

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Atty. Ref. No.: 016756/0211



BFS BRANDS, LLC

and

BRIDGESTONE/FIRESTONE
NORTH AMERICAN TIRE, LLC,

Opposers,

v.

ORTECK INTERNATIONAL INC., :

Applicant.

Opposition No. 154,661

Application Serial No. 76/369,339

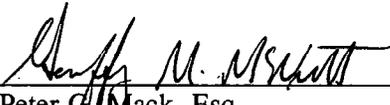
NOTICE OF FILING OF TRIAL TESTIMONY

TO: Deborah J. Westervelt, Esq.
The Law Offices of Royal J. Craig
10 North Calvert Street, Suite 153
Baltimore, Maryland 21202

PLEASE TAKE NOTICE that, pursuant to 37 C.F.R. § 2.125(c), the signed transcript of the trial testimony (with exhibits) of witness Bernard I. Weltman given in the referenced matter was filed with the Trademark Trial and Appeal Board on January 31, 2005.

Dated: January 31, 2005

Respectfully submitted,

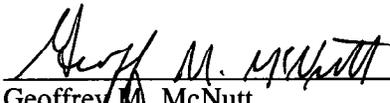

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CERTIFICATE OF SERVICE

I hereby certify that I have this 31st day of January, 2005, served a true and complete copy of the foregoing NOTICE OF FILING OF TRIAL TESTIMONY upon Applicant by mailing a true copy of the same via first-class U.S. Mail, postage prepaid, to Applicant's counsel, addressed as follows:

Deborah J. Westervelt, Esq.
The Law Offices of Royal J. Craig
10 North Calvert Street
Suite 153
Baltimore, Maryland 21202

By: 

Geoffrey M. McNutt
FOLEY & LARDNER, LLP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application

Serial No.: 76/369,339

Trademark: MILESTONE ROAMER

-----X

BFS BRANDS, LLC, :

and :

BRIDGESTONE/FIRESTONE :

NORTH AMERICAN TIRE, LLC, :

Opposers, : Opposition No.

vs. : 154,661

ORTECK INTERNATIONAL, INC., :

Applicant. :

-----X

ORIGINAL

DEPOSITION OF BERNARD I. WELTMAN

Washington D.C.

Friday, December 3, 2004

REPORTED BY:

BRENDA SMONSKEY

ACE-FEDERAL REPORTERS, INC.

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1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

3 In the Matter of Trademark Application

4 Serial No.: 76/369,339

5 Trademark: MILESTONE ROAMER

6 - - - - -x

7 BFS BRANDS, LLC, :

8 and :

9 BRIDGESTONE/FIRESTONE :

10 NORTH AMERICAN TIRE, LLC, :

11 Opposers, : Opposition No.

12 vs. : 154,661

13 ORTECK INTERNATIONAL, INC., :

14 Applicant. :

15 - - - - -x

ORIGINAL

16

17 DEPOSITION OF BERNARD I. WELTMAN

18

19 Washington D.C.

20 Friday, December 3, 2004

21 REPORTED BY:

22 BRENDA SMONSKEY

1 Deposition of BERNARD I. WELTMAN, called for
2 examination pursuant to notice of deposition, on
3 Friday, December 3, 2004, in Washington, D.C., at
4 the offices of Foley & Lardner, 3000 K Street, N.W.,
5 at 1:25 p.m., before BRENDA SMONSKEY, a Notary
6 Public within and for the District of Columbia, when
7 were present on behalf of the respective parties:

8
9 GEOFFREY M. MC NUTT, ESQ.
10 PETER G. MACK, ESQ.
11 Foley & Lardner
12 3000 K Street, Northwest
13 Washington, D.C. 20007-5101
14 202-954-6120
15 On behalf of Opposer

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21
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1 P R O C E E D I N G S

2 Whereupon,

3 BERNARD I. WELTMAN

4 was called as a witness and, having first been duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. MC NUTT:

8 Q Good afternoon, Mr. Weltman.

9 A Good afternoon.

10 Q Can you please state your full name for
11 the record.

12 A Bernard I. Weltman, W-e-l-t-m-a-n.

13 Q And could you state your residence
14 address.

15 A 2231 Bancroft, B-a-n-c-r-o-f-t, Place,
16 Northwest, Washington, D.C. 20008.

17 Q And your age?

18 A My age?

19 Q Yes.

20 A ~~74.~~
 73

Blue

21 Q And what is your occupation?

22 A I'm a private investigator.

1 Q And could you please just briefly
2 summarize your education and your employment
3 history.

4 A I was graduated from the United States
5 Naval Academy, received an MA at Syracuse
6 University, an MBA at Southern Illinois and a JD at
7 Washington and Lee School of Law.

8 I have served the federal government as a
9 foreign intelligence officer for 26 years, and upon
10 retirement in 1974, began the practice of private
11 investigation.

12 Q Thank you.

13 I'm going to go ahead and ask that we mark
14 Opposer's Exhibit Number 1.

15 (Opposer's Exhibit 1 identified.)

16 BY MR. MC NUTT:

17 Q Mr. Weltman, you have been handed an
18 exhibit marked Opposer's Exhibit Number 1. Can you
19 identify that document?

20 A Yes. It is a document I received from the
21 law offices of Foley Lardner.

22 Q Can you go ahead and tell me what that

1 document is.

2 A The document is an Opposer's notice of
3 taking the testimony of Bernard Weltman.

4 Q And are you appearing today to provide
5 testimony pursuant to that notice that you received?

6 A Yes, I am.

7 Q Mr. Weltman, was there a time when
8 Foley & Lardner asked you to purchase a tire?

9 A Yes.

10 Q And what type of tire were you asked to
11 purchase?

12 A A Milestone or a Milestone Roamer.

13 Q And did anyone from Foley & Lardner or
14 from Bridgestone/Firestone tell you where to look
15 for such a tire?

16 A No.

17 Q Were you able ultimately to purchase such
18 a tire?

19 A Yes, I was.

20 Q And the tire that you purchased, is that
21 tire in the room with us today?

22 A Yes, it is.

1 MR. MC NUTT: I will go ahead and mark the
2 next set of exhibits.

3 I will go ahead and mark a group together.
4 This will be Opposer's number 2.

5 (Opposer's Exhibit 2 identified.)

6 MR. MC NUTT: These will be 3 through 7.

7 (Opposer's Exhibits 3-7 identified.)

8 BY MR. MC NUTT:

9 Q All right, Mr. Weltman. You have been
10 handed a group of related exhibits that are marked
11 Opposer's Exhibit Numbers 2 through 7.

12 We will start with Opposer's Exhibit
13 Number 2. Can you identify for us or describe what
14 Exhibit Number 2 is.

15 A A picture of a Milestone LT radial tire.

16 Q And is that an accurate and fair depiction
17 of the tire that you purchased?

18 A Yes, including the unidentifiable yellow
19 mark on the tire.

20 Q Right. That same yellow mark appears on
21 the actual tire in the room here?

22 A Yes.

1 Q So the picture shown in Opposer's Exhibit
2 Number 2, then, that's a fair and accurate
3 representation of the tire in the room with us
4 today?

