

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

In the matter of trademark application Serial)
No. 78-313, 196.)
For the mark "We'll Buy your car even if you)
don't Buy Ours.")
Published in the Official Gazette on August)
10, 2004)
North Carolina Automobile Dealers) Case Number
Association, Inc.)
Opposer)
v.)
Carmax Auto Superstores West Coast, Inc.)
Applicant)

TTAB

NOTICE OF OPPOSITION

The North Carolina Automobile Dealers Association, Incorporated ("NCADA"), a North Carolina non-profit corporation whose address is 1029 Wade Avenue, Raleigh, North Carolina 27605, believes that it and its individual members will be damaged by the registration of the mark shown in the above-identified application and hereby opposes the same.

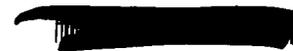
The grounds for the opposition are as follows:

1. NCADA is an association organized under the laws of the State of North Carolina as a non-profit corporation, which association is comprised of approximately seven hundred (700) individual car dealers located throughout the State of North Carolina;

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2. Pursuant to its Charter, NCADA is charged with representing and protecting its constituent members consistent with the purposes of the Association.
3. One purpose of the association is to minimize to the extent reasonably possible restraints on the right of its constituents to conduct their businesses in a legitimate and lawful manner;
4. NCADA believes that the proposed registration by Applicant will impinge upon the legitimate rights of the NCADA's members to conduct their businesses;
5. The proposed mark, "We'll Buy your car even if you don't Buy Ours," is purely descriptive of the business practices of car dealers located throughout North Carolina and elsewhere. Many car dealers are willing to inspect and purchase used cars regardless of whether the seller is willing to buy a car from that dealer and many of those dealers advertise their willingness to do so.
6. The proposed mark is descriptive, does not have any secondary meaning and has been used by companies both inside and outside of the United States to describe an automobile dealer's willingness to consider buying a prospective buyer's automobile even if the buyer doesn't buy one from the dealer.
7. The proposed mark is generic and merely describes the generic willingness of an automobile dealer to consider buying a prospective buyer's automobile even if the buyer does not purchase an automobile from the dealer.

For the reasons stated above, North Carolina Automobile Dealers Association, Inc. opposes the issuance of the above trademark.

Respectfully submitted this the 4th day of October, 2004,

North Carolina Automobile Dealers Association, Incorporated

By its attorney:  _____

Shawn D. Mercer, Esq.
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(919) 743-2200

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing Notice of Opposition by depositing a copy of the same in the United States mail, addressed to counsel for the Applicant as follows:

Kimberly A. Chasteen, Esq.
Williams Mullen
721 Lakefront Commons, Suite 210
Newport News, VA 23606

Kenneth J. Gumbiner, Esq.
Tuggle, Duggins & Meschan
228 W. Market Street
Greensboro, NC 27401

This 4th day of October, 2004.


Shawn D. Mercer

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October 4, 2004

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Director of the U.S. Patent & Trademark Office
Trademark Trial & Appeal Board
2900 Crystal Drive
Arlington, VA 22202-3513

Re: Serial No. 78-313, 196

Dear Sir or Madam:

Enclosed please find for filing on behalf of the North Carolina Automobile Dealers Association, Incorporated a Notice of Opposition in the matter of trademark application Serial No. 78-313, 196 for the mark "We'll Buy your car even if you don't Buy Ours" published in the Official Gazette on August 10, 2004. A check in the sum of \$300.00 representing the filing fee is also enclosed.

Please do not hesitate to contact me should you have questions.

Sincerely,

JOHNSON, HEARN, VINEGAR,
GEE & MERCER, PLLC


Shawn D. Mercer

SDM/bb

Enclosures

cc: Kimberly A. Chasteen, Esq.
Kenneth J. Gumbiner, Esq.

North Carolina Automobile Dealers Association, Incorporated

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