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

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

In the matter of Application Serial No. 78/751,105
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UMG RECORDINGS, INC.

Opposition No.: 91176791

Opposer

v.

MATTEL, INC.

Applicant

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Vol. 2 of 7

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Cover Story

CAN DETROIT MAKE CARS THAT BABY BOOMERS LIKE?

It won't be easy: A majority prefer imports--and Motown's reliance on trucks and minivans isn't helping matters

James A. Horty III is Detroit's worst nightmare. At a cocktail party this summer, a friend mentioned he had just traded in his sport-utility vehicle for a new Mercedes-Benz. As his friend boasted about the taut, sporty ride of his new car, it occurred to Horty that he had tired of his Jeep Grand Cherokee, the fourth he had owned. "It made me start thinking: 'This is getting kind of stupid. My Jeep guzzles gas, and it drives like a truck,'" says Horty, 31, a Wilmington (Del.) real estate executive. "It was truly a fad, and I feel like: been there, done that."

Soon after, Horty traded his nearly new Jeep for a silver BMW 528ia. Seven years as a happy Jeep owner didn't persuade him to buy a U.S. car. "The quality and amenities of European cars are just so much nicer," he explains.

In that view, Horty is not alone. Instead of Ford Tauruses and Buick Regals, baby boomers and the generation just behind them favor reliable Japanese sedans such as the Toyota Camry and Honda Accord or upscale German cars such as the Mercedes E320. Buy a U.S. luxury car? No way, says Kevin Ireland, 45, a Wescosville (Pa.) book editor: "I think of a Cadillac or a Lincoln as a car my Uncle Charlie, who's bald, smokes cigars, and wears bad pants, would drive."

That's terrible news for Motown. Masked by soaring stock prices and record profits from minivans and sport-utility sales, Detroit has a gnawing secret: It has lost control of the U.S. passenger car market, and a crisis is looming. As the oldest of the 75 million baby boomers enter their 50s, when consumers

usually spend the most on autos, a majority prefer Japanese or European cars. The Big Three's share of car sales has plummeted from 74% in 1985 to 61% now. Strip out commercial fleet sales, and that share drops to 48%. Among baby boomers, Motown accounts for just 44% of sales. "We don't do well with boomers," admits G. Richard Wagoner Jr., 44, president of North American Operations at General Motors Corp. "It's one of the business challenges we have."

Unless Detroit can do a better job of meeting that challenge, the situation will worsen. As the prewar generation that makes up the industry's most loyal customers dies off, the mix of cars on the road will slide inexorably toward imports. By 2010, that older generation—which now buys a third of all cars—will account for just 12% of sales, according to NexTrend Inc., a Thousand Oaks (Calif.) consulting firm. By then, boomers will buy half of all vehicles, followed by Generation X, which is even less inclined than boomers to buy American. Says Christopher W. Cedergren, NexTrend's managing director: "If boomers don't alter their purchasing patterns, it's going to be devastating for the Big Three."

How devastating? He predicts that Detroit's share of the U.S. car market could drop an additional five points in the next five years. Says Conrad P. Kottak, an anthropology professor at the University of Michigan who specializes in U.S. popular culture: "You could say we're seeing the rise of the new American car business, but the names are Honda, Toyota, or BMW."

LONG HAUL. Winning over boomers won't be easy. The seeds of their defection were sown a quarter-century ago, when they started buying their first cars—and when Detroit was turning out some of its worst cars ever. Formative experiences with cars that failed to start or stalled at traffic lights turned many boomers off U.S. makes forever. "We taught them that we build junk," says James C. Bulin, Ford Motor Co.'s generational studies manager. "The lessons learned in the 1970s will stay with baby boomers for the rest of their lives."

That may be one reason why the Big Three's efforts to attract import-loving car buyers have so far fallen short. Although Detroit has narrowed the quality gap between U.S. and foreign cars dramatically and has introduced stylish models far superior to past offerings, U.S. car-share has continued to decline.

Why? For one thing, quality, while vastly improved, still can't match that of the best Japanese carmakers. Some U.S. offerings, such as the Plymouth Neon subcompact and Dodge Stratus compact, simply couldn't make up in styling what they lacked in reliability. Others, such as the Oldsmobile Aurora and Cadillac Catera, can't live down their brands' old-fogy images. Consumers deemed other well-engineered cars, such as the Ford Contour, too pricey.

Motown has had a few solid boomer successes over the years. GM's strong-

selling new Pontiac Grand Prix, with its distinctively American styling, has attracted a following among some boomers, for example. But too often, Detroit has been unable to sustain those successes. The original 1986 Taurus was a hit with older boomers, and by 1992 it ranked as the best-selling car in America. But many buyers found Ford's 1995 redesign too radical or the price increase too high. After two Taurus wagons, David Savinar, a 43-year-old direct-mail executive from Newtown Square, Pa., switched to Subaru when he saw the latest Taurus look. "I would go back if there was a really beautiful American car design and if its mechanics were good," he says. Even GM's Saturn, Detroit's biggest import-fighting success, has seen sales fall 9.4% this year.

Despite their car woes, U.S. auto makers take comfort in the huge profits their trucks haul in. The 41% growth in sales of minivans, sport-utes, and pickups since 1986—a market that has been almost exclusively the domain of the Big Three—has carried them to record earnings in recent years and allowed them to maintain a 72% share of total vehicle sales. For the first nine months of 1997, they've reported combined earnings of \$12 billion, largely fueled by sales of trucks, where margins can run as high as \$15,000 per vehicle.

That truck success should give Detroit a marketing edge for cars, but so far it hasn't worked. To sell cars these days, Detroit has been forced to slap on rebates, eroding already thin or nonexistent margins. And boomers who have been snapping up Big Three sport-utes, minivans, and pickups show little interest in U.S. cars. Says Furman Selz auto analyst Maryann N. Keller: "Buyers have not made the transition from loving their truck to loving the same brand of car."

"FIXATION ON SUVs." Take Sharon and Ed Koorbusch of Leesburg, Va. They drive a Dodge Caravan and an Acura Integra. Sharon, 31, a pharmaceutical sales rep, loves her minivan, but that hasn't changed her mind about U.S. cars. Her advice: "If you have a choice between a domestic car and a foreign car, take the foreign car."

Make no mistake, cars do still matter. Americans bought 8.5 million of them last year, vs. 6.6 million trucks. And lately, there have been signs that America's passion for trucks is cooling. Truck sales are up just 3.5% this year, compared with 8% last year. An array of forces could dent truck sales further. Concerns over global warming could lead to stricter emission rules, which would hit trucks hardest, as would an oil shock. Meanwhile, insurers are considering raising their rates on these behemoths because of the greater damage they inflict in accidents. "Trucks are hot, and profits are there," says GM Chairman John F. Smith Jr. "But those numbers can swing back and forth rather fast."

Indeed, as their kids start leaving home over the next decade, aging boomers might well find they prefer the less jolting ride of a car. Says Susan G. Jacobs, president of Jacobs & Associates in Rutherford, N.J.: "The fixation on SUVs is distracting manufacturers from the next transition of the market

as baby boomers move to the next life stage."

No company has more at stake than Chrysler. The No.3 auto maker sells two trucks for every car. "I am concerned about our declining share of the passenger-car market," says Chrysler Chairman Robert J. Eaton. "It clearly puts us at risk if the market changes."

But Detroit's deeds don't always match its words. Although Chrysler has poured \$2.1 billion into restyling its Dodge Intrepid and Chrysler Concorde full-size sedans to attract younger buyers, the company is considering slashing by 50% its investment in its next generation of compact cars--the Dodge Stratus, Chrysler Cirrus, and Plymouth Breeze--due by 2000, say consultants to the auto maker. Chrysler Vice-Chairman Robert A. Lutz confirms the company is looking at making "less of a bet" on its compact car line, a key segment for winning over import buyers.

Likewise, consultants say Ford may kill the Contour and Mercury Mystique, its entries in that segment, even as it adds such trucks as the Lincoln Navigator. Even GM, the most aggressively committed to cars, recently decided to introduce a Cadillac sport-utility, insiders say. "It's hard not to give people what they want," says GM's Wagoner.

BEETLEMANIA. Still, Detroit is notoriously shortsighted. In the '60s, the Big Three ignored the threat from Japan. In the '70s, they were caught without fuel-efficient cars. And in the '90s, they're pursuing the truck boom as though it will never end, cranking out ever-bigger pickups and SUVs. Egged on by Wall Street, they've been converting car factories into truck factories--which will make it difficult to retool if America's love of trucks should wane. "This is history repeating itself," warns Keller. "It's not going to last forever, but they're acting as though it will."

The industry's obsession with big trucks is also keeping it from developing car-truck hybrids that could help it retain truck-weary boomers. While foreign car companies are launching popular, car-based SUVs such as the Mercedes ML320 and Honda CR-V, Detroit has yet to introduce such a hybrid. And the station wagon, which Detroit invented but now barely offers, is enjoying a comeback thanks to stylish all-wheel-drive versions from Subaru, Audi, and Volvo.

Baby boomers' affinity for these import brands can be traced to their early years. Unlike their parents, boomers had no World War II-derived aversion to Japanese and German cars. For a rebellious generation, making the switch to a foreign car was easy. Volkswagen was the first to tap into the new zeitgeist with quirky ads starting in the '60s that played up the Beetle's small size and odd looks. Savinar recalls being swept up in Beetlemania in college. "I loved those cars because they were simple and easy to maintain," he says.

That was in stark contrast to the land yachts offered by Detroit back then. Shocked into action by the oil embargoes of 1973 and 1979, Detroit spent

the decade downsizing. New government regulations mandating better gas mileage and less pollution caught the Big Three flat-footed as they hastily launched such losers as the Chevy Vega and Ford Pinto. Bruce Lavin, a 42-year-old Sacramento doctor, vividly recalls when his first car, a 1972 Ford Mustang, erupted into flames at a stoplight. Today, he drives a Mitsubishi. "I saw there was something better," he says. Such experiences played right into boomers' mistrust of Big Business. "In the '60s, boomers grew up believing the Establishment, including the U.S. car industry, was no good," says Ford's Bulin. "And in the '70s, we proved them right."

Quality wasn't the only problem. In its rush to introduce new models, Detroit broke every marketing credo in the book. The legendary GM Chairman Alfred P. Sloan Jr. tried to keep customers for life by offering "a car for every purse and purpose." But suddenly, showrooms were crammed with lookalike models that blurred the brand distinctions. A Chevrolet looked the same as a Pontiac, a Ford the same as a Mercury, a Chrysler the same as a Dodge. Even mighty Cadillac, once the industry's gold standard, slapped its nameplate on a small car called a Cimarron, which consumers quickly recognized as a Chevy Cavalier with leather. Sloan's marketing ladder was being dismantled, rung by rung.

The Japanese, meanwhile, proved to be apt students of what had made Detroit great. As their customers gained in affluence, carmakers extended their reach with family models such as the 1986 Honda Accord. In the late '80s, they introduced luxury brands, moving into a niche Cadillac once dominated. "We moved right along with them, knowing as they grew up their desires would be changing," says Richard Colliver, executive vice-president for sales at American Honda Motor Co.