5 A Yes.

6 Q Let's go ahead and move on to Opposer's
7 Exhibit Number 3. And could you describe briefly
8 for me what Opposer's Number 3 is.

9 A Another picture of the tire, Milestone LT
10 radial tire.

11 Q Is this also an accurate picture of the
12 tire that you purchased?

13 A Yes. It is the same tire.

14 Q In this picture, can you see the word
15 "Roamer"?

16 A No, I cannot.

17 Q But is the word "Roamer" present on the
18 actual physical specimen of the tire that you
19 purchased?

20 A Yes, it is.

21 Q It is. So this picture, then, is it fair
22 to say, is an accurate and fair representation of

1 the tire you purchased?

2 A Yes.

3 Q And is it an accurate and fair
4 representation of the tire that's here with us in
5 the room?

6 A Yes, it is.

7 Q We can move now to the picture marked
8 Opposer's Exhibit Number 4. Could you describe
9 briefly what's shown in that picture.

10 A Milestone LT with a very faint word
11 "Roamer" under the word "Milestone." And the
12 numbers LT 215/85R16, a yellow marker and the
13 numbers 115/112S.

14 Q The yellow marker you referred to, that
15 same yellow marker, does that appear on the actual
16 tire?

17 A Yes.

18 Q And looking at the picture in comparison
19 to the actual tire, is the positioning and ratio of
20 the words "Milestone" and "Roamer" as they are
21 displayed in the picture in Exhibit Number 4, is
22 that a fair and accurate representation of the size

1 and placement and ratio of the words "Milestone" and
2 "Roamer" as they appear on the actual physical tire?

3 A Yes, it is.

4 Q If we could turn to Opposer's Exhibit
5 Number 5. If you could please describe briefly what
6 that depicts.

7 A It is an expanded or blown-up view of
8 "e-s-t-o-n" portion of the word "Firestone," with
9 the word under the "T" and "O" being "Roamer,"
10 R-o-a-m-e-r at about 1/8 the size of the lettering
11 above it.

12 Q You said blown up of the word "Firestone."
13 I think you might have misspoken there. Is that a
14 picture of the tire here, the Milestone rubber tire
15 here in the room?

16 A Yes.

17 Q So this is a picture of a Milestone Roamer
18 tire?

19 A Yes, it is.

20 Q And this is a fair and accurate picture of
21 the tire that you purchased?

22 A Yes, it is.

1 Q It is a fair and accurate picture of the
2 tire that is here in the room with us today?

3 A Yes.

4 Q With respect to this Exhibit Number 5, is
5 the size and placement and ratio of the respective
6 words "Milestone" and "Roamer," is that a fair and
7 accurate representation of the size, placement and
8 ratio of the same two words, "Milestone" and
9 "Roamer," as they appear on the actual physical
10 tire?

11 A Yes, it is.

12 Q Directing your attention to Opposer's
13 Exhibit Number 6, could you briefly describe what is
14 displayed in Exhibit Number 6.

15 A The letters "s-t-o-n," with the word
16 "Roamer," R-o-a-m-e-r, immediately beneath the "T"
17 and the "O," and the numbers 15/85R16, a yellow
18 marker, and the number 115.

19 Q And that yellow marker you referred to in
20 the picture, does that appear on the actual tire
21 that's here in the room?

22 A Yes, it does.

1 Q Does it appear in the same size and
2 positioning on the actual tire?

3 A Yes, it is.

4 Q And with respect to the size and the
5 placement and ratio of the word "Milestone"
6 vis-a-vis the word "Roamer," is the picture shown in
7 Exhibit Number 6 an accurate representation of the
8 size, the placement and the ratio of the term
9 "Milestone" and the term "Roamer" as they appear on
10 the physical tire here?

11 A Yes, they are.

12 Q We are finished with number 6 for now.

13 If you could take a look at Opposer's
14 Exhibit Number 7. Could you describe briefly what
15 is depicted in that exhibit.

16 A The number DOT 9JLT, then a space and the
17 number 1303.

18 Q This photograph shown or the image shown
19 in Exhibit Number 7, is that an accurate
20 representation of the tire that you purchased?

21 A Yes, it is.

22 Q And is that a fair and accurate

1 representation of the tire as it is here in the room
2 today?

3 A Yes, it is.

4 Q So to confirm, the same number
5 DOT 9JLT 1303 appears also on the sidewall of the
6 tire in the room with us?

7 A Yes, it does.

8 Q We are finished with those exhibits for
9 now. Thank you.

10 Mr. Weltman, directing your attention back
11 to the actual tire that you purchased that's here
12 today, do you have a clear view of the sidewall of
13 the tire from where you are sitting?

14 A Yes, I do.

15 Q And when you look at the sidewall, are you
16 able to see the wording "Roamer" on the tire?

17 A No, I cannot.

18 Q Now, as you look at the actual tire and
19 the sidewall from where you are sitting, are you
20 able to read the term "Milestone" on the tire?

21 A Yes, I am.

22 Q I'm going to hand you now a tape measure

1 and ask that you measure for us your distance from
2 the tire as you just read the sidewall of the tire
3 to us.

4 A 36 inches.

5 Q Mr. Weltman, turning back to your purchase
6 of the tire, could you describe for us your efforts
7 to locate and purchase the tire.

8 A Yes. Over a period of three days, I
9 consulted the Yellow Pages for the names and phone
10 numbers of area tire dealers and called each of
11 these dealers, asking whether or not they carried
12 either Milestone or Milestone Roamer tires.

13 I then proceeded to two dealers that had
14 said that they carried the Milestone tires.

15 Q If I could interrupt you for just a
16 moment. You said you consulted the Yellow Pages.

17 A Yes.

18 Q For what regions or locales were those
19 Yellow Pages?

20 A The entire metropolitan area, to include
21 Maryland, Virginia and the District of Columbia
22 within a radius of 75 miles.

1 Q And do you have anything else to add in
2 terms of your efforts to locate a tire?

3 A I checked advertisements in searching the
4 newspapers for any advertisements on Milestone or
5 Milestone Roamer tires.

6 Q And what were the results of your search
7 of newspaper advertisements?

8 A I did not find any dealership with a
9 Milestone tire advertised.

10 Q And did you search any other advertising
11 listings or media to try to locate a Milestone tire
12 or a Milestone Roamer tire?

13 A I attempted only the Yellow Pages.

14 Q From whom did you ultimately purchase the
15 tire that is in the room today?

16 A The McCarthy Tire Service Company at 22806
17 Cedar Green Road in Sterling, Virginia.

18 MR. MC NUTT: I'm going to go ahead and
19 have another exhibit marked as Opposer's Exhibit
20 Number 8.

21 (Opposer's Exhibit 8 identified.)

22 BY MR. MC NUTT:

1 Q Before we turn our attention to Opposer's
2 Exhibit Number 8, just to clarify, Mr. Weltman, how
3 many stores or dealers or listings did you call
4 before you found a tire with the Milestone or
5 Milestone Roamer name?

