hope that they will market it as Mazda did with their Miata at a fair price and the dealers do not add their own "added fees and accessories". I could see myself in one if the taxes were not so high here. "

To my recollection no one has produced an economical vehicle such as the Triumph Spitfire or the "Bug Eye" Sprite since the 1960's. The closest vehicle I can think of was the Pontiac Fiero that was marketed as a commuter car

Warren Buffet claims he and other wealthy individuals need to pay more taxes. He claimed his tax rate is 17.4%. In the 17 August 2011 issue of the *WSJ* explained that he doesn't

receive a salary as his secretary does but he receives his as dividends, which are taxed at 15%. All dividends we receive are taxed at 15%. Would you also like to have your dividends taxed higher when the banks are paying below 1%?

Did you know back in 1975 88% of our clothes were made here? Now we make 2%.

Since *National Speed Sport News* went out of print publication I received a one-year subscription to *Autoweek*. *Autoweek* published **every other** Monday?

Speaking of *Autoweek*, they reported in the 8 August 2011 issue Bernie Ecclestone paid Gerhard Gribkowsky, a bank executive, \$44M in connection with the sale of F1 to CVC Capital Partners. Gribkowsky has been in a German jail as he was arrested in connection with that transaction. He is charged with breach of trust, tax evasion, and receiving "corrupt payments" from Ecclestone and his family trust, Bambino. Ecclestone is being investigated for alleged bribery and abetting breach of trust. *Autoweek* further stated, "...without using the exact phrase, that Gribkowsky blackmailed him". Gribkowsky worked for Bayern LB (bank) and had extensive dealings with Ecclestone when the bank sold its 47.2 % share of F1 holding company SLEC and CVC. Investigations by law enforcement continue. Further information can be found in the article.

I love these red light cameras. People are stopping a car length or so from the white line at an intersection because they are so camera shy. What made me laugh the other day was someone had a line of cars behind them because they did not pull up far enough to trip the sensor to turn the light green. According to a study by the Virginia Transportation Research Council rear end accidents had increased 27% in the study area. Researchers at the University of South Florida pointed out in 2008 that red light cameras tend to increase accidents. In 2003 Ontario (Canada) Ministry of Transportation noted a 2% increase in fatal and injury collisions compared to a 12.7% decrease in the camera-free intersections. There is a running joke that you know a Chicago driver because they wait 10 seconds after a light turns green before they enter an intersection. Right on red violations are nothing more than taxes for not stopping behind the line or long enough. This is tax revenue for cash strapped local governments.

No *WHAT??* this month as I need to get this to the editor... though these are still my random thoughts.

EVENTS

The IHobby Exp is this month, see above. Also the Toledo swap and NNL is October 8.

See the events calendar for details for all of the events that I know of. I will be adding the 2012 events I am aware of soon. If any readers wish their events or any other events of interest to GTR listed send the information along to me.



GTR Update

The next regular meeting will be Saturday, October 1, at the Algonquin Township Building. October thru December are all scheduled to be at the Algonquin Township Building

Any member who wants to bring up other ideas or suggestions for future meetings or activities, do so either at the meeting or contact me.

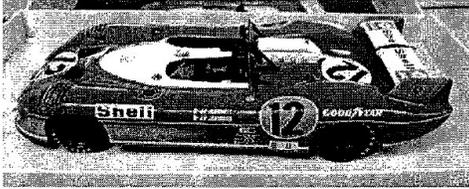
Past issues of the GTR newsletters are now available on line.

Go to www.carsandracingstuff.com, then click on Newsletters, find GTR and our newsletters are archived back to 2004, more will be added. Thanks to Bill Crittenden for storing our newsletters on his site.

September GTR Meeting

The September GTR meeting was at the Algonquin Township Office on September 3. We did a bit of business, reviewed the GTR NNL and approved going forward with the event next year. We looked at the treasury update, and decided to pursue some kind of club project for next year, maybe doing a Christmas party? Details need to be worked out on these. We also discussed the Meadowdale club display event. After we did the mailbag then it was on to Show & Tell. Some of the stuff on the tables is pictured below.