For many boomers, Detroit never had a chance. Michelle Adams, 34, a law professor at Seton Hall University School of Law in Newark, N.J., believes U.S. cars lack status. Instead, she yearns for a Honda Accord with leather seats. "I don't want to be seen getting out of a Ford; a Honda is cooler," says Adams. "I want a car that looks like I've made it."

HERD MENTALITY. Another boomer priority is looking smart in front of peers. The result: "Baby boomers buy in a herd," says John Wolkonowicz, automotive consultant at Arthur D. Little & Co. in Boston. "A vehicle gets anointed as the one to buy." These days, Camry is the sedan of choice. In SUVs, it's Grand Cherokee or Explorer. Chrysler is the right minivan, and Lexus or BMW is the correct luxury car.

Once boomers have bonded with an import brand, it takes a lot to dislodge them. Stella Otto, 41, a Maple City (Mich.) gardening author, and her husband, Francis, have owned seven Toyotas. All remained trustworthy long after the odometer passed 100,000 miles. "I've gotten comfortable with my Toyotas," she says. "I'm inclined to stick with something that's proven good."

The Big Three counterattacked with breakthrough vehicles based on truck

platforms. In 1983, Chrysler introduced the first minivan, brilliantly timed to capture the boomer shift to parenthood. And just when those people-haulers became a bit boring, along came Ford in 1990 with a refined SUV called the Explorer. A new boomer niche was born. SUV sales have shot up 130% since the Explorer's launch, to 2.14 million units in 1996. Now, flush from a seven-year economic upswing, boomers are shelling out upwards of \$40,000 for ever bigger, more luxurious SUVs such as the Ford Expedition and Lincoln Navigator.

Sound too good to last? You bet. Even before the recent stock market jitters, the truck boom was starting to stall. Minivan sales have flattened. Sales of big pickups have dropped 5% from last year. Even sales of Jeep Grand Cherokees and Ford Explorers have sagged 6% this year. And a glut of competition is forcing manufacturers to slap rebates and lease deals on former hot sellers.

Worse, import carmakers are storming Detroit's last bastion. But instead of hulking trucks, Mercedes, Toyota, and Honda are cleaning up with smooth-riding car-based SUVs. And Toyota just launched its Sienna minivan, based on its best-selling Camry sedan. Next fall, Honda will introduce a minivan built on the same frame as its popular Accord. Warns Honda's Colliver: "We think we can do in minivans what we did in the passenger-car segment."

NEW STAGE. The Big Three, however, remain supremely confident that they will continue to dominate the truck market. U.S. car executives note that Japan stumbled in its earlier attempts to crack the truck market with miscues such as the overpriced, undersized Honda Odyssey minivan and the underpowered Toyota T100 pickup. But such self-assurance "is the traditional mistake of Detroit," says consultant Jacobs.

Motown may also be fooling itself about the staying power of the truck craze, which has more to do with image than practicality. Already, some boomers are switching to all-wheel-drive European wagons. "There's no reason to have a sport-utility vehicle as a family car, other than to make a fashion statement," says John Pohland, 32, a Minneapolis portfolio manager who traded his Jeep Grand Cherokee for an Audi A6 Quattro wagon.

Even more ominous, though, are the demographic forces that could soon work against trucks. People-haulers such as minivans are "life-stage" vehicles, useful during child-rearing years but quickly shed when no longer needed. When that happens, boomers probably won't return to the same showrooms where they bought their trucks. New consumer data from J.D. Power & Associates Inc. show that just 19% of those switching from a truck to a car stay with the same brand.

Even as its truck successes have mounted, Detroit has been waging a losing rearguard battle in cars. Chrysler made cutting-edge design its chief weapon in the fight to win younger buyers. But Consumer Reports-toting boomers have shown little willingness to put looks ahead of quality. Chrysler's Stratus compact, launched in 1994 and aimed squarely at boomers, has

nearly twice as many defects as the rival Honda Accord, according to J.D. Power. Even with a \$1,000 rebate, Stratus has barely captured 1% of the market. Now, Chrysler is hoping its restyled Concorde and Intrepid sedans will attract a younger crowd. But many analysts fear the cars are too aggressively styled for the conservative family-sedan market. "Cappuccino styling for a washing-machine market," as J.D. Power analyst Lincoln Merrihew puts it.

FORD'S FOLLY. Ford has flopped in its last two bids to lure boomers to its cars. It spent \$6 billion developing an internationally styled "world car," launched here as the Ford Contour and Mercury Mystique in 1994. With their cramped interiors, those compacts never caught on.

Ford's biggest blunder came with the pride of its fleet: the Taurus. The original Taurus introduced in 1986 had been an automotive breakthrough that pioneered aerodynamic styling and helped Ford lure older boomers. At a time when Detroit's car fortunes were declining, the Taurus overtook the Honda Accord in 1992 to become the best-selling car in America. "When we took over the No. 1 car in America, that was a huge benefit to Ford, GM, and Chrysler," recalls Ross Roberts, vice-president of the Ford Div. "People thought: 'Maybe those bozos can build a car right.'" But then Ford spent \$2.8 billion to redesign the Taurus in 1995. The carmaker crammed new features into a radically restyled Taurus—and raised the price by \$1,000. Sales slumped, and Ford has since slashed prices. Worse, the average age of Taurus buyers remains stuck at 53, and the Camry will be the top-selling car in America this year.

Now, Ford is taking on an even greater challenge: trying to ignite a youth movement at its aged Lincoln brand. While the new Lincoln Navigator sport-ute is proving a hit with boomers, Lincoln's car buyers are still solidly in the Geritol set. Lincoln hopes softer styling this year will lower the average age of the Town Car buyer—all the way from 67 to 63. Lincoln is aiming for boomers with the smaller LS sedans coming in 1999, priced around \$30,000.

GM is betting on its new brand-management strategy to win over boomers to Buick, Olds, and Cadillac. In the past year, it has introduced almost a dozen new cars, half of them midsize sedans. GM figures it can please more customers with six different cars than Honda can with its one-size-fits-all Accord. Critics gripe that it's just a way to justify seven car divisions. The newest of the bunch, Olds's stylish Intrigue, is hailed by analysts as GM's best midsize and could do nicely if the division's stodgy image does not hamper sales.

That's a big if. With many of its brands favored mainly by older buyers, image is a problem at GM. Take the Catera, the first serious play for boomer business from Cadillac, where the average customer is 63. GM says sales are on target, but even a youthful ad campaign hasn't attracted boomers. The median age of Catera buyers is 56, and nearly two-thirds of them have been coming out of other GM models. "If BMW or Mercedes

brought that car out, Catera would be more widely accepted now," says R.E. Cochran, a Monroeville (Pa.) Cadillac dealer. It hasn't helped that Catera ranked near the bottom of J.D. Powers' 1997 quality study. Cadillac has had to offer \$1,000 rebates to boost sales. Now, Cadillac hopes its revamped flagship Seville, arriving in December and laden with the latest technology, will shave six years off the median customer age of 56 for the current Seville.

In its zeal to save older brands, GM has ignored what may be its best opportunity for winning younger buyers. When its Saturn division premiered in 1990, it captured boomers with its upstart, anti-Detroit image. But after seven years, Saturn still offers only a modestly restyled version of its original subcompact, leaving nothing for early buyers to trade up to. "If GM took all the money it put into Oldsmobile and spent it on Saturn, they could have created a Saturn minivan and sport-utility that would have sold like crazy," says Wolkonowicz. "And Saturn would probably be the No. 1 American automotive division today." GM doesn't deny the gaffe. "There are a lot of calls we didn't make right. You can just add [Saturn] to the list," says GM's Wagoner. Saturn will get a compact car in two years, but a sport-utility or minivan are distant prospects, at best.

BLANK SLATE. Foreign carmakers hardly have a perfect record with boomers, either. Mercedes stumbled badly in the late '80s when its overengineered and overpriced flagship S-class sedans made Benzes seem stodgy, though it recovered with new, lower-priced C-class sedans in 1993. The Acura and Infiniti luxury lines have never approached Lexus' success, and even Lexus' original ES250 and GS300 sedans flopped.

The Big Three are hoping to do better with Generation X. Although this group is even more inclined than boomers to buy imports—59% of its car purchases are foreign makes—its attitude toward Detroit is more one of apathy than antipathy. Gen Xers grew up in their parents' imports, and many have no firsthand experience with U.S. brands. Detroit sees this as an opportunity. "In Generation X, we're finding a more open attitude to our name and our products," says John F. Smith, general manager of Cadillac Motor Car Div.

To snare these buyers, Detroit must come up with better quality and styling. Instead, Detroit lost Russell P. Marsella, 31, who recently bought an Isuzu Rodeo after becoming disgusted with quality problems and poor service on his 1993 Chevy Blazer. "A lack of comparable quality, an unwillingness to stand behind their products, and arrogant attitudes from the Big Three drove me away," he says.

Right behind the Gen Xers are the "echo boomers," now just a few years away from their first cars. They rival their parents in number, yet few marketers have begun to prepare for them. "The arrival of the baby boomers completely changed the structure of the auto industry—the competitors changed, market share changed," says Wolkonowicz. "We have another generation like that coming along."

If Detroit is to steer this generation into its cars, the industry must begin focusing on it now. That could mean nurturing new brands such as Saturn and giving up on dying brands that drag down Detroit's image. Most of all, it must make a renewed commitment to cars. "Some brave CEO in Detroit has to stand up and say, 'We need a strategy to save ourselves in the car business,'" says Cedergren. If that doesn't happen, Detroit risks watching its car business follow its elderly buyers into the sunset.

By Kathleen Kerwin and Keith Naughton in Detroit

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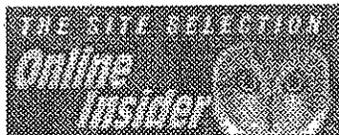
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Go West, Young Motown? Irvine Lands Ford's PAG HQ

Call it another strong shot of "Motown West": On the heels of Lincoln-Mercury's historic move 18 months ago, Ford Motor Co. (www.ford.com) has announced that it's also locating its Premier Automotive Group (PAG) headquarters in Irvine, Calif.

As PAG's home base, the new Irvine facility will become the North American headquarters for Jaguar, Volvo and Aston Martin, as well as housing the global headquarters for Lincoln-Mercury.

The PAG headquarters will be located on Ford's existing campus at the Irvine Spectrum. Company officials project that the new facility will be completed in 2001. The 300,000-sq.-ft. (27,000-sq.-m.) building, which will be able to house some 800 people, will include a product development wing, a conference center, a vehicle display area, a fitness center and a cafeteria, company officials said.

Co-Location Synergies a Major Determinant

Establishing the PAG headquarters in California, company officials explained, will increase the consumer focus for each of the Ford-family luxury brands. At the same time, officials said that the co-location of multiple brands will increase the group's synergies and cost-efficiencies.