6 A I would estimate between 40 and 50.

7 Q So between 40 and 50 separate phone calls?

8 A Separate phone calls to separate dealers.

9 Q To 40 or 50 separate dealers.

10 Now, you just testified that you
11 ultimately purchased a tire from McCarthy Tire
12 Service, and I have had the court reporter mark and
13 hand to you Opposer's Exhibit Number 8.

14 Could you identify the document, Exhibit
15 Number 8, for us.

16 A Yes. It is a copy of the sales slip I was
17 given after purchasing the tire.

18 Q And is that, then, a fair and accurate
19 representation of the actual sales slip that you
20 received from McCarthy Tire?

21 A Yes, it is.

22 Q Let me ask you, in your dealings with

1 McCarthy Tire Service in connection with the
2 purchase of a Milestone Roamer tire, do you recall
3 how they referred to the tire that you ultimately
4 purchased?

5 A Yes. They referred to it as a Milestone
6 tire.

7 Q Did they ever use the term "Roamer" or
8 "Milestone Roamer" in connection with the tire?

9 A No, they did not.

10 Q Turning back to the receipt at Exhibit
11 Number 8, could you tell me how the tire that you
12 purchased is identified in the receipt?

13 A Yes. It is identified as size 215/85R16:
14 Milestone Prem LT.

15 Q Does the word "Roamer" appear anywhere in
16 the receipt shown in Exhibit Number 8?

17 A No, it does not.

18 Q And to confirm, this is the receipt for
19 the actual Milestone Roamer tire that you purchased?

20 A Yes, it is.

21 Q This is the receipt for the same Milestone
22 Roamer tire that's in the room today?

1 A Yes, it is.

2 Q Turning back to the receipt, can you tell
3 me what the purchase price was for the tire that you
4 bought?

5 A \$75.44, plus tax. Total of \$79.33.

6 Q And did McCarthy Tire Service carry other
7 brands of tires?

8 A Yes, they did.

9 Q And how did the price or how does the
10 price of the tire that you purchased compare to the
11 price of a better known brand tire of approximately
12 the same size?

13 A It was 20 to 40 percent lower in price.

14 Q So the Milestone Roamer tire that is here
15 today that's reflected in the sales receipt at
16 Exhibit 8 was about 20 to 40 percent cheaper than
17 other tires sold by McCarthy?

18 A Yes, it was.

19 Q I see from the receipt from McCarthy that
20 they have a Web site. Could you identify the name,
21 the domain name for that Web site for me.

22 A Yes. Their Web site is

1 www.McCarthytire.com.

2 Q Have you had an opportunity to visit the
3 Web site McCarthytire.com?

4 A Yes, I have.

5 MR. MC NUTT: At this time I'm going to
6 mark another group of exhibits. There will be three
7 of them.

8 (Opposer's Exhibits 9-11 identified.)

9 BY MR. MC NUTT:

10 Q Before I move on to those exhibits, just
11 to clarify, Mr. Weltman, I will direct your
12 attention back to Exhibit Number 8, the receipt.

13 Could you just say for the record how many
14 pages there are that comprise Exhibit Number 8.

15 A Exhibit Number 8 is two pages.

16 Q What do those two pages reflect?

17 A The first page is a copy of the sales slip
18 I was given by McCarthy Tire, and the second page
19 appears to be a reproduction of the rear of the
20 sales slip I was given by McCarthy Tire.

21 Q So the original receipt was one page
22 double-sided?

1 A Yes.

2 Q We are not going to mark this or enter it
3 into evidence, but I'm going to hand you a copy of
4 the original receipt as you provided, just to
5 inspect and confirm that Exhibit Number 8,
6 consisting of two one-sided pages, accurately
7 depicts the original double-sided receipt.

8 A Yes, it does.

9 Q Just prior to that we were discussing the
10 McCarthytire.com Web site, and I asked you if you
11 had had an opportunity to visit the Web site
12 McCarthytire.com.

13 A Yes.

14 Q You have. I will ask you to look at
15 Opposer's Exhibit Number 9. Could you start by
16 telling me how many pages there are in Exhibit
17 Number 9.

18 A Exhibit Number 9 consists of two pages.

19 Q And can you briefly describe for me what
20 is shown in Exhibit Number 9.

21 A Exhibit Number 9 is the home page for
22 McCarthy Tire and Automotive Centers. It lists the

1 six categories of displays and provides for contact
2 with McCarthy Tire and Auto. It covers technicians,
3 guarantees, financing, one-stop shopping and quality
4 name brand parts and tires.

5 Q Thank you. We are done with Number 9 for
6 now.

7 If you could turn your attention to
8 Opposer's Exhibit Number 10 which the court reporter
9 handed to you.

10 First, could you tell me how many pages
11 comprise Exhibit Number 10.

12 A Exhibit Number 10 consists of five pages.

13 Q Can you describe for me what is displayed
14 in Exhibit Number 10.

15 A Exhibit Number 10 provides for the
16 distribution locations for McCarthy Tire and
17 Automotive Centers.

18 Q And among the distribution locations
19 listed in Exhibit Number 9 is there a listing for
20 the store from which you bought the tire that's here
21 in the room today?

22 A Yes, there is. On page 4 of the exhibit,

1 there is the location for Sterling, Virginia 22806
2 Cedar Green Road.

3 Q The five-page printout of the Web page
4 shown in Exhibit 10, is that an accurate copy of the
5 McCarthytire.com Web site that you visited and
6 personally reviewed?

7 A Yes, it is.

8 Q And if we can just turn back to the
9 previous exhibit, Number 9, for a second. If you
10 will take a look at that, I will ask you the same
11 question. Is that two-page printout from the
12 McCarthy Tire and Automotive Centers home page, is
13 that an accurate printout of the McCarthytire.com
14 Web site that you visited and personally viewed?

15 A Yes, it is.

16 Q Can I ask you now to look at Opposer's
17 Exhibit Number 11. Can you tell me first how many
18 pages comprise Exhibit Number 11.

19 A Exhibit Number 11 is comprised of three
20 pages.

21 Q Can you describe for me what is displayed
22 in the printout, number 11.

1 A Exhibit Number 11 displays tires carried
2 by McCarthy Tire and Automotive Centers.

3 Q Are the particular brands carried by
4 McCarthy listed?

5 A The brands listed are Firestone,
6 Bridgestone, BF Goodrich, Michelin, General Tire and
7 Continental Tire.

8 Q Are there any brands listed on the second
9 page?

10 A On the second page, there are listed
11 Bandag, B-a-n-d, what appears to be "a-g," Bandag,
12 Openroad Tech, Alldata, Mitchell, Monroe and Jasper.

13 Q And in the listed tires shown on the
14 McCarthy Tire Web site in Exhibit 11, you mentioned
15 the Firestone and the Bridgestone brands. Where do
16 they appear?

17 A They are the first two. Firestone appears
18 at the top of the list, Bridgestone second,
19 underneath Firestone.

20 Q Is the three-page printout of
21 McCarthytire.com shown in Opposer's Exhibit
22 Number 11 an accurate depiction of the

1 McCarthytire.com Web site that you visited?

2 A Yes, it is.

3 Q And you personally viewed this Web site?

4 A Yes, I have.

5 Q We are finished with Number 11 for now.

6 Why don't we go ahead and mark the next
7 set of exhibits now.

8 (Opposer's Exhibits 12-15 identified.)