Ed Sexton: a 1/18 resin built up model by Spark of the 1973 LeMans Matra,



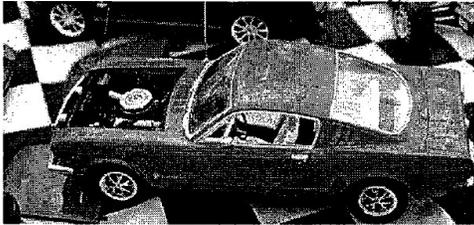
and a LeMans miniature 1/32 slot car of the Renault Alpine A442 from 1978,



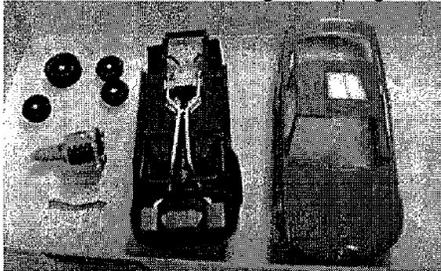
also the Tamiya 1/20 kit of the Wolf F1 WR1.



Steve Jahnke: Revell 1965 Mustang (seen below shown at the Meadowdale display), also



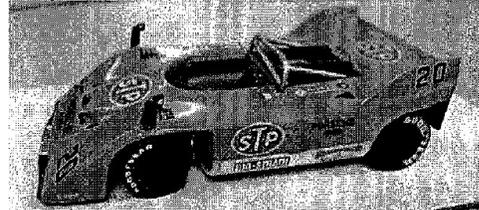
a new 2010 Revell Mustang GT in progress,



and the new Round2/Polar Lights Batmobile full detail kit.



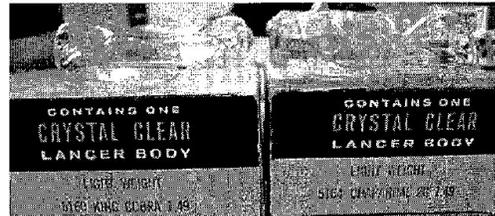
Larry Fulhorst: his first completed build in "a few years", a Saphire 1/43 Porsche 917 Can-Am



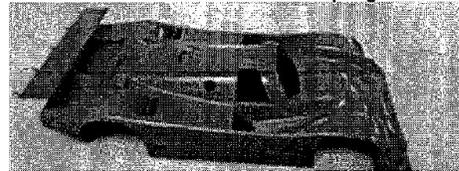
and a built up 1/43 1968 Camaro Penske Trans Am by Spark,



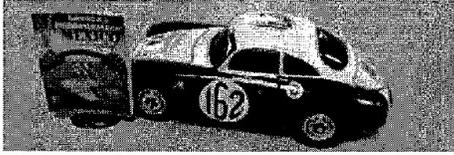
Finally some vintage clear plastic 1/24 slot car bodies he intends to build up as static display models.



Chuck Herrmann: Hasegwa Kremer Bros/Kenwood Porsche 962C in progress,



and Porsche 356 Carrera Panamericana racer, converted from a \$1 swap meet bargain radio control toy using Scale Design decals,



IPMS News

GTR is a local chapter of IPMS/USA, in Region 5. This month the annual chapter renewal process began. We needed five active national IPMS/USA members to renew, and this was an issue in past years. This time I sent our latest membership list and fact sheet back the same day it arrived via e-mail and we have been accepted. The check was in the mail the next day so we are good for another year. Thanks to all our members who have kept up their IPMS/USA membership. We still urge those who have lapsed to renew their IPMS/USA membership, or if you have never been a member enroll now! Details can be found at their web site, www.ipmsusa.org, or see me for membership forms.

IPMS also underwent elections for national officers, and the winners have been announced. They are:

President: Dick Christ
 1st Vice President: Steve Collins
 2nd Vice President: Mike Ronnau
 Director of Local Chapters: Larry Randel
 Secretary: Dick Montgomery
 Historian/Publication Director: Jim Pearsall



Meadowdale Event

GTR hosted a model display at the Meadowdale Motorsports and Memories Car Show at Raceway Woods in Carpentersville, IL on September 17. This is an annual daylong event to commemorate the history of the former Meadowdale International Raceway, a road course that hosted races up until 1968. The area

is now a forest preserve called Raceway Woods, with portions of the old track preserved. The annual car show is organized by the Meadowdale International Raceway Preservation Association. For details on the group and about the track see:

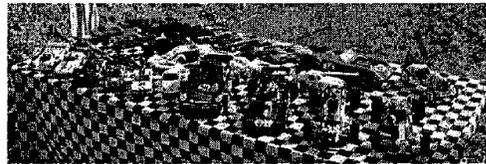


www.mirpa.org

It was a beautiful fall day, the GTR tent was set up on what used to be inside of the final corner, the famous Monza Wall banked turn. There were show cars and displays there and out along the old front straight, there were over 100 cars on display. We had a lot of visitors throughout the day who reminisced about building models from when they were younger, and a few potential new members stopped by.