"As we look to develop our North American luxury automotive business, we can leverage the strength and synergies of our premium brands by co-locating Jaguar, Aston Martin, Volvo and Lincoln," said Dr. Wolfgang Reitzle, Ford Motor group vice president and Premier Automotive Group president.

"As the Lincoln-Mercury experience has demonstrated," Reitzle continued, "California is an energetic, consumer-focused culture that will serve as an ideal location to plan the growth of these premium brands. The new headquarters will provide the Premier Automotive Group with a strong bi-coastal understanding of luxury consumers."

Move Will Trigger Some Relocations from New Jersey

The announcement, however, entails some job losses for PAG group brands' East Coast operations. Ford officials, however, stressed that Jaguar, Volvo and Aston Martin will all maintain a significant presence in New Jersey. In addition, all the PAG luxury brands will retain regional sales offices to

promote a strong nationwide consumer focus, they added.

Volvo announced, as part of the PAG headquarters project, that it will relocate to California the executive management, sales, marketing, communications and corporate service functions that are currently located in Rockleigh, N.J. Volvo expects some 150 jobs to be relocated to Irvine.

Jaguar announced that it, too, will relocate to Irvine its executive management and strategic functions, including dealer development, marketing, communications and direct support, from the company's current headquarters in Mahwah, N.J. Jaguar officials projected that between 50 and 75 positions will be relocated to California.

California's Growing Auto Clout

The new facility will also house the Lincoln-Mercury headquarters, which is currently located in a temporary facility in Irvine. In 1999, Lincoln-Mercury had its best year ever, becoming the best-selling U.S. luxury brand.

That sterling year came after Ford shocked the auto industry in 1998, relocating Lincoln-Mercury's corporate headquarters to Irvine. That move marked the first time since World War II that an existing domestic automobile brand had left Michigan.

Detroit clearly remains the epicenter of the U.S. auto industry. But the PAG deal underscores California's growing auto-sector prominence. The Beach Boys, of course, long ago made California car culture an embedded element in the pop culture landscape. The state's auto-industry emergence, though, has been more recent (though undoubtedly no less "Fun, Fun, Fun" for state economic development leaders).

Today, 10 Asian car companies have their U.S. subsidiaries headquartered in Southern California -- including Honda, Nissan, Mitsubishi, Mazda, Kia, and Hyundai. And some two dozen automotive companies have located design studios in Southern California, including Mercedes-Benz, Nissan Mazda, Kia, Honda and Toyota.

City, State Officials Trumpet Move

The PAG headquarters marks another big win for both the city and the state.

Founded in 1971, Irvine is the first and largest master-planned community in the United States. And it's proved to be fertile corporate location turf. Microsoft, Apple, Bristol-Myers Squibb, Eastman Kodak, Hughes Aircraft, AT&T, Canon, Toshiba, Sony, Cisco Systems and Gateway all have significant operations in Irvine. And Irvine-headquartered companies include Con Agra, Home Base, Broadcom, Allergan, Western Digital, and Taco Bell.

"Ford's commitment reinforces Irvine's emerging reputation as an automotive headquarters center," said Ned Snavely, chairman of Destination Irvine (www.irvinechamber.com), the city's economic development group.

Irvine Mayor Christina Shea was similarly ebullient. "We're very excited to welcome the Premier Automotive Group to Irvine," said Shea. "Our city has become a destination location for some of the world's leading companies, and the prestigious addition of Jaguar, Volvo and Aston Martin is a resounding endorsement for the city."

Lon S. Hatamiya, secretary of the California Secretary of Trade and Commerce Agency (www.commerce.ca.gov) also weighed in on the Golden State's landing such a prestigious plum.

"This announcement shows how the dedicated efforts of the [Gov. Gray] Davis administration can bring a significant positive impact on the state's economic health," Hatamiya said. "We are delighted that Ford recognized the incredible attributes that our state has to offer in making its decision. Southern California is emerging as the place to be for automobile companies."

HQ Project Service Providers Named

Auto officials also unveiled an artist's rendering of the new facility at the PAG headquarters' announcement.

Officials also took the occasion of the announcement to name a number of the major service providers that will be working on the headquarters project. The participating companies that were announced included:

- Irvine-based LPA, which will be the project's design architect,
- Newport Beach, Calif.-based Koll Construction, which will be the project's construction manager, and
- Charlottesville, Va.-based William McDonough & Partners, which will be the project's environmental design consultant.

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Mexico Becomes Motown South

The nation's auto industry is growing fast because of top quality, not just low pay.
By John Lippert

Santitas corp., an auto parts maker headquartered in Mexico City, pays its workers \$2.60 an hour, or only one-fifth as much as similar workers in the U.S. earn. No surprise there. The company turns out brake rotors at the rate of only 20 defects per million, or just one-fifth the number allowed by customers. That's the surprise—and the chief reason, according to Santitas officials, that the company expects to increase its annual revenues 10-fold to \$1.3 billion by 2004.

To the dismay of industrial unions in the U.S., dozens of Mexican companies like Santitas are thriving in the auto industry, turning the country's low wages and world-class quality into a potent competitive edge. "What are the great manufacturing centers in North America?" asks Troy Clarke, president of General Motors de Mexico. "You've got Ontario and Michigan. You've got Kansas and Ohio and Indiana. Now you add Mexico to the list."

Mexico's vehicle production will increase 29 percent by 2004 to 2.27 million vehicles, with two-thirds destined for export, predicts Armando Soto, an analyst with Grupo Ciemex-WEFA in Mexico City. Mexican auto parts exports to the U.S. more than doubled to \$16.8 billion in 1999 from 1993. Analysts expect total exports to continue growing by at least 10 percent per year for the foreseeable future.

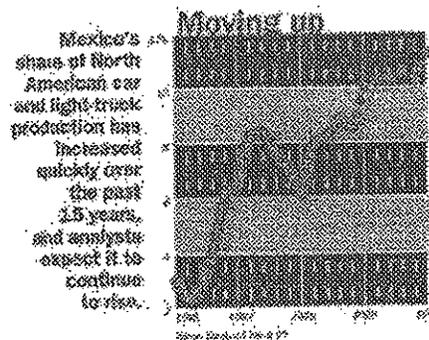
That's true in part because of new free-trade agreements with the European Union, Brazil, Israel, Chile, Nicaragua, and Costa Rica.

General Motors Corp., Ford Motor Co., DaimlerChrysler, Volkswagen, Nissan Motor Co., and Renault are all expanding their Mexican factories. PSA Peugeot Citroen plans to open a factory soon (see "Peugeot Goes It Alone" in this issue), Hyundai Motor Co. is searching for a car assembly site, and Fiat may build and sell cars in Mexico as part of its new alliance with GM. Even Toyota Motor Corp., which didn't make or sell a single car in Mexico last year, plans to start building cars there. "Mexico is good for these companies because it expands their sales base and because it's a great help with cost cutting," says David Healy, a Burriham Securities equity analyst. "Hopefully, they'll bring some of these savings down to the bottom line."

Mexico could soon have more auto workers than the U.S., even though the U.S. has two and a half times more people. By 2004 Mexico is expected to have 1.5 million auto workers, up from 1.1 million today, according to Ciemex-WEFA. These numbers include maquiladoras, or "twin plants," which line the U.S.-Mexican border and which import parts duty free from around the world and assemble them for export, usually to the U.S. North of the border, meanwhile, automotive employment will remain steady at 1.3 million jobs through 2004, according to Sean McAinden, a University of Michigan analyst.

Most stunning about the rapid growth in Mexico is the speed at which workers are stepping out of a preindustrial age. Even today, many of them have to be taught about bank accounts and automated teller machines before they can be paid electronically instead of in cash.

Still, thousands are eager to learn, and automakers are getting better at selecting, training, and motivating them. The companies have also learned how to design shop-floor equipment that reduces the chance of error. In Piedras Negras, on the southern shore of the Rio Grande, Sanluis used to paint "Made in Mexico" on its automotive suspensions in small, hidden-away letters, because it knew that customers regarded the country's quality as second-rate. Today it uses big yellow letters. "We are tops in quality, and our products are accepted all over the world," says Sergio Davila, vice president of the Piedras Negras plant.



Sanluis is a Mexican-owned company with roots in gold mining. It earned \$29 million before interest and other expenses during the first quarter on revenue of \$129.6 million. Its stock price was 14.5 pesos (\$1.46) per share at the beginning of June, down 23.2 percent for the year. It has invested about \$320 million over the past four years to expand its auto parts business because it recognizes the potential, through the North American Free Trade Agreement, for rapid growth in exports. It got its big break in 1997, when it

landed exclusive global contracts from GM for suspension and brake components on full-size pickups and sport utility vehicles.

In Piedras Negras, Sanluis has tripled its employment in the past four years to 1,900 people. It's using World Bank funds to build 840 pastel-colored, two-bedroom homes for workers. The homes will encourage parents to keep their kids in school instead of sending them out to find work, says Eugenio Madero, 32-year-old director of Sanluis suspension operations. The new homes also reduce turnover and absenteeism so much that, in effect, they've added the equivalent of seven days of output at the Sanluis factory, says Madero, who attended an advanced management program at Harvard University in 1997.

To qualify for the homes, workers must have no disciplinary or attendance problems for their first 90 days. If they stay with the company for 25 months, the rent they pay during that period, at \$75 per month, is converted into a down payment. Sanluis is growing and hiring workers in part because of its joint ventures with Italian and Japanese companies to obtain the latest metal-cutting technologies.

It also got engineering help from GM, which in 1997 was encouraging its Delphi Automotive Systems Corp. parts unit to concentrate on high-profit parts like mobile communications, not low-profit parts like brakes. That decision was part of the trend that's benefited the overall Mexican auto industry. "With the U.S. almost at full employment, people are moving into high-technology jobs," says Antonio Madero, 60, Sanluis's chairman and father of suspension chief Eugenio Madero. "Many people don't want to go into factories, where the work is hotter and heavier."

Mexico's new auto workers are more than ready to face the challenge. Victor Gallardo, 35, a worker at GM's truck assembly plant in Silao since 1994, is typical. He earns about \$3 an hour, or five times more than he was making at his old job at a tire factory. Because it was paying five times more than the Mexican minimum wage, the Silao plant was swarming with job applicants when Gallardo sought work there six years ago. The company screened 400 people per day for 50 days, or 20,000 in total, for basic math and reading skills as well as for their ability to learn and to work cooperatively with other people. On the day Gallardo applied, he was one of 20 to pass all of the tests even though he lacks a high school diploma. At first, Gallardo spent six weeks in classrooms, studying Japanese-style, lean-manufacturing techniques, including statistical process control, predictive maintenance, and standardized job descriptions so that wasted effort

can be identified and eliminated. During his first year at GM, he stayed an extra two hours every day for English classes. Gallardo is now a team leader in Silao's inspection area. Last fall, when Silao started building redesigned vehicles, Gallardo helped pinpoint faulty wires that were shutting down the air-conditioning on some of them.