9 BY MR. MC NUTT:

10 Q Mr. Weltman, was there a time when
11 Foley & Lardner asked you to visit stores where
12 tires were sold for the purpose of taking
13 photographs showing use of the Firestone trademark
14 and use of the Bridgestone trademark?

15 A Yes.

16 Q And were you able to do so?

17 A Yes, I was.

18 Q And how did you select the stores that you
19 visited?

20 A Purely by the Yellow Pages in the phone
21 book for those stores that advertised.

22 Q And the Yellow Pages that you consulted

1 were for what area?

2 A For Washington, D.C. and Maryland and
3 Virginia.

4 Q And what time period was that? When did
5 you search for and visit those stores?

6 A Most of this work was done in the period
7 15 to 30 November 2004.

8 Q In selecting the stores that you visited,
9 did anyone from Foley & Lardner or from
10 Bridgestone/Firestone or anyone else, for that
11 matter, direct you to visit any particular store?

12 A No.

13 Q So you independently selected the stores
14 that you visited?

15 A Yes.

16 Q You have been handed a group of exhibits
17 marked Opposer's Exhibit Numbers 12, 13, 14 and 15.

18 If you could look at Opposer's Exhibit
19 Number 12, please. Could you describe for me what
20 that exhibit consists of.

21 A This exhibit consists of the word
22 "Firestone" with the word "Bridgestone" beneath it

1 on the side of a wall at a dealership located at
2 11500 Georgia Avenue, Wheaton, Maryland.

3 Q And is Opposer's Exhibit Number 12 an
4 accurate picture of a tire store that you visited
5 and personally observed?

6 A Yes.

7 Q And is Opposer's Exhibit Number 12 a
8 photograph of that store?

9 A Yes, it is.

10 Q And who took that photograph?

11 A I took the photograph.

12 Q When you were photographing this store and
13 others, what portions of the store were you
14 photographing or were you reviewing?

15 A The exterior of the store. I did not go
16 into the store itself.

17 Q And is that true for any of the stores
18 that you visited?

19 A Yes. It is true for all the stores I
20 visited.

21 Q Let's turn our attention to Opposer's
22 Exhibit Number 13. Could you describe for us what's

1 depicted in Exhibit Number 13?

2 A It is a picture of the exterior of the
3 store located at 5731 Riverdale Road in Riverdale,
4 Maryland, displaying the names "Bridgestone" and
5 "Firestone" on a red-backed display.

6 Q You say it is a picture. Who took that
7 picture?

8 A I took the picture.

9 Q Is that picture an accurate representation
10 of an actual store that you visited and personally
11 observed?

12 A Yes, it is.

13 Q From what vantage point was this picture
14 taken?

15 A This picture was taken from approximately
16 50 feet from the entrance to the store in the
17 parking lot.

18 Q The sign that you refer to with the
19 Bridgestone and the Firestone names, where is that
20 located?

21 A It is located inside the store window on a
22 ledge.

1 Q So this is a photograph, then, that you
2 took from outside looking through the window of the
3 store?

4 A Yes, it is.

5 Q And the display itself of
6 Bridgestone/Firestone is within the window just
7 inside the store?

8 A Yes, it is.

9 Q Could you take a look at Opposer's Exhibit
10 Number 14 which is in the group that was handed to
11 you, and could you describe for us what's shown in
12 Exhibit 14.

13 A In Exhibit 14, two racks of tires are
14 displayed in front of the store located at 8450
15 Ardwick-Ardmore Road in Landover Hills, Maryland,
16 with the names "Firestone" and "Bridgestone" side by
17 side on top of the two racks.

18 Q Is Exhibit Number 14 a photograph of those
19 racks?

20 A Yes, it is a photograph I took of that
21 store.

22 Q And what was your vantage point when you

1 took that photograph?

2 A Approximately 50 feet away from the front
3 of the store in the parking lot.

4 Q And is that an accurate photograph, then,
5 of the store that you personally visited and
6 observed?

7 A Yes, it is.

8 Q If you could turn your attention to the
9 document marked Opposer's Exhibit Number 15.

10 A Yes.

11 Q If you could describe for us what's
12 depicted in Exhibit Number 15.

13 A This is a picture of the front of the
14 store located at 5001 College Avenue in College
15 Park, Maryland. The picture depicts what appears to
16 be a stack of tires with a cover over them stating
17 "check your air pressure monthly." Imprinted on
18 this cover are the names "Bridgestone" and
19 "Firestone."

20 Q And is this a picture of that?

21 A This is a picture of that storefront taken
22 from approximately 50 feet from the storefront.

1 Q And who took this picture?

2 A I took the picture.

3 Q And this is an accurate representation of
4 the store as you personally viewed it?

5 A Yes, it is.

6 MR. MC NUTT: I'm finished with number 15.

7 Mr. Weltman, I have no further questions
8 for you.

9 The applicant's counsel is not present
10 today. So this will conclude your testimony.

11 I will state for the record that
12 Ms. Deborah Westervelt, the attorney of record for
13 the Applicant, Orteck International, expressly
14 indicated to us by e-mail prior to today that she
15 did not intend to attend this deposition.

16 So since we are the only attorneys here,
17 that will conclude your testimony.

18 Mr. Weltman will have to read and sign.

19 (Whereupon, at 2:10 p.m., the deposition
20 was concluded.)

21

22

1 I HEREBY CERTIFY that I have read this
 2 transcript of my deposition and that this transcript
 3 accurately states the testimony given by me, with
 4 the changes or corrections, if any, as noted.

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X *Steuern*

Subscribed and sworn to before me this 23 day of
December, 20 04.