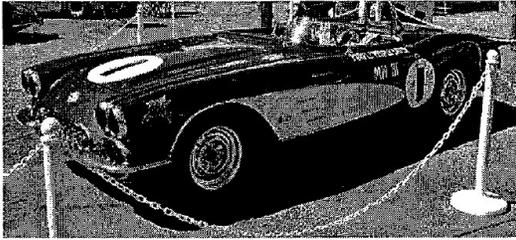
GTR's display tent



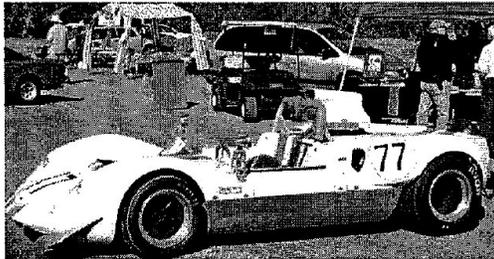
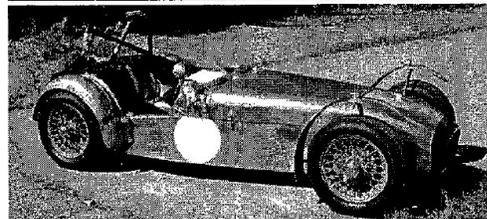
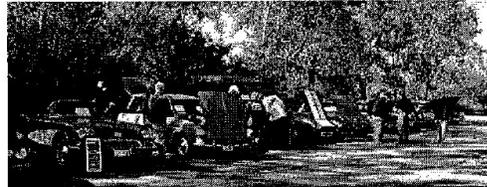
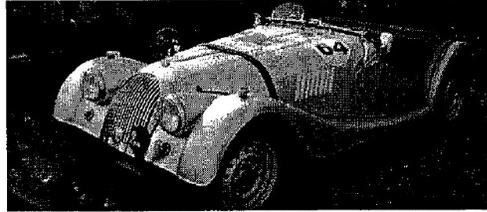
GTR Models on display



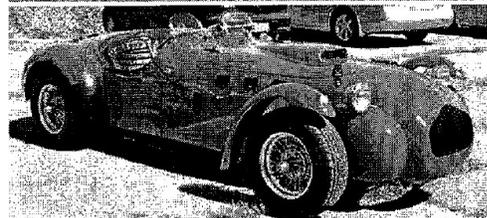
Ron Spannraft's large scale models drew a lot of favorable response all day.



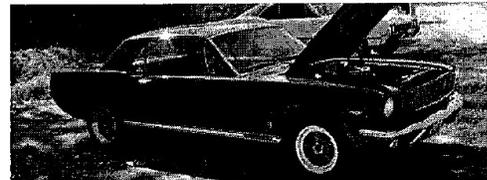
The Purple People Eater, the SCCA National Championship winning 1959 Corvette that was developed in the Nickey Chevrolet Race Shop in Chicago, was the featured race car of the 2011 show. Driver James Jeffords, Crew Chief Ronnie Kaplan., Team Manager Lindy Lindheimer, and members of the Jack Stephani Nickey Chevrolet race team were on hand signing autographs.



McKee Can Am race car (GTR tent in background)



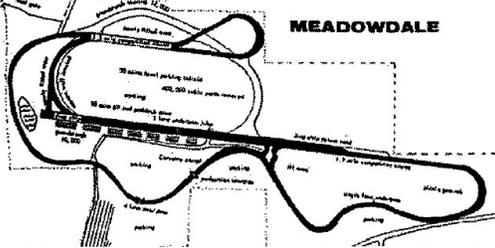
Ramo Stott's Plymouth Superbird stocker.



It was a great day, thanks to GTR's Ron Spannraft for setting this up (and putting up the tent) and to Linda Daro of MIRPA for inviting us to participate.