The Silao plant lies at the center of Mexico, beneath a hill on which the Catholic church built a 60-foot statue of Jesus Christ in 1923. When the plant opened in 1995, Mexico was in the throes of a peso devaluation that cut vehicle sales by 70 percent to 188,000. The NAFTA treaty had just taken effect, encouraging exports, and the devaluation had cut Mexican manufacturing costs by 40 percent in dollar terms. So GM made a quick U-turn; it steered Silao toward exports and away from the Mexican market itself.

Today Silao is the primary builder worldwide for GM's Suburban, a nine-passenger sport utility that, with a \$5,000 profit for each one sold, is GM's most lucrative vehicle. Silao will soon also be building the Avalanche, a Suburban-size pickup that GM considers its most innovative vehicle in years. The company's aiming to build 240,000 vehicles at the plant next year, up from 129,739 in 1999.

The Silao plant uses 80 robots for tasks that are dangerous or that require a high degree of precision, such as body welds that maintain the vehicle's shape. A Janesville, Wis., factory making similar vehicles for GM uses 600 robots, since wages of \$22 an hour create incentives to reduce jobs.

Even though they're paid much less than workers in Janesville, Silao workers have more responsibility. They monitor costs, and they interact with suppliers when problems arise. They're assigned only two classifications—one for maintenance and one for production workers—compared with the dozens of classifications that Janesville workers use to limit the ability of management to alter or intensify their work. Also, unlike at U.S. plants, workers from outside companies build instrument panels and other subassemblies inside Silao itself. Such workers typically earn less than GM employees in Mexico.

In the U.S., unions sometimes use their clout to defend workers who violate shop-floor rules repeatedly. In Silao, says plant manager Hank Hale, "we'll talk once or twice, but if the problem continues, they don't stay employed." Silao's safety record, at 1.24 injuries or illnesses per 100 workers per year, is about seven times better than GM's U.S. plants'. Its productivity, at 32 hours of labor time per vehicle, is 9 percent higher than Janesville's. Its output recorded only 164 customer complaints per 100 vehicles during the first 90 days of ownership, according to J. D. Power and Associates. That was tops among GM's North American truck plants last year even though it was launching the redesigned Suburban. Because of Mexico's low wages, GM saves "hundreds of dollars" per vehicle compared with vehicles built in the U.S., according to Clarke of General Motors de Mexico.

As for Gallardo, he hopes to become a supervisor. He's happy that his daughter Victoria, who is 12, dreams of becoming a GM engineer. "My kids, they tell me not to leave GM," Gallardo says. "I want to stay here for a long time." Other automakers report similar success stories. A plant in Toluca, where DaimlerChrysler started building the hot-selling PT Cruiser, a low-price, retrodesign compact, in February, recorded the lowest warranty expense for any new model in its history. It achieved this in part by sending one-quarter of the plant's 3,500 workers to Michigan for training. Half the PT Cruiser's parts come from Mexican factories. Turnover is running at less than 1 percent a year.

In Juarez, a Delphi factory making antilock-brake sensors and other components boosted productivity by 125 percent in the past two years, to 180 pieces per worker per day. It achieved this not with big capital investments but with lean-manufacturing techniques, including simplified designs that allowed rapid changeovers from one type of product to another.

Lee Crawford, head of Delphi's Mexican operations, remembers being surprised at how quickly quality improved after the company started large-scale hiring in Juarez in 1978. One of his big challenges, he says, is to get U.S. executives to delegate authority to Mexican subordinates at a pace commensurate with their talents.

Good things happen when these workers are allowed to take on responsibility. Take Lino Perez, who worked as a courier in the Juarez customs office as a teenager. Today, at 56, he runs cross-border shipping operations for 22 Delphi factories. He grew up in a two-room stucco house not far from the Catholic cathedral in Juarez. Today he lives in a two-story, three-bedroom house with tile floors and air-conditioning. His Juarez neighborhood, which mushroomed during the post-NAFTA export boom, is filled with U.S. retailers like Wal-Mart and Wendy's. "For many years, we had a lack of employment. Now, we have lots of employment. The people have the opportunity to learn, to develop their skills," Perez says.

In Puebla, Volkswagen says it's building Jettas and New Beetles with the same quality as at the company's German factories. Prior to the New Beetle launch in 1997, Volkswagen chairman Ferdinand Piech made several visits to the Puebla plant, spending days at a time on the shop floor itself. He made detailed assignments to subordinates, and he insisted for the first time that the Puebla plant compare its quality performance with factories around the world, not just with factories in Mexico.

Bernd Leissner, president of Volkswagen's Mexican operations, marvels at white-collar workers who can routinely be found at their desks at 8 p.m. and who attend language classes besides. "How many American workers are learning two languages?" Leissner asks.

Jose Garcia, 38, has worked as an assembler at the Volkswagen plant for two years. He points with pride to an in-house magazine in which he was recognized for designing a tool that aligns the Beetle's hand brake. "Me, I work on the line," he says. "My kids, I want them to be bosses."

Mexico has been slow to gain recognition for its new industrial prowess, in part because top automakers like GM don't want to antagonize the United Auto Workers union, which is becoming increasingly prickly about the rise of the low-wage Mexican auto industry. "I'm a tough guy, but I don't go around with a sign saying 'kick me,'" GM's Clarke says.

UAW president Stephen Yokich has regularly predicted mushrooming trade deficits due to Mexico's auto business, and in that regard he's certainly been correct.

Since 1993, two-way automotive trade between the U.S. and Mexico grew by about two and a half times to \$44.4 billion in 1999. But because imports from Mexico grew at a much faster rate than exports to Mexico, the U.S. automotive trade deficit was \$20.7 billion in 1999, or about six times more than in 1993.

Yokich has also been complaining about downward pressure on wages in the U.S., contending in a recent speech that free-trade advocates are "trying to drive our pay and benefits down to what the Mexican workers get."

There, too, he may have a point. In March, American Axle & Manufacturing Holdings opened a new factory in Guanajuato, Mexico. It's the world's first high-volume plant to cut the gears that go inside axles to precise dimensions without the use of messy and often toxic liquid coolant. Its computers recommend adjustments to the speed, depth, and direction of its cutting tools if they detect small imperfections in gears as they're cut. "In the past, we'd need to hire an expensive job setter to know how to tweak the system. This technology does it for us," says Curt Howell, 37-year-old plant manager, who speaks five languages.

The American Axle plant's 328 workers make about \$2.60 an hour. They haven't built a single defective axle since the plant opened.

On May 22 American Axle announced it plans to build an identical axle line in Three Rivers, Mich. Before that announcement, it informed the UAW that this investment would be impossible at the UAW's normal pay of \$22 an hour. The union agreed that the plant's 187 new workers will receive \$17. Both sides declined to comment, since UAW leaders worry they'll be inundated with similar proposals from other companies.

At the same time, there's some pressure building for higher wages in Mexico. From

1995 to 1999, as the Mexican economy staggered through a sharp slump following a 1994 peso devaluation, productivity in the Mexican auto industry rose 10.3 percent. But real wages fell 20 percent, according to CIEMEX-WEFA. From 2000 to 2004, productivity is expected to rise 9 percent, but real wages will rise 33 percent, CIEMEX-WEFA says.

Mexican wages are rising because the local economy is improving. Vehicle sales in Mexico could double by 2005 to 1.5 million annually, says Mustafa Mohatarem, GM's chief economist. Wages are also rising because skilled workers are increasingly hard to find in northern industrial centers like Monterrey and because just-in-time delivery methods give workers more clout.

The specter of labor unrest is also rising. In Puebla, Siemens employs 2,500 workers at a factory making wire harnesses, which control dozens of electrical functions in the Volkswagen Beetle. In December the workers staged a two-day strike, disrupting the nearby Volkswagen plant and related suppliers employing a total of 24,000 workers. Siemens agreed to a 30 percent wage increase, bringing starting pay to about 90 cents an hour. The Siemens workers, most of whom are single mothers, risked going on strike "because the salary we were receiving wasn't enough to support a family," says Raquel Olarte, who is 26. Olarte is now an officer in an independent union formed to replace the government-affiliated union that was in place at Siemens prior to the strike.

Raul Ramos, deputy secretary of SECOFI, Mexico's commerce department, doesn't want Mexico's wages to rise too fast. That's true in part because companies like GM are investing in the Czech Republic and Poland, where wages are half those in Mexico. Ramos is trying to relieve wage pressure in the northern industrial centers by shifting investment to impoverished provinces in the south. He's particularly proud of the first maquiladora to open in Chiapas. It's an automotive wire harness plant owned by Axa Yazaki.

The 200 workers at the Axa Yazaki factory, which supplies a variety of automakers, make about 60 cents an hour. That's a high salary for Chiapas, which has virtually no industry, but Axa Yazaki isn't running a charity. The company is requiring the Chiapas plant to meet the same quality targets as the company's two dozen maquiladoras in northern Mexico, and it's doing just that. Since the plant opened late last year, it's been generating fewer than 10 defective wire harnesses for every million that it's built.

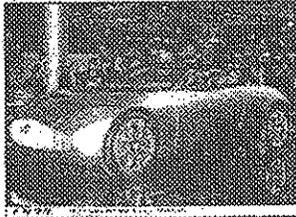
That's a striking accomplishment, considering most wire harness factories in Europe and Japan are happy with a defect rate of 50 per million. In the rapidly expanding Mexican auto industry, the surprises just keep coming.

*John Lippert covers The World Auto Industry at Bloomberg News in Detroit.
jlippert@bloomberg.net*

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Special Events

Detroit Motor Show



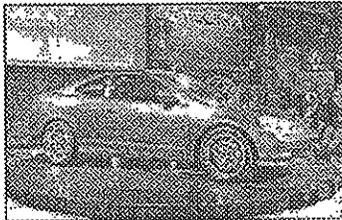
MOTOWN ON A ROLL

The very first auto shows of the new millennium kicked off within days of each other and curiously both of them were in the US of A. The first was the Los Angeles Auto Show where a few new cars were revealed by some of the top auto makers but it was the dazzling North American International Auto Show, held in Detroit which pretty much impressed. OVERDRIVE's exclusive coverage of these two shows begins here.

Bob Lutz, former president of Chrysler and the driving force behind the outrageous Viper sports car, crystallised a general opinion when he presented his latest venture at the North American Auto Show in Detroit. "This," he said, presenting the graceful if oversized 200,000-dollar Cunningham C7 Coupe, "is designed to look like a car. Not a toaster, a trash compactor or the front of a snowplough: a car. And if that is out of fashion, we apologise."

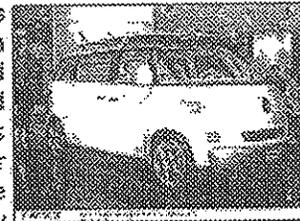
If the concept vehicles at the Detroit show are anything to go by, there will be fewer and fewer cars as we know them in the years ahead. America's volume manufacturers, whose fortunes depend more on trucks - pick-ups, sport utilities and MPVs - than cars, are gradually introducing more and more 'crossover' vehicles that blur the distinctions between saloons, coupes, sports cars, and trucks.

It is the tough, working vehicle image that comes through most strongly in the Motor City.



A few years ago, who would have imagined that Cadillac, maker of the extravagant, softly-cushioned cars of Hollywood stars, would give pride of place among new production models to an amalgam of a sport utility vehicle and a pick-up truck?

Bob Lutz once said that if the Viper, which was intended as a raw, uncompromising muscle car, ever received such modern conveniences it would have lost its way. But he is long gone from Chrysler and now embarking on the revival of the most famous American sports car. He and Briggs Cunningham III, son of the famous racing driver and America's Cup sailor, are co-owners of the company that intends to make the C7 a fast, comfortable and refined Grand Touring car that can rival the Ferrari 456 and Aston Martin Vanquish. There was much to see and appreciate at Detroit as was much to view and dismiss, it was that type of a show.



Ray Hutton



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DOCUMENT INFORMATION	
TRADEMARK/SERVICEMARK APPLICATION	
VERSION 1.24	
APPLICANT INFORMATION	
NAME	Ford Motor Company
STREET	1 The American Road
CITY	Dearborn
STATE	MI
COUNTRY	USA
ZIP/POSTAL CODE	48121
TELEPHONE NUMBER	313-323-2023
FAX NUMBER	313-323-2647
E-MAIL ADDRESS	tmgroup@ford.com
AUTHORIZE E-MAIL COMMUNICATION	Yes
APPLICANT ENTITY INFORMATION	
CORPORATION: STATE/COUNTRY OF INCORPORATION	Delaware
TRADEMARK/SERVICEMARK INFORMATION	
MARK	MOTOWN
TYPED FORM	Yes
BASIS FOR FILING AND GOODS/SERVICES INFORMATION	
INTENT TO USE: SECTION 1(b)	Yes

78101526

INTERNATIONAL CLASS NUMBER	036
LISTING OF GOODS AND/OR SERVICES	Financial services, namely, asset backed commercial paper program, consumer and commercial loan lending services, loan collection services, accounts - <i>financing 036</i> receivable management, services relating to the trading of equity derivatives. <i>Sys 035</i>
ATTORNEY INFORMATION	
NAME	Gregory P. Brown
STREET	1 Parklane Boulevard
CITY	Dearborn
STATE	MI
COUNTRY	USA
ZIP/POSTAL CODE	48126
FIRM NAME	Ford Global Technologies, Inc.
TELEPHONE NUMBER	313-323-1826
FAX NUMBER	313-323-2647
ATTORNEY DOCKET NUMBER	200211
OTHER APPOINTED ATTORNEY(S)	Susan N. McFee; Donald B. Aiken
FEE INFORMATION	
TOTAL FEES PAID	325
NUMBER OF CLASSES PAID	1
NUMBER OF CLASSES	1
LAW OFFICE INFORMATION	
E-MAIL ADDRESS FOR CORRESPONDENCE	tmgroup@ford.com

78101526

SIGNATURE AND OTHER INFORMATION	
SIGNATURE	/thomas dezure/
DATE	01/08/2002
NAME	Thomas DeZure
TITLE	Assistant Secretary
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LINE	Ford Global Technologies, Inc.
LINE	1 Parklane Boulevard
LINE	Dearborn MI 48126
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<CORPORATION: STATE/COUNTRY OF INCORPORATION> Delaware

<TRADEMARK/SERVICEMARK INFORMATION>

<MARK> MOTOWN
 <TYPED FORM> Yes

* Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq., as amended). *

<BASIS FOR FILING AND GOODS/SERVICES INFORMATION>

<INTENT TO USE: SECTION 1(b)> Yes

* Applicant has a bona fide intention to use or use through a related company the mark in commerce on or in connection with the below-identified goods/services. (15 U.S.C. Section 1051(b), as amended.) *

<INTERNATIONAL CLASS NUMBER> 036

<LISTING OF GOODS AND/OR SERVICES> Financial services, namely, asset backed commercial paper program, consumer and commercial loan lending services, loan collection services, accounts receivable management, services relating to the trading of equity derivatives.

<ATTORNEY INFORMATION>

<NAME> Gregory P. Brown
 <STREET> 1 Parklane Boulevard
 <CITY> Dearborn
 <STATE> MI
 <COUNTRY> USA
 <ZIP/POSTAL CODE> 48126
 <FIRM NAME> Ford Global Technologies, Inc.
 <TELEPHONE NUMBER> 313-323-1826
 <FAX NUMBER> 313-323-2647
 <ATTORNEY DOCKET NUMBER> 200211
 <OTHER APPOINTED ATTORNEY(S)> Susan N. McFee; Donald B. Aiken

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<LAW OFFICE INFORMATION>
 * The USPTO is authorized to communicate with the applicant at the below e-mail address
 *

<E-MAIL ADDRESS FOR CORRESPONDENCE> tmgroup@ford.com

<SIGNATURE AND OTHER INFORMATION>
 * PTO-Application Declaration: The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true. *

<SIGNATURE> /thomas dezure/
 <DATE> 01/08/2002
 <NAME> Thomas DeZure
 <TITLE> Assistant Secretary

<MAILING ADDRESS>

<LINE> Gregory P. Brown
<LINE> Ford Global Technologies, Inc.
<LINE> 1 Parklane Boulevard
<LINE> Dearborn MI 48126

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Internet Transmission Date:
2002/01/08

Serial Number:
78101526

Filing Date:
2002/01/08



TRADEMARK APPLICATION

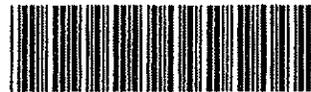
U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

TOTAL FEES PAID: \$325

RAM SALE NUMBER: 91
RAM ACCOUNTING DATE: 20020109



NO OCR



01-08-2002

Exhibit: A
Page: 167

Drawing Page

Serial Number:

78101526

Applicant:

Ford Motor Company
1 The American Road
Dearborn MI USA 48121



Goods and Services:

Financial services, namely, asset backed commercial paper program, consumer and commercial loan lending services, loan collection services, accounts receivable management, services relating to the trading of equity derivatives.

Mark:

MOTOWN

REGISTERED
9/23/03

AMENDED TO
SUPPLEMENTAL REGISTER



NO OCR



01-08-2002

Exhibit: A
Page: 168

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FULL TEXT OF CASES (USPQ2D)

All Other Cases

Rockland Mortgage Corp. v. Shareholders Funding Inc. (DC Del) 30 USPQ2d 1270 (10/8/1993)

Rockland Mortgage Corp. v. Shareholders Funding Inc. (DC Del) 30 USPQ2d 1270
Rockland Mortgage Corp. v. Shareholders Funding Inc.

U.S. District Court District of Delaware
30 USPQ2d 1270

Decided October 8, 1993

No. 93-211 MMS

Headnotes

TRADEMARKS AND UNFAIR TRADE PRACTICES

1. Types of marks -- Arbitrary or fanciful -- Particular marks (§ 327.0803)

"Rockland Mortgage Corp.," for retail mortgage corporation, is arbitrary mark.

2. Infringement; conflicts between marks -- Likelihood of confusion -- Particular marks -- Confusion likely (§ 335.0304.03)

Confusion is likely between plaintiff's "Rockland Mortgage Corp." and defendant's "Rockwell National Mortgage," both for retail mortgage companies, even though defendant used mark in good faith and even though consumers are likely to use greater care in purchasing retail mortgages, since plaintiff's mark is arbitrary with high consumer recognition and is relatively strong both conceptually and commercially, since marks are confusingly similar in appearance, sound, and manner of use, and since instances of actual confusion occurred following defendant's use of mark.

REMEDIES

Exhibit: A
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3. Non-monetary and injunctive -- Equitable relief -- Preliminary injunctions -- Trademarks and unfair trade practices (§ 505.0707.09)

Trademark infringement plaintiff's three-month delay between filing of complaint and filing of motion for preliminary injunction was reasonable and does not demonstrate lack of irreparable injury, since plaintiff was occupied, in part, by attempt to resolve matter without further litigation.

4. Non-monetary and injunctive -- Equitable relief -- Preliminary injunctions -- Trademarks and unfair trade practices (§ 505.0707.09)

Harm to defendant that would be caused by preliminary injunction barring its use of mark 'Rockwell National Mortgage' that has been found confusingly similar to plaintiff's "Rockland Mortgage Corp." does not outweigh benefits to plaintiff of granting preliminary relief, since plaintiff's loss of control over its own reputation for service, after five years in business, is far greater than loss of reputation to defendant by having to change its name after only nine months in business.

Case History and Disposition:

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Action by Rockland Mortgage Corp. against Shareholders Funding Inc., d/b/a Rockwell National Mortgage, for trademark infringement, unfair competition, deceptive trade practices, and violation of Delaware Uniform Deceptive Trade Practices Act. On plaintiff's motion for preliminary injunction. Granted.

Attorneys:

Vincent M. Amberly, of Nath, Lambert & Amberly, Washington, D.C.; Charles Gruver III, of Taylor & Gruver, Wilmington Del., for plaintiff.

Donald F. Parsons Jr. and Karen A. Jacobs, of Morris, Nichols, Arsht & Tunnell, Wilmington (Robert B. Bodzin and Jeffrey D. Hofferan, of Mesirov, Gelman, Jaffe, Cramer & Jamieson, Philadelphia, Pa., of counsel), for defendant.

Opinion Text

Opinion By:
Schwartz, J.

I. INTRODUCTION

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Plaintiff, ROCKLAND MORTGAGE CORP., has filed suit against defendant, Shareholders Funding,

Inc., alleging trademark infringement, 1unfair competition, and deceptive trade practices under the Lanham Act, 15 U.S.C. Section 1125(a), the Delaware

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Uniform Deceptive Trade Practices Act, Del. Code Ann. tit. 6, Section 2531 *et seq.*, and the common law. The Court has subject matter jurisdiction over plaintiff's Lanham Act claim pursuant to 28 U.S.C. Section 1338(a). The related state statutory and common law claims fall within the Court's pendent jurisdiction pursuant to 28 U.S.C. Sections 1338(b) and 1367(a).

Plaintiff has moved for a preliminary injunction and defendant has filed a motion for summary judgment. This opinion addresses the former motion. 2Plaintiff requests the Court enjoin defendant from using the ROCKWELL NATIONAL MORTGAGE mark pending the final outcome of the case. For the reasons which follow, the Court will grant plaintiff's motion for a preliminary injunction.

II. FINDINGS OF FACT

On July 11, 1988, plaintiff was incorporated in Delaware as Rockland Mortgage Ltd. Docket Item ["D.I."] 1 at 2. Effective August 5, 1988, plaintiff changed its name to ROCKLAND MORTGAGE CORP. and has operated continuously under the name since that time. *Id.* The parties dispute how plaintiff came to choose its name, but both parties agree there is a location in New Castle County known as Rockland, Delaware which consists of one business, residential condominiums, several estates, and a post office which does not deliver mail. D.I. 19 Ex. A at Para. 5; D.I. 21 at C-16.

For the last five years, plaintiff has provided retail mortgages in New Castle County, Delaware and in several counties within Pennsylvania. D.I. 15 at A-2. During that time, plaintiff has advertised and promoted its mark in those areas through the following media and means: local telephone books, newspapers, radio, flyers, realtor seminars, open house sheets, rate sheets, real estate talk shows, gifts and other promotional items for realtors. D.I. 15 at A-2. Plaintiff has expended more than \$100,000 in such promotions. *Id.* As a result of its efforts, plaintiff has developed a sound reputation and has successfully placed mortgages worth over \$260,000,000. D.I. 15 at A-2-3. Plaintiff also plans to "expand regionally and then nationally after establishing [itself] in the Delaware and Southeastern Pennsylvania market." D.I. 21 at C-1.

During its first four years of operation, plaintiff was owned by its current president, Kevin Jorlin, and Steven Fasick. D.I. 15 at A-3. On June 12, 1992, Fasick agreed to sell his ownership interest, and "agreed to a one year consulting arrangement and provided other covenants, representations and warranties for payment, in the aggregate, of approximately \$200,000.00." D.I. 1 at 3. Fasick, along with two other employees, left plaintiff to become involved with a proposed new retail mortgage company. D.I. 15 at A-3. That company, defendant Shareholders Funding, Inc. ["Shareholders"], was incorporated in Pennsylvania on or around July 6, 1992. D.I. 1 at 3. Plaintiff originally alleged defendant filed a fictitious name certificate with the New Castle County Prothonotary's Office on that same day, indicating it intended to do business under the fictitious name ROCKWELL NATIONAL MORTGAGE. *Id.* At an October 1, 1993 hearing on the present motion ["the hearing"], however, plaintiff conceded it was in error and the parties stipulated the certificate was filed on January 4, 1993.

The circumstances leading up to defendant's selection of its mark are as follows: Defendant was involved in a proposed acquisition, pending since June of 1992, of a New York company known as ROCKWELL EQUITIES INC. D.I. 19 Ex. A at Para. 7. On November 2, 1992, defendant issued a private placement memorandum setting forth the terms of that acquisition. Defendant's Hearing Exhibit ["DX"] 2. Shortly thereafter on November 25, 1992, defendant filed a fictitious name certificate with the Pennsylvania Department of State indicating defendant intended to do business under the fictitious

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name ROCKWELL NATIONAL MORTGAGE. DX-1. At the hearing, defendant offered testimony that it began doing business under that name in December of 1992. 3 On February 5, 1993, however, defendant

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issued an amended private placement memorandum which no longer included the acquisition of ROCKWELL EQUITIES INC. among its terms. DX-3. According to defendant, the acquisition could not go forward because ROCKWELL EQUITIES INC. was no longer sure it wished to be acquired. At that point, as Fasick testified at an unrelated arbitration proceeding, "we were left with a situation where we've got to pick a name, okay, and we wanted to use the name Rockwell if . . . Rockwell in New York closed. And if it didn't, we still needed to have the name." D.I. 19 Ex. A-1 at 17. Defendant added the word "NATIONAL" to its ROCKWELL NATIONAL MORTGAGE mark to further distinguish it from plaintiff's ROCKLAND MORTGAGE CORP. mark. D.I. 19 Ex. A at Para. 9.

Patricia Hobbib, testifying for defendant, stated at the hearing defendant started doing business under the ROCKWELL NATIONAL MORTGAGE mark in Pennsylvania during December of 1992, and in Delaware during March of 1993. For the previous five months, defendant had done business under its Shareholders name. D.I. 19 Ex. A-1 at 20.

As of August 27, 1993, when defendant filed its answering brief, it had eleven offices with three new offices scheduled to open in September of 1993. D.I. 19 Ex. B at Para. 2. At that time, there was one office in Wilmington, Delaware; seven in Pennsylvania; one in southern New Jersey; one in Maryland; and one in Virginia. *Id.* at Para. 3. In order to advertise and promote those offices, defendant has spent \$27,000 through the following media and means: newspapers, cable television, community seminars, and outside promotional items. D.I. 19 Ex. B at Para. 11. While defendant claims also to have committed \$250,000 to a one year advertising contract, *id.* at Para. 12, defendant's counsel consulted with his client during the hearing and conceded defendant has actually committed a much smaller sum of not more than \$100,000.

Plaintiff and defendant, as retail mortgage companies, compete in both the purchase and refinance mortgage markets. In the purchase market, the source of business is usually professional consumers, such as realtors, who recommend a retail mortgage company to their buyers. D.I. 19 Ex. B at Para. 4. In the refinance market, the source of business is usually ordinary consumers seeking to refinance their existing mortgages at lower rates. D.I. 19 Ex. B at Para. 6.

According to defendant, plaintiff was aware defendant was using the ROCKWELL NATIONAL MORTGAGE name "as early as November of 1992." D.I. 19 at 2. By contrast, plaintiff claims it gradually became aware of defendant's commencing use of its mark in February of 1993, when it began to experience instances of actual consumer confusion between the competing retail mortgage companies. D.I. 21 at 3. Those instances, over time, came to include the following: (1) various persons, including realtors and potential customers, placed telephone calls to plaintiff when they intended to call defendant, and vice versa (D.I. 21 at C-5-8, C-14-17, C-23-24, C-28-29, C-34; Plaintiff's Hearing Exhibit ["PX"] 4); (2) plaintiff received mail intended for defendant (D.I. 21 at C-14, C-23, C-29; PX-1, PX-2, PX-5-8); (3) plaintiff mistakenly paid some of defendant's bills (D.I. 21 at C-14-15); (4) a temporary employee presented herself to plaintiff when she was scheduled to work for defendant (D.I. 21 at C-14); and (5) various persons, including realtors and potential customers, called plaintiff to complain about services rendered by defendant (D.I. 21 at C-6, C-8, C-23, C-32-33). At the hearing, plaintiff produced further evidence of actual confusion, including a flyer sent by a wholesale mortgage lender to its employees. *See* PX-9 (affidavit identifying flyer as the one distributed). The flyer, acknowledging "PHH US Mortgage employees have been confusing" plaintiff and defendant, was intended to dispel that employee confusion as to the two marks at issue in this case. PX-3.4

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On March 24, 1993, the National Mortgage Bankers sponsored a convention party

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in Atlantic City, New Jersey. D.I. 15 at A-27. At that party, Fasick approached Janine Smith, an employee of plaintiff, and told her that defendant had benefitted from a series of radio advertisements commissioned by plaintiff. D.I. 15 at A-27; D.I. 21 at C-13-14. Smith also stated, in her affidavit:

Mr. Fasick stated that his company had not conducted any radio advertising and that numerous consumers had called his office in response to the radio advertising. Mr. Fasick stated that he should probably wait until Kevin Jornlin had a few more drinks before expressing his appreciation to Mr. Jornlin. A short time later, I was present when Mr. Fasick and Mr. Jornlin discussed this same matter.

D.I. 15 at A-27. Jornlin, too, remembers hearing that several customers were confused as to the source of the radio advertisements. D.I. 15 at A-4. Fasick asserts, however, he mentioned only one confused customer ("someone"), and then only "jokingly." D.I. 19 Ex. A at Para. 14.

Also on March 24, 1993, plaintiff's counsel mailed a letter to defendant claiming trademark infringement in its use of the ROCKWELL NATIONAL MORTGAGE name. 5 D.I. 19 Ex. A-3. In that letter, plaintiff stated if defendant did not provide an adequate response by April 6, 1993, plaintiff would initiate legal action. *Id.* On April 6, 1993, defendant's counsel mailed a letter to plaintiff denying infringement, claiming "no evidence of actual or likely confusion," and warning that upon initiation of legal action, defendant would seek sanctions under Rule 11 of the Federal Rules of Civil Procedure. D.I. 19 Ex. A-4.

On April 29, 1993, plaintiff filed suit against defendant alleging trademark infringement, unfair competition, and deceptive trade practices. Plaintiff was initially unable to secure its preferred counsel, Vincent M. Amberly, who was in the process of leaving his former law firm. D.I. 21 at C-40. In June of 1993, however, Jornlin authorized Amberly to proceed as counsel for plaintiff. D.I. 21 at C-41. Plaintiff and defendant, through counsel, communicated throughout July of 1993 attempting to settle the dispute without resorting to litigation. D.I. 21 at C-41. For example, on July 12, 1993, Amberly mailed a letter to Robert Bodzin, counsel for defendant, offering specific instances of actual confusion. D.I. 21 at C-43. When Bodzin offered no response, Amberly testified in his affidavit that "[a]s soon as it was apparent that the Defendant would not be willing to change its name to a less confusing name, Mr. Jornlin authorized me to proceed with the preparation and filing of a Motion for a Preliminary Injunction in this matter." D.I. 21 at C-41.

On August 4, 1993, plaintiff filed the present motion for a preliminary injunction. D.I. 15. On August 27, 1993, defendant joined issue and moved for summary judgment. D.I. 19. Plaintiff replied on September 13, 1993. D.I. 21. On October 1, 1993, the Court held an evidentiary hearing on the preliminary injunction motion.

IV. DISCUSSION

The Court must analyze four factors in determining whether a preliminary injunction should issue: (1) the likelihood the movant will succeed on the merits at trial; (2) the extent of irreparable harm suffered by the movant as a result of the complained of conduct; (3) the extent of irreparable harm that would be suffered by the non-movant upon the issuance of the preliminary injunction; and (4) the public interest. *S & R Corp. v. Jiffy Lube Int'l, Inc.*, 968 F.2d 371, 374 [23 USPO2d 1201] (3d Cir. 1992). "All four factors should favor preliminary relief before the injunction will issue." 6 *Id.* The Court will discuss each factor in turn.

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A. Likelihood of Success

The rights of plaintiff in its trademark, if any, arise under common law because the

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mark is not federally registered. 7 In order to succeed in a trademark infringement case, then, plaintiff must show: "(1) the marks are valid and legally protectable; (2) the marks are owned by the plaintiff; and (3) the defendant's use of the marks to identify goods or services is likely to create confusion concerning the origin of the goods or services." *Opticians Ass'n v. Indep. Opticians*, 920 F.2d 187, 192 [17 USPO2d 1117] (3d Cir. 1990). Defendant has presented no argument as to element (2), 8 but disputes elements (1) and (3).

1. Validity and Protectability

Plaintiff's mark can be protected only to the extent it is "distinctive." According to the United States Supreme Court, "[t]he general rule regarding distinctiveness is clear: an identifying mark is distinctive and capable of being protected if it *either* (1) is inherently distinctive or (2) has acquired distinctiveness through secondary meaning." *Two Pesos, Inc. v. Taco Cabana, Inc.*, ___ U.S. ___, ___, 112 S.Ct. 2753, 2758 [23 USPO2d 1081] (1992) (emphasis in original). That is, unless plaintiff can show its mark is inherently distinctive, plaintiff must prove secondary meaning. Secondary meaning, "in essence, is the development of an association in the minds of consumers between the mark and a single source of the good or service." *Accu Personnel, Inc. v. AccuStaff, Inc.*, 823 F.Supp. 1161 [27 USPO2d 1801] (D. Del. 1993) (citing 1 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* Section 15.02 [1] at 15-8 (3d ed. 1992)).

Marks are classified along a spectrum of distinctiveness which ranges from "fanciful" and "arbitrary" marks at one end, to "suggestive" and "descriptive" marks, and finally to "generic" marks at the other end. 9 *Id.* at 1165. Fanciful marks are words coined for the sole purpose of functioning as trademarks. 1 McCarthy Section 11.03 [1]. See, e.g., *Eastman Kodak Co. v. Rakow*, 739 F.Supp. 116, 117 [15 USPO2d 1631] (W.D.N.Y. 1989) (" [t]he Kodak trademark is perhaps one of the strongest and most distinctive trademarks . . . in the world"). Arbitrary marks are words which enjoy common usage, but are chosen so as to "neither suggest nor describe any ingredient, quality or characteristic" of the underlying good or service. *Ford Motor Co. v. Summit Motor Prods., Inc.*, 930 F.2d 277, 292 n.18 [18 USPO2d 1417] (3d Cir. 1991), *cert. denied sub nom. Altran Corp. v. Ford Motor Co.*, 112 S.Ct. 73 (1991) (quoting 2 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* Section 11:4 (2d ed. 1984)). Suggestive marks also enjoy common usage, but they do suggest the underlying good or service, requiring "imagination, thought and perception to reach a conclusion as to the nature" of the good or service. 1 McCarthy Section 11.21 [1] at 11-107 (quoting *Stix Products, Inc. v. United Merchants & Mfrs., Inc.*, 295 F.Supp. 479, 488 [160 USPO 777] (S.D.N.Y. 1968)). By contrast, descriptive marks immediately convey "the intended purpose, function or use of the goods; the size of the goods, the class of users of the goods, a desirable characteristic of the goods, or the end effect upon the user." 1 McCarthy Section 11.05 [2] [a] at 11-20. No imagination is required. See, e.g., *Eagle Snacks, Inc. v. Nabisco Brands, Inc.*, 625 F.Supp. 571, 580 [228 USPO 625] (D.N.J. 1985) (holding HONEY ROAST honey roasted nuts to be descriptive). Generic terms can never be used as marks. 1 McCarthy Section 12.01 [2].

In classifying a mark, the Court does not look to the intent of the party choosing that mark. Instead, the impact of the mark on the minds of prospective consumers is controlling. "The meaning of a term to a non-purchasing segment of the population is neither relevant nor important." 1 McCarthy Section 11.06 [2] at 11-27. See also *id.* (" [a] term should be characterized as 'descriptive' only if a substantial

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portion of prospective customers recognize it as such"). Therefore, contrary to the great weight of argument at the hearing, it does not matter what motivated

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plaintiff's original principals when they chose plaintiff's mark. What matters is the impact of that mark on prospective consumers of retail mortgages.

A fanciful, arbitrary, or suggestive mark is termed "inherently distinctive," and no proof of secondary meaning is required. *Ford Motor Co.*, 930 F.2d at 292 n.18. A descriptive mark, however, "is not inherently distinctive and its proponent must demonstrate the mark has acquired distinctiveness through secondary meaning in order for the mark to merit protection." *Accu Personnel*, 823 F.Supp. at 1165 (citation omitted). The classification of a mark is a factual issue, to be resolved by the factfinder. *Ford Motor Co.*, 930 F.2d at 292 n.18.

Plaintiff contends its mark is suggestive, because its components suggest the qualities of plaintiff's business. 10 Specifically, according to Jornlin, he favored using the ROCKLAND MORTGAGE CORP. name "based upon the strength of the term 'rock' and that mortgage companies dealt with real estate or 'land.'" D.I. 21 at C-2. Smith adds her recollection "that we were choosing a name that could be used regionally and possibly nationally in the future, thus we did not want to choose a name that would be tied to a specific location and become a negative to future expansion of the company." 11 D.I. 21 at C-13.

By contrast, defendant contends plaintiff's mark is descriptive, because it describes the "prestige of [a] well known town in the Wilmington area" containing several estates. D.I. 19 Ex. A at Para. 5. In addition, Fasick asserts "we considered many names and finally decided to choose a name that had local significance and would be recognized as a local lender." 12 *Id.* The recollections of the parties are therefore directly in conflict. Neither party, however, addresses how the average prospective consumer would view plaintiff's mark.

[1] The Court, as factfinder, preliminarily resolves the conflict in favor of plaintiff yet finds its ROCKLAND MORTGAGE CORP. mark to be arbitrary and neither suggestive nor descriptive. 13 The combination of "ROCK" and "LAND" may, in the minds of Jornlin and Smith, suggest certain qualities of stability in the mortgage business. In the minds of potential retail mortgage purchasers, however, the combination is more likely to be simply arbitrary. Potential purchasers may just as easily take the "ROCKLAND" portion of the mark to signify "stony terrain" as "a stable business pertaining to real estate." *Cf. Accu Personnel*, 823 F.Supp. at 1166 (holding the ACCU mark suggestive because it "derives from the word accurate, but is not the word itself. . . . [and] [t]he short leap of the imagination required to derive this meaning renders the mark suggestive"). Plaintiff's mark requires more than "imagination, thought and perception to reach a conclusion as to the nature" of its products. 1 McCarthy Section 11.21 [1] at 11-107 (quoting *Stix Products, Inc.*, 295 F.Supp. at 488). It requires mind reading. The mark is therefore not suggestive.

Neither is the mark descriptive, for it does not immediately convey "the intended purpose, function or use of the goods; the size of the goods, the class of users of the goods, a desirable characteristic of the goods, or the end effect upon the user." 1 McCarthy Section 11.05 [2] [a] at 11-20. The Court finds it definitely does not convey the prestige of a widely known neighborhood. In fact, it stretches credulity to find plaintiff had an intention of hitching its fortunes to what is truly an "obscure geographic location in

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Northern Delaware," D.I. 21 act C-2, which includes only one business. 14 D.I. 21 at C-16. The mark is therefore not descriptive.

Instead, plaintiff's mark is arbitrary, because it enjoys common usage, but "neither suggest[s] nor describe [s] any ingredient, quality or characteristic" of plaintiff's product to the average potential customer. *Ford Motor Co.*, 930 F.2d at 292 n.18 (quoting 2 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* Section 11:4 (2d ed. 1984)). Because it is arbitrary, plaintiff's mark is inherently distinctive and thus both valid and protectable without proof of secondary meaning.

2. Likelihood of Confusion

Defendant is guilty of infringing plaintiff's mark only if the use of defendant's mark to identify its mortgage services is likely to create confusion concerning their origin. 15 *Opticians*, 920 F.2d at 192. The Third Circuit Court of Appeals has enumerated a nonexclusive list of factors to consider in determining likelihood of confusion: 16

(1) the degree of similarity between the owner's mark and the alleged infringing mark; (2) the strength of [the] owner's mark; (3) the price of the goods and other factors indicative of the care and attention expected of consumers when making a purchase; (4) the length of time defendant has used the mark without evidence of actual confusion arising; (5) the intent of the defendant in adopting the mark; (6) the evidence of actual confusion; (7) whether the goods, though not competing, are marketed through the same channels of trade and advertised through the same media; (8) the extent to which the targets of the parties' sale efforts are the same; (9) the relationship of the goods in the mind of the public because of the similarity of function; (10) other facts suggesting that the consuming public might expect the prior owner to manufacture a product in the defendant's market.

Ford Motor Co., 930 F.2d at 293 (citing *Scott Paper Co. v. Scott's Liquid Gold, Inc.*, 589 F.2d 1225, 1229 [200 USPQ 421] (3d Cir. 1978)). In the present case, defendant concedes element (8) tips the scales in favor of confusion. D.I. 19 at 19 ("the targets are identical"). Arguably, elements (7), (9), and (10) do not apply to the circumstances of this case, 17 so the Court will consider the remaining elements on which both parties present argument.

In considering those elements, the court must take into account the standard of care likely to be exercised by mortgage consumers, for "likelihood of confusion 'should be determined by viewing the two marks from the perspective of an ordinary consumer of the goods or services.'" *Ford Motor Co.*, 930 F.2d at 293 (quoting *Dominion Bankshares Corp. v. Devon Holding Co.*, 690 F.Supp. 338, 345 [6 USPQ2d 1855] (E.D. Pa. 1988)). Courts often call these ordinary consumers "reasonably prudent buyers." *Id.* In this case, there are two buyer classes: first, ordinary consumers generally seeking to refinance their mortgages; and second, professional

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consumers, such as realtors, generally seeking to place new mortgages on behalf of buyers of new or existing homes. D.I. 19 Ex. B at Paragraphs 4, 6. When a buyer class is so mixed, "the standard of care to be exercised by the reasonably prudent purchaser will be equal to that of the least sophisticated consumer in the class." *Ford Motor Co.*, 930 F.2d at 293. In other words, confusion within the class of ordinary consumers "may give rise to liability even if professional buyers in the market are not confused." *Id.* (quoting *Worthington Foods, Inc. v. Kellogg Co.*, 732 F.Supp. 1417, 1448 [14 USPQ2d 1577] (S.D. Ohio 1990)). The Court will thus consider whether, at the very least, the ordinary consumer is likely to confuse the mortgage services of plaintiff and defendant.

a. Element (1)

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Element (1), the degree of similarity between the marks, is highly probative of the likelihood of confusion because "if the overall impression created by marks is essentially the same, 'it is very probable that the marks are confusingly similar.'" *Opticians*, 920 F.2d at 195 (citing 2 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* Section 23:7 (2d ed. 1984)). In determining similarity, the Court should consider the "appearance, sound and meaning of the marks, as well as the manner in which the marks are used." *Accu Personnel*, 823 F.Supp. at 1164 (citing *American Cyanamid Co. v. S.C. Johnson & Son, Inc.*, 729 F.Supp. 1018, 1021 [13 USPO2d 1032] (D.N.J. 1989)).

Plaintiff highlights the resemblance between its mark and that of defendant, particularly in the first syllable. While plaintiff's mark ends in "LAND" and defendant's mark ends in "WELL," the two marks do share the "ROCK" beginning. Indeed, this beginning has resulted in the marks being placed next to one another in mortgage rate listings and other sources. D.I. 19 at Ex. E. To a large extent, then, the two marks are visually similar.

The two marks are also very similar when heard. The shared first syllable is the dominant syllable, as both marks are pronounced with the emphasis on "ROCK". In other words, the average speaker is likely to pronounce plaintiff's mark as "ROCK-land" and defendant's mark as "ROCK-well." The Court may properly "recognize that one feature of a mark is more significant than the other features and . . . give greater force and effect to that dominant feature." *American Cyanamid*, 729 F.Supp. at 1022 (quoting *Burger Chef Systems, Inc. v. Sandwich Chef, Inc.*, 608 F.2d 875, 878 [203 USPO 733] (C.C.P.A. 1979)). In this case, the significant feature of both marks is their identical first syllable.

Defendant insists the two marks bear no visual or aural similarity to each other, but offers evidence as to manner of use, that is, that its employees answer its telephones with the phrase "ROCKWELL NATIONAL MORTGAGE." The use of this phrase, defendant argues, further distinguishes defendant's ROCKWELL NATIONAL MORTGAGE mark from plaintiff's ROCKLAND MORTGAGE CORP. mark. Even taking defendant's evidence at face value, the addition of one word with no inherent distinctiveness 18 does not remove the aural similarity between the two marks. In fact, plaintiff introduced testimony at the hearing that defendant answers its telephones, at least on occasion, with the phrase "ROCKWELL MORTGAGE." 19 The Court is persuaded by this testimony. Even were defendant to assiduously emphasize the "NATIONAL" in its ROCKWELL NATIONAL MORTGAGE mark, however, the reasonably prudent purchaser likely would call the plaintiff "ROCKLAND" and the defendant "ROCKWELL," as did both parties and their attorneys during the hearing. The phrase which defendant may use in answering its telephones does not obviate the likely confusion among ordinary consumers.

The Court preliminarily concludes the marks are confusingly similar in appearance, sound, and manner of use. The similarity element, then, weighs heavily in favor of a finding that defendant's mark is likely to cause confusion concerning the origin of its services.

b. Element (2)

The second element, the strength of a mark, is "a measure of the mark's distinctiveness, 'or more precisely, its tendency to identify the goods sold under the mark as emanating from a particular, although possibly anonymous, source.'" *Accu Personnel*, 823 F.Supp. at 1165 (quoting *McGregor-Doniger, Inc. v. Drizzle, Inc.*, 599 F.2d 1126, 1131 [202 USPO 81] (2d Cir. 1979)). Thus, "the true relative strength of a mark can only

fully be determined by weighing two [the conceptual and the commercial] aspects of strength." 1 McCarthy Section 11.25 [2] at 11-137. The conceptual aspect is the placement of the mark on the distinctiveness spectrum, that is, deciding whether the mark is "fanciful," "arbitrary," "suggestive," "descriptive," or "generic." The commercial aspect is the recognition value of the mark in the relevant market. *Id.* "In addition, the use of a mark by third parties may impact its strength." *Accu Personnel*, 823 F.Supp. at 1165.

The Court has previously held plaintiff's mark is arbitrary. As such, it is inherently distinctive and a relatively strong mark. It remains for the Court to address the second aspect of the mark's strength, its "actual consumer recognition value" as of this litigation. 1 McCarthy Section 11.25 [2] at 11-137. Recognition value is low "if the mark lacks significance in the marketplace for identifying the origin of the goods." *Id.* (quoting *Oxford Industries, Inc. v. JBJ Fabrics, Inc.*, 6 U.S.P.Q.2d 1756 (S.D.N.Y. 1988)). That significance is determinable, in part, through advertising and sales. As McCarthy notes, "[m]any arbitrary . . . terms may be conceptually and inherently strong, but if they receive little publicity through only meager advertising and feeble sales, they are relatively weak marks in the place where it counts: the marketplace." *Id.* at 11-137-138. Plaintiff offers evidence of advertising and sales which are anything but "meager" and "feeble." Since its incorporation over five years ago, plaintiff has spent "in excess of \$100,000 dollars [sic] on advertising and various promotions that emphasized . . . its name and mark." D.I. 15 at A-2. *See* D.I. A-6-11 (examples of advertisements). That advertising, coupled with "in excess of two hundred and sixty million dollars (\$260,000,000.00) in mortgages . . . successfully placed" to date demonstrates additional strength in plaintiff's mark. D.I. 15 at A-2-3. Not only, it may be assumed, do ordinary consumers do business with plaintiff, but professionals such as realtors have built up valuable business relationships with plaintiff as well. *See* D.I. 15 at A-25, A-28-33.

Also relevant to the strength of a mark is the impact of third party use. "Where there are numerous similar marks, the mark in question may be found to have been weakened because consumers 'have been educated to distinguish between different [such] marks on the basis of minute distinctions.'" *Accu Personnel*, 823 F.Supp. at 1166 (quoting *Standard Brands, Inc. v. RJR Foods, Inc.*, 192 U.S.P.Q. 383 (T.M.T. App. Bd. 1976)). In other words, "in a 'crowded' field of similar marks, each member of the crowd is relatively 'weak' in its ability to prevent use by others in the crowd." 1 McCarthy Section 11.26 [1] at 11-140.

Defendant argues that the retail mortgage market is just such a crowded field by pointing to similar names of mortgage lenders, such as AMERICAN FAMILY MORTGAGE, AMERICAN FINANCIAL, and AMERICAN HOME FUNDING. D.I. 19 at 6. The examples defendant offers are similar, but only to one another. Further, they all consist entirely of descriptive or even generic terms. To be sure, plaintiff's mark would be weakened -- one of many in a crowded field -- if it were simply a descriptive term coupled with the generic ending "MORTGAGE CORP." The arbitrary portion of its mark, however, bears no resemblance to any example from defendant's list. Aside from defendant, there is no other lender whose name begins with "ROCK". *See* D.I. 19 Ex. E. Thus, there is no evidence to suggest that minute distinctions have forced consumers to educate themselves as to the differences between AMERICAN FAMILY MORTGAGE on the one hand and plaintiff's ROCKLAND MORTGAGE CORP. on the other.

The Court preliminarily concludes plaintiff's mark is strong, not only because it is arbitrary and thus inherently distinctive, but also because its consumer recognition value is high. The strength element, then, also tips the scales in favor of a finding of likelihood of confusion.

c. Element (3)

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Element (3) consists of the price of the goods or services and other factors indicative of the care and

attention expected of consumers when making a purchase. As defendant notes, "[t]he purchase of a home and attendant financing is perhaps the most significant purchase any consumer makes" in his or her lifetime. D.I. 19 at 18. Thus, one would expect even ordinary consumers to exercise great care in connection with the selection of a retail mortgage lender. The Court preliminarily concludes this element weighs against a finding that defendant's mark is likely to cause confusion concerning the origin of its services.²⁰

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d. Element (4)

The fourth element concerns the length of time defendant has used the mark without evidence of actual confusion arising. The length of use varies inversely with the likelihood of confusion. That is, if a party has used a certain mark for years without any consumers being confused about the source of its services, there is a strong inference that future consumers will not be confused either. *See, e.g., Scott Paper Co.*, 589 F.2d at 1230 (finding no likelihood of confusion in part because "defendant's mark had been utilized . . . for over forty years without any evidence of actual confusion").

In the present case, plaintiff argues instances of actual confusion between its ROCKLAND MORTGAGE CORP. mark and defendant's ROCKWELL NATIONAL MORTGAGE mark "began to occur almost immediately" after defendant commenced its use. D.I. 15 at 11. According to testimony offered by defendant at the hearing, it began doing business under its mark in Pennsylvania during December of 1992, and in Delaware during March of 1993. Plaintiff claims instances of actual confusion began as early as February of 1993. D.I. 15 at A-3, A-26-27. Defendant does not directly dispute this time frame, ²¹ but asserts no actual confusion as to the source of mortgage services exists.²²

Because little, if any, time passed between defendant's first use of its mark and plaintiff's first brush with instances of actual confusion, the Court preliminarily concludes this element weighs in favor of a finding of likelihood or confusion.

e. Element (5)

Element (5) consists of the intent of the defendant in adopting the mark. "Adoption of a mark in order to take advantage of the good will or reputation of a prior user is probative of likelihood of confusion." ²³ *Accu Personnel*, 823 F.Supp. at 1167 (citing *Scott Paper Co.*, 589 F.2d at 1230)). In this case, plaintiff argues defendant adopted its mark expressly for that wrongful purpose. As evidence, plaintiff argues defendant knew of plaintiff's prior use of the ROCKLAND MORTGAGE CORP. mark but regardless of that knowledge, initiated use of the ROCKWELL NATIONAL MORTGAGE mark. Plaintiff further highlights defendant's continued use of its mark despite receiving notification that plaintiff considered that use an infringement of its common law trademark. *See* D.I. 19 Ex. A-3 (letter notification). Defendant, in turn, admits knowledge of plaintiff's prior use but asserts its actions were taken in good faith for two reasons: First, defendant began using its mark prior to receiving plaintiff's letter; and second, defendant chose its mark for reasons unrelated to plaintiff.

The federal courts disagree as to whether "bad faith is established merely by virtue of the fact that the junior user has knowledge of the senior user's mark prior to the junior initiating use." *Accu Personnel*, 823 F.Supp. at 1167. *Compare Money Store v. Harriscorp Finance, Inc.*, 689 F.2d 666, 674-75 [²¹⁶ USPQ 11] (7th Cir. 1982) (holding knowledge to be sufficient to support a finding of bad faith) *with GTE Corp. v. Williams*, 904 F.2d 536, 541 [¹⁴ USPQ2d 1971] (10th Cir.), *cert. denied*, 498 U.S. 998

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(1990) (holding knowledge to be merely the first step in the inquiry). The Third Circuit Court of Appeals has not decided the issue. See *A.J. Carfield Co. v. Honickman*, 808 F.2d 291, 296 n.7 [1 USPO2d 1364] (3d Cir. 1986) (" [t]hose claims raise interesting issues" not necessary for decision). The Court finds the later line of cases persuasive, and declines to attribute to defendant bad faith absent some "plan antagonistic to [plaintiff's] interests." *Accu Personnel*, 823 F.Supp. at 1167. The Court, therefore, will examine whether defendant adopted its mark in order to take advantage of plaintiff's good will.

According to defendant, it chose the ROCKWELL NATIONAL MORTGAGE

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mark based on its proposed acquisition, pending since June of 1992, of a New York company known as ROCKWELL EQUITIES INC. D.I. 19 Ex. A at Para. 7. On November 2, 1992, defendant issued a private placement memorandum setting forth the terms of that acquisition. DX-2. Shortly thereafter on November 25, 1992, defendant filed a fictitious name certificate with the Pennsylvania Department of State indicating defendant intended to do business under the fictitious name ROCKWELL NATIONAL MORTGAGE. DX-1. At the hearing, defendant offered testimony that it began doing business under that name in December of 1992. On February 5, 1993, however, defendant issued an amended private placement memorandum which no longer included the acquisition of ROCKWELL EQUITIES INC. among its terms. DX-3. According to defendant, the acquisition could not go forward because ROCKWELL EQUITIES INC. was no longer sure it wished to be acquired.

By contrast, plaintiff asserted in its complaint that defendant had filed a fictitious name certificate under the ROCKWELL NATIONAL MORTGAGE name with the New Castle County Prothonotary's Office on July 6, 1992, the same day of its incorporation. D.I. 1 at 3. At the hearing, however, plaintiff conceded its information was off by some six months. Accordingly, the parties stipulated that defendant filed its certificate in New Castle County on January 4, 1993.

The Court finds credible inferences of bad faith to have disappeared with plaintiff's