X *Lois Covert Brown*

Notary Public

My commission expires: *January 1, 2008*

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C O N T E N T S

WITNESS

EXAMINATION

BERNARD I. WELTMAN

by Mr. MC NUTT

3

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DEPOSITION NUMBER

IDENTIFIED

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<p>ultimately 5:17 14:14 15:11 16:3 under 8:11 9:9 underneath 22:19 unidentifiable 6:18 United 1:1 4:4 University 4:6 use 16:7 23:13,14</p> <hr/> <p style="text-align: center;">V</p> <p>vantage 26:13 27:22 very 8:10 view 9:7 12:12 viewed 21:14 23:3 29:4 Virginia 13:21 14:17 21:1 24:3 visit 18:2 19:11 23:11 24:5,11 visited 21:5,14 23:1 23:19 24:8,14 25:4,18,20 26:10 28:5 vis-a-vis 11:6 vs 1:12</p> <hr/> <p style="text-align: center;">W</p> <p>wall 25:1 Washington 1:19 2:3,13 3:16 4:7 24:2 Web 17:20,21,22 18:3 19:10,11 21:3,5,14 22:14 23:1,3 Weltman 1:17 2:1 3:3,8,12 4:17 5:3 5:7 6:9 12:10 13:5 15:2 18:11 23:10 29:7,18 31:4 were 2:7 5:10,17 13:18 14:6 19:9 23:12,16 24:1 25:12,13,14 Westervelt 29:12 Wheaton 25:2 window 26:21 27:2 27:6 witness 3:4 31:3 word 7:14,17 8:10 8:11 9:8,9,12 10:15 11:5,6 16:15 24:21,22 wording 12:16 words 8:20 9:1</p>	<p>10:6,8 work 24:6 www.McCarthy... 18:1 W-e-l-t-m-a-n 3:12</p> <hr/> <p style="text-align: center;">X</p> <p>x 1:6,15 30:7,16 31:9</p> <hr/> <p style="text-align: center;">Y</p> <p>years 4:9 yellow 6:18,20 8:12 8:14,15 10:17,19 13:9,16,19 14:13 23:20,22</p> <hr/> <p style="text-align: center;">\$</p> <p>\$75.44 17:5 \$79.33 17:5</p> <hr/> <p style="text-align: center;">1</p> <p>1 4:14,15,18 31:13 1/8 9:10 1:25 2:5 10 20:8,11,12,14,15 21:4 11 21:17,18,19,22 22:1,14,22 23:5 115 10:18 115/112S 8:13 11500 25:2 12 24:17,19 25:3,7 12-15 23:8 31:18 13 24:17 25:22 26:1 1303 11:17 12:5 14 24:17 27:10,12 27:13,18 31:16 15 24:7,17 28:9,12 29:6 15/85R16 10:17 154,661 1:12 18 31:17 1974 4:10</p> <hr/> <p style="text-align: center;">2</p> <p>2 6:4,5,11,13,14 7:2 31:14 2:10 29:19 20 17:13,16 30:12 20007-5101 2:13 20008 3:16 2004 1:20 2:3 24:7 202-954-6120 2:14 215/85R16 8:12 16:13 2231 3:15</p>	<p>22806 14:16 21:1 23 31:18 26 4:9</p> <hr/> <p style="text-align: center;">3</p> <p>3 1:20 2:3 6:6 7:7,8 31:5 3-7 6:7 31:15 30 24:7 3000 2:4,12 36 13:4</p> <hr/> <p style="text-align: center;">4</p> <p>4 8:8,21 20:22 31:13 40 15:6,7,9 17:13 17:16</p> <hr/> <p style="text-align: center;">5</p> <p>5 9:5 10:4 50 15:6,7,9 26:16 28:2,22 5001 28:14 5731 26:3</p> <hr/> <p style="text-align: center;">6</p> <p>6 10:13,14 11:7,12 31:14,15</p> <hr/> <p style="text-align: center;">7</p> <p>7 6:6,11 11:14,19 74 3:20 75 13:22 76/369,339 1:4</p> <hr/> <p style="text-align: center;">8</p> <p>8 14:20,21 15:2,13 15:15 16:11,16 17:16 18:12,14 18:15 19:5 31:16 8450 27:14</p> <hr/> <p style="text-align: center;">9</p> <p>9 19:15,17,18,20,21 20:5,19 21:9 9JLT 11:16 12:5 9-11 18:8 31:17</p>		
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, BRENDA M. SMONSKEY, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Brenda Smonskey

Notary Public in and for the
District of Columbia

My Commission Expires:

APRIL 30, 2006



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Application
Serial No.: 76/369,339
Trademark: MILESTONE ROAMER

BFS BRANDS, LLC)

and)

BRIDGESTONE/FIRESTONE)
NORTH AMERICAN TIRE, LLC)

Opposers)

v.)
ORTECK INTERNATIONAL,)
INC.)

Applicant.)

Opposition No. 91154,661

**OPPOSERS' NOTICE OF TAKING TESTIMONY
OF BERNARD WELTMAN**

TO: Deborah J. Westervelt, Esq.
Law Offices of Royal W. Craig
10 North Calvert Street, Suite 153
Baltimore, Maryland 21202.

PLEASE TAKE NOTICE, that beginning at 1:00 p.m. on Friday, December 3, 2004,
Opposers will take the testimony deposition upon oral examination of BERNARD WELTMAN
of 9200 Basil Court, Suite 201, Upper Marlboro, MD 20784.

The deposition shall take place at the following location:

FOLEY & LARDNER LLP
3000 K Street, N.W., Suite 500
Washington, D.C. 20007
TEL: 202.672.5300

002-1297981.1

Opp. No. 91154661
BFS v. Orteck
Opposers' Ex. No. 1

The testimony deposition shall be taken before a court reporter or other such person duly authorized to administer oaths under the laws of Washington, D.C. The deposition will be recorded by stenographic means and will feature real time transcription. Opposers reserve the right to record the deposition by audio and/or visual means as well.

This testimony deposition is for use at trial and/or for such other purposes as are permitted under the rules.

You are invited to attend and cross-examine.

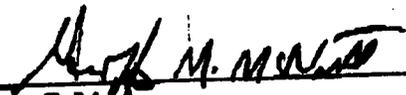
Respectfully submitted,

Bridgestone/Firestone North American Tire, LLC

and

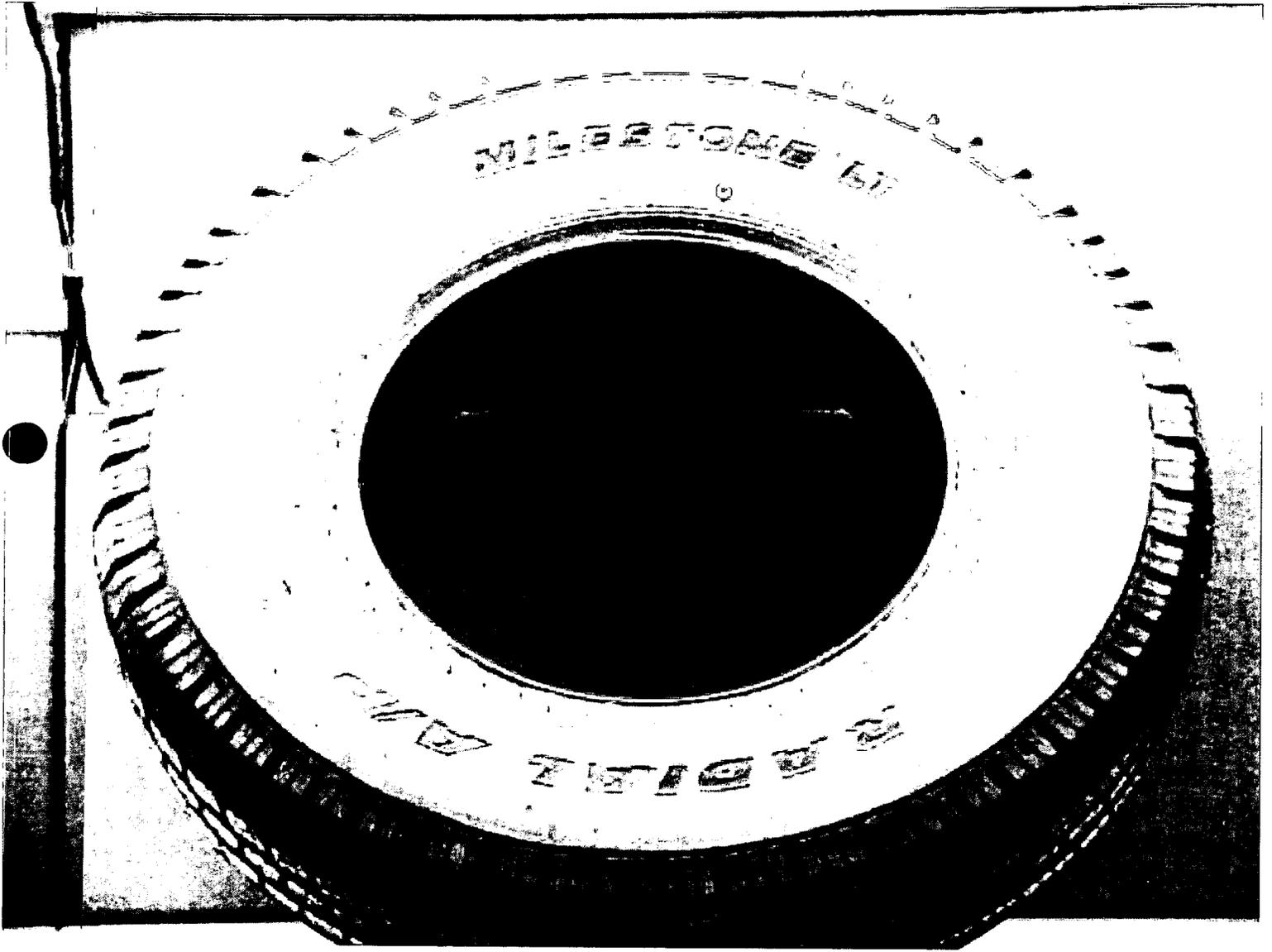
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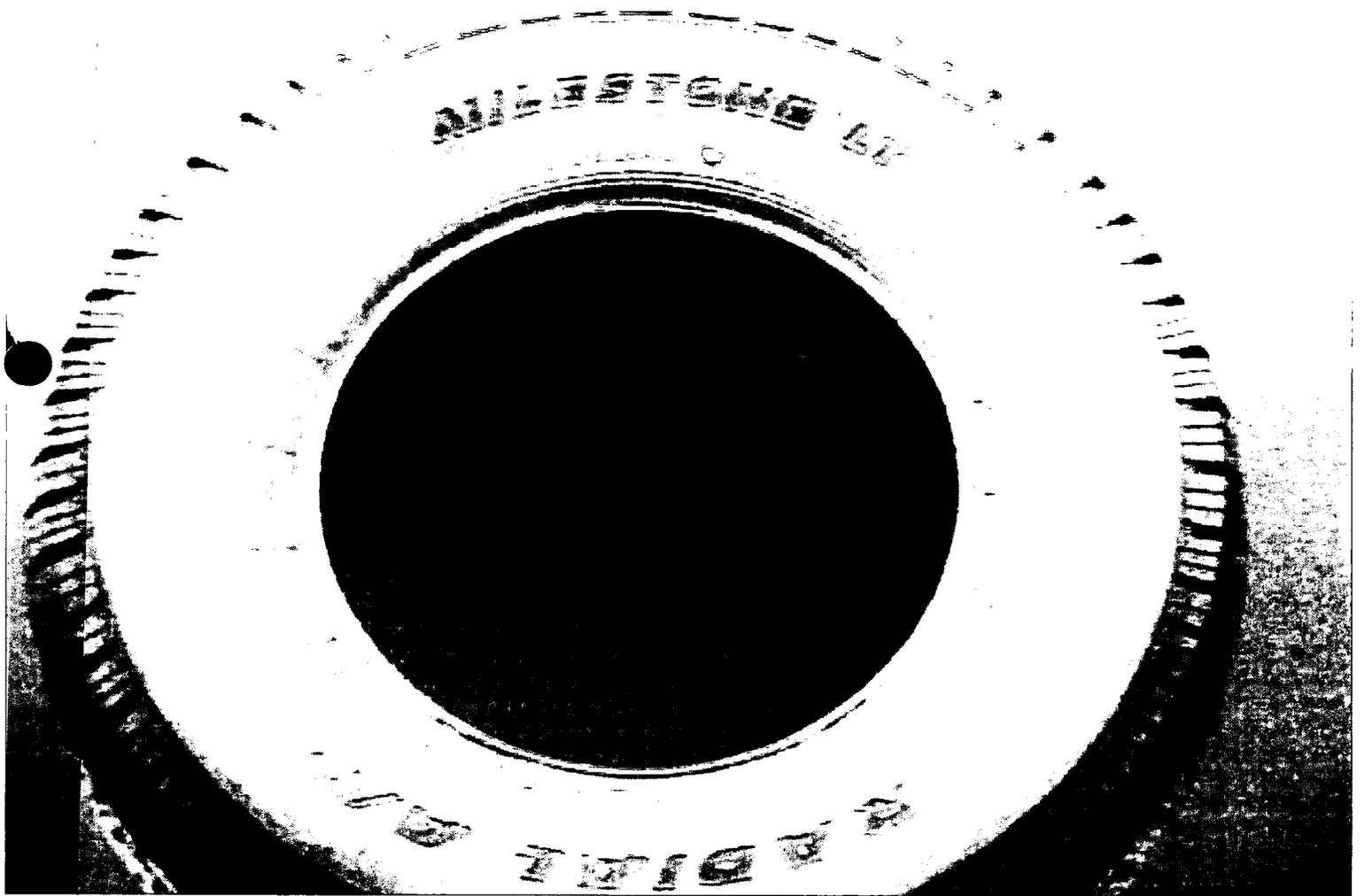
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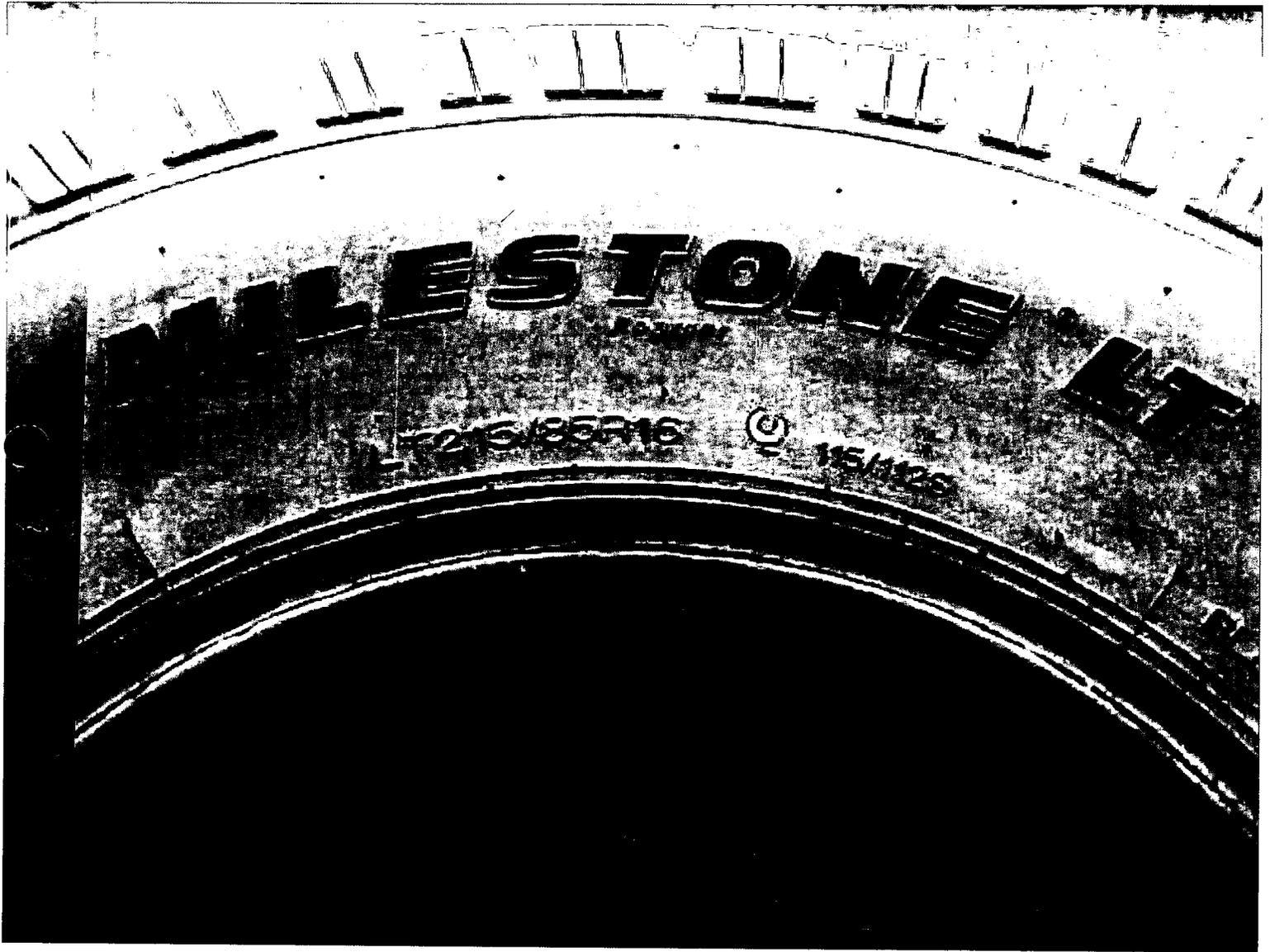
By: 

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Geoffrey M. McNitt
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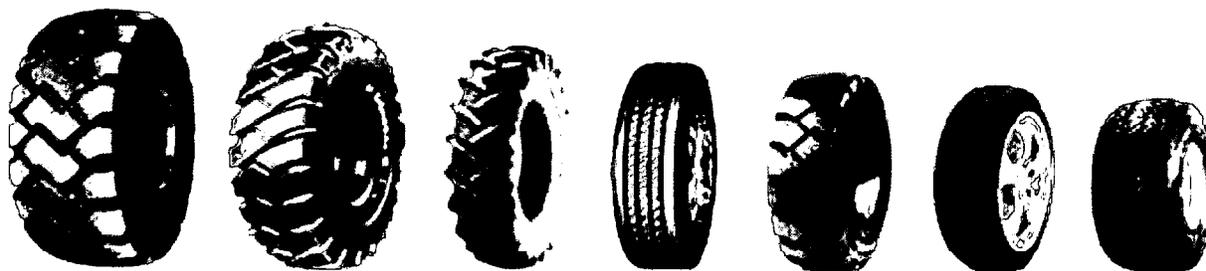
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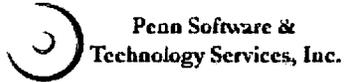
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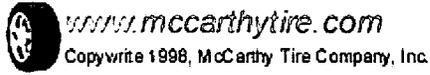
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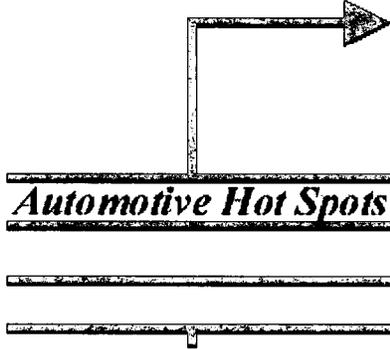
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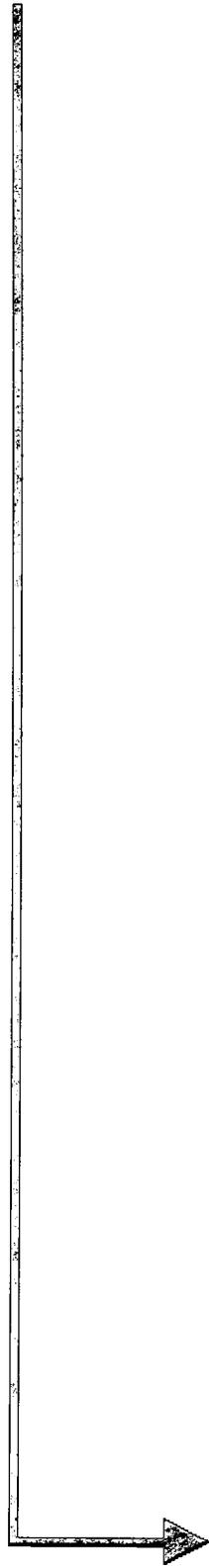
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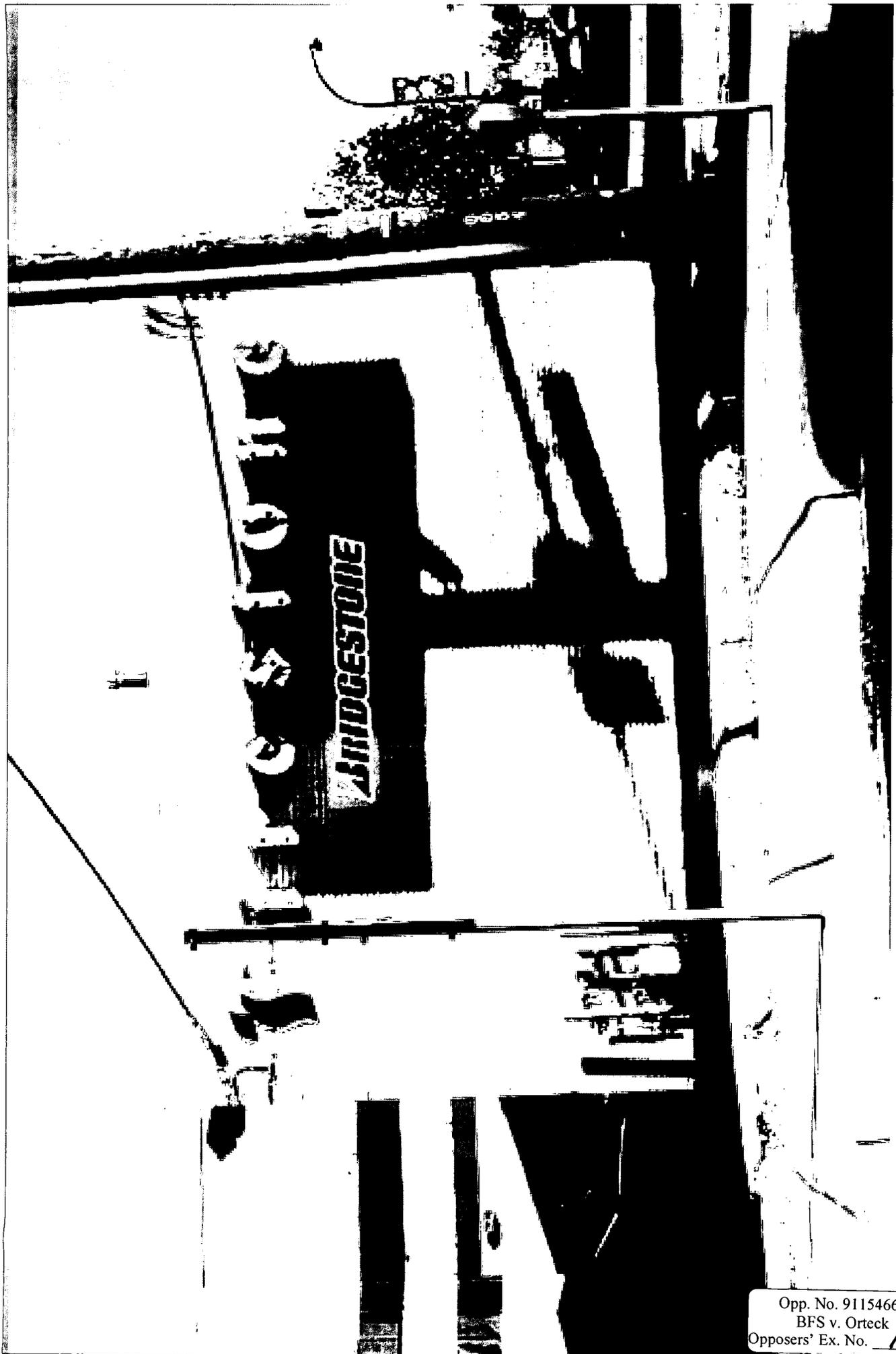
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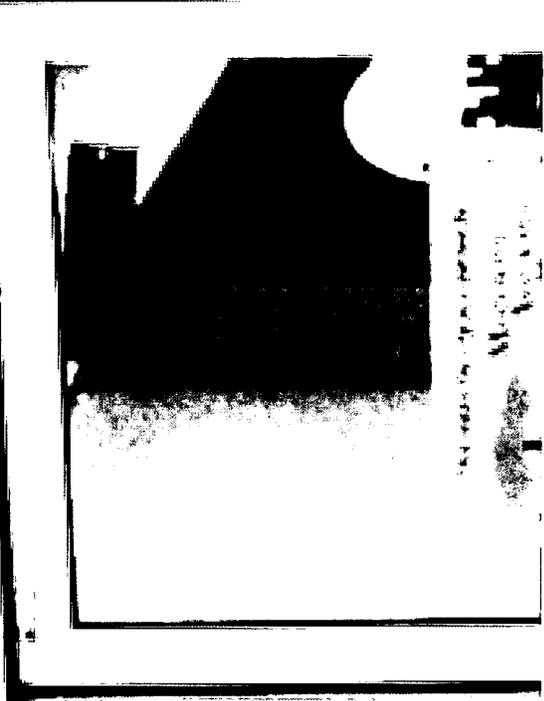


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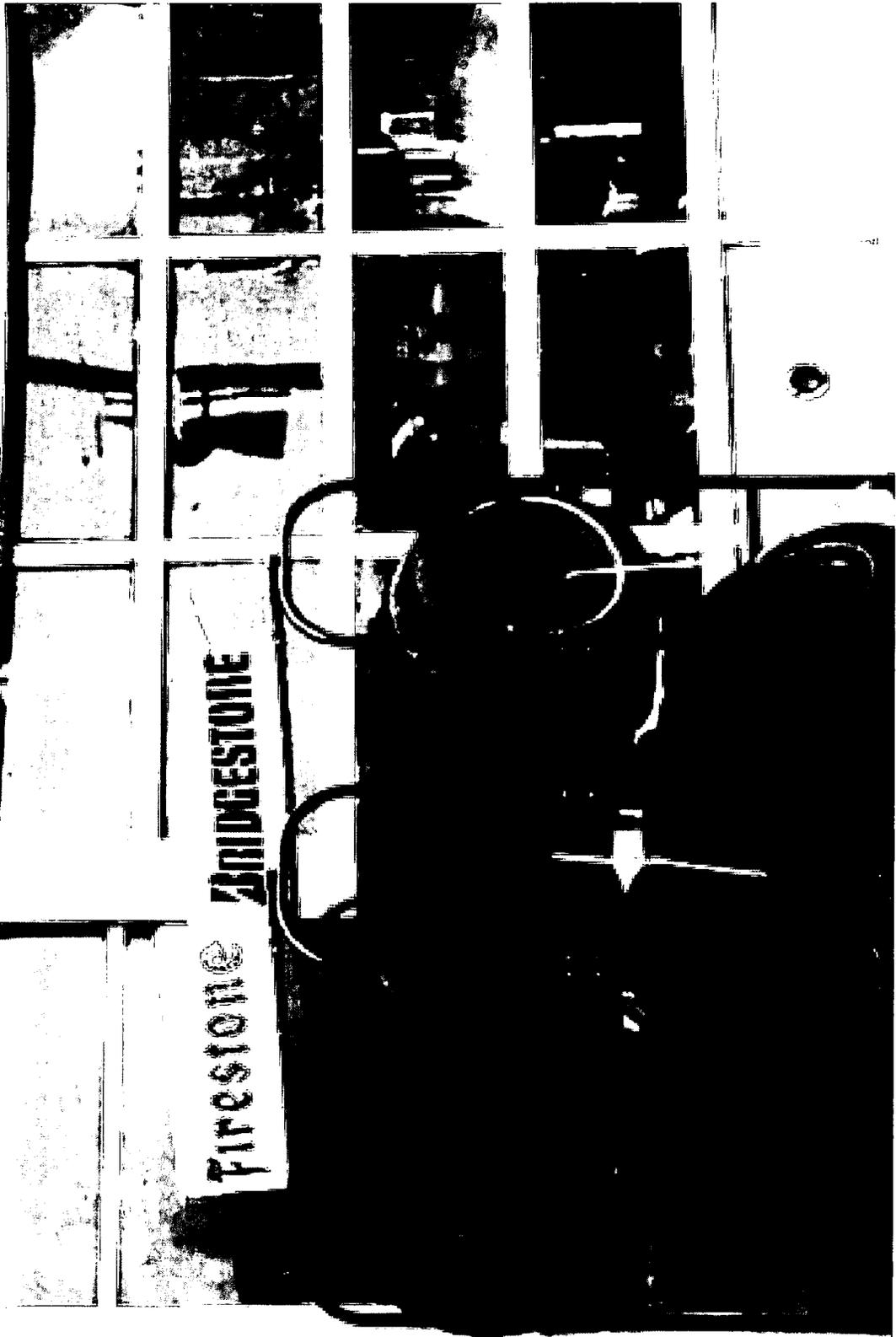
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