Meadowdale History

Meadowdale International Raceway was built in 1958 to promote growth in the Carpentersville area, 40 miles northwest of Chicago. The original track was 3.27 miles long with a variety of turns and elevation changes. Its signature feature was the Monza Wall, a 180 degree steeply banked turn that led onto the 4,000 foot main straight.



Meadowdale underwent a series of track and management changes in its brief life. It hosted major spectator road races from many different sanctioning bodies: USAC, Midwestern Council, SCCA regions, AMA motorcycles and kart clubs. An NHRA drag racing sanction was issued late in 1968 for the 1969 season. It was also used for police training, new car introductions and local club events.

The last major event at Meadowdale was an SCCA Trans-Am race July 6-7, 1968, won by Mark Donahue in the legendary Sunoco Penske Camaro. A few sports car club races followed, but for all practical purposes, the track closed down after that pro event. Plans to revive it were announced periodically, but none were successful.

The combined park districts who bought the north 90 acres of the Meadowdale Raceway property in 1994 purchased the balance of the track in 2002. The track is now a forest preserve, nature area, recreation area called Raceway Woods. When they put up buildings at Raceway Woods, they have indicated they would devote some space to the track history.

While we will never again race on the track, a vigorous clean-up campaign is being waged by volunteers to clear open areas for activities and picnics and a walking path around the old course. This is being done to assure that Meadowdale Raceway retains its important position in American racing history.

Product Review: M&H Racemaster Slicks Parts Pack from AMT

Manufacturer: AMT/Round2

Kit#: AMTPP001

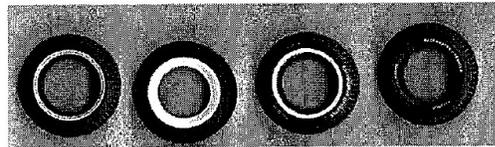
Scale: 1/25

by: Chuck Herrmann



Round 2 Models continues to help bring back memories of the "Golden Age" of plastic modeling by reissuing some classic vintage model products as well as some new updated products in vintage style packaging. Their reissues of AMT and MPC kits feature some great new box art that retains the feel of the original.

This updated AMT Parts Pack set that has just been reissued contains four sets of M&H Racemaster dragster slicks. Each of the sets comes with nice sharp tampon pad printing. There is a set with wide white walls, a set with lettering only, a set with narrow whitewalls and the final set which contains a whitewall with a narrow red stripe, exclusive to this parts pack. These will be great to use in vintage custom and drag projects. On a recent visit to Model Empire in Milwaukee, I picked up a set and they look really nice. The quality of the printing is first rate, and the packaging, as all recent Round2 products, is first class.



2011 GTR

October 8 Toledo Swap Meet and>NNL

Oct 15 – IPMS/Glue Crew Contest & swap
Howard Johnson Inn & Conf Center
Wausau, WI Joe Drew 715-842-0173

Oct 16 Countryside Collectors Classic Toy Show
With 1/43rd Collectors Club
Park Place of Countryside Countryside, IL
www.uniqueeventsshows.com

Oct 29 Circle City Modelers Contest & Swap
Knights of Columbus Hall, Indianapolis IN
Cgbeach1221954@yahoo.com

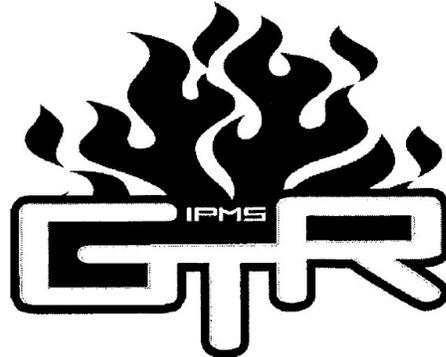
October 20-23 iHobby Expo
Public Days 10 am – 5 pm Saturday and Sunday
Stephens Convention Center, Rosemont IL
www.ihobbyexpo.com

Nov 6 Scale Auto Hobby and Toy Swap Meet
Serb Hall, Milwaukee WI
www.uniqueeventsshows.com

Nov 12 29th Annual IPMS Butch O'Hare Model
Contest and Swap Meet
Lakeview Jr HS Downers Grove IL
John Wendt 630-969-9016

December 4 Tinley Park Toy Show
Tinley Park HS, Tinley Park IL
www.uniqueeventsshows.com

December 11 Milwaukee Miniature Motors
Winter Show – Swap and Contest
Waukesha County Expo Center, Waukesha WI
www.milwaukeeeminaturemotors.com



IPMS USA

International Plastic Modelers Society

2012 Region 5 Regional - TBD
2012 Nationals: Aug 8-11 Orlando, FL
www.ipms2012.org
2013 Nationals: Aug 14-17 Loveland,
CO

GTR Auto Modelers Newsletter

IPMS/GTR Auto Modelers

Chuck Herrmann
338 Alicia Drive
Cary, IL 60013

Next GTR Meeting: October 1, 2011
www.gtrautomodelers.freesevers.com

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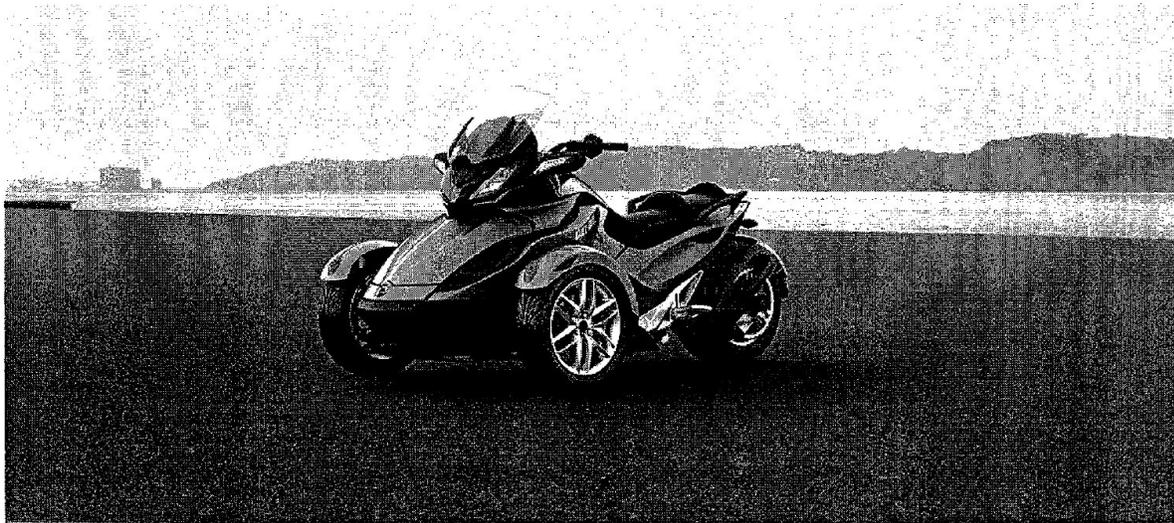


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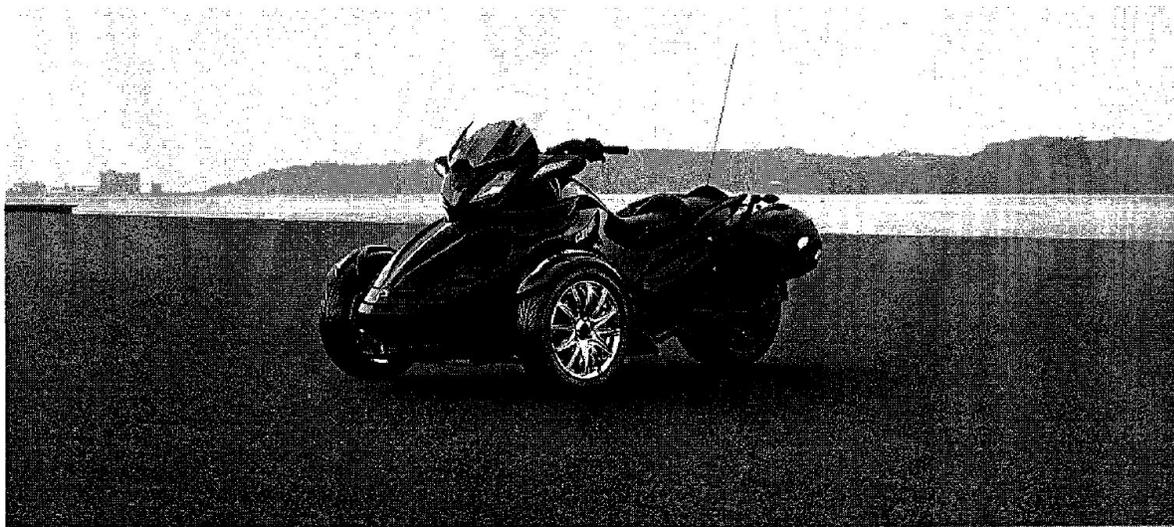


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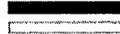
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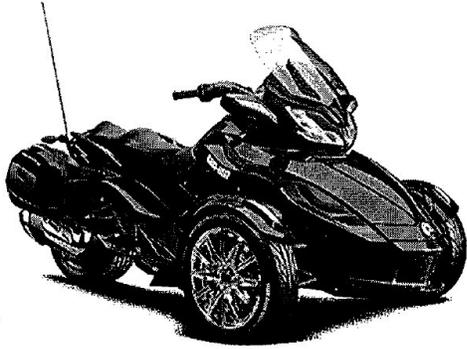
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Can-Am Spyder Roadster and Sabertooth ... - Automobile Magazine

www.automobilemag.com/features/...can_am.../vswall.html
Bike Weak: The only thing I have to fear is a motorcycle. Read the full story as editor Ezra Dyer attempts to expand his comfort zone and overcome his fear of ...

CAN-AM MACHINE SHOP in ROHNERT PARK, CA - Automobile ...

www.city-data.com - Business Photos
Business Profile and Photos of CAN-AM MACHINE SHOP - Automobile Machine Shop Service in ROHNERT PARK, CA.

Can-Am - BRP Automobile User Manual for Can-Am DS 70 ...

www.krippa.com/can-am-brp-automobile-user-manual-for-can-am-d...
Automobile Manuals, Can-Am - BRP Automobile User Manual, Can-Am - BRP Automobile User Manual for Can-Am DS 70 Automobile.

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Can-Am Automobile in Metaline Falls, WA by Yellowbook

www.yellowbook.com/profile/can-am-automobile_1842711170.html
Business Listing Information for Can-Am Automobile in Metaline Falls, WA by Yellowbook.

Chaparral Cars - Wikipedia, the free encyclopedia

en.wikipedia.org/wiki/Chaparral_Cars
Chaparral Cars was a United States automobile racing team which built race cars from 1963 through 1970. ... Their high point being the 1966 2E can-am car.

Manhattan Automobile Company | CAN-AM Spyder Used New York ...

www.manhattanauto.com/.../2009-CAN-AM-Spyder-New-York-NY-...
CAN-AM Spyder Used New York, NY 10019. ... Used CAN-AM Spyder New York NY 10019. Published Friday, 27 May, 2011. CAN-AM Spyder RS SE5. Witless ...

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Automobile News & Reviews - Wheel Lights | Cars, Trucks, Can Am ...
www.lightwheel.com/automobile-news-a-reviews
Article Title, Date, Hits, 1, Top 10 Wagons and Hatchbacks With the Most Cargo Capacity for 2012, Thursday, 04 October 2012, - 2, A Revised EPA Label Helps ...

Monterey Historic Automobile Races -- Saturday Results
www.sportscardigest.com > Featured Articles
Aug 21, 2008 - 2008 Rolex Monterey Historic **Automobile** Saturday Race Highlights include Bobby Rahal Winning the **Can-Am** Race in Dramatic Fashion and ...

Automobile Quarterly 1969 Volume Vol 7 Number No # 3 Can Am ...
www.ebay.com/itm/Automobile...7...Can-Am.../120991528256
Automobile Quarterly 1969 Volume Vol 7 Number No # 3 Can Am Corvette Edsels in Collectibles, Transportation, Automobilia | eBay.

Spyder - Wikipedia, the free encyclopedia
en.wikipedia.org/wiki/Spyder
Roadster (**automobile**), type of car, Porsche 550 Spyder, a very successful ... BRP **Can-Am** Spyder Roadster, the model name for a three-wheeled motor vehicle ...

Canadian-American Challenge Cup (auto racing) -- Britannica ...
www.britannica.com/EBchecked/.../Canadian-American-Challenge-C...
Canadian-American Challenge Cup, byname **Can-am** Cup, trophy of a series of **automobile** races that took place annually from 1966 to 1975 and from 1977 to ...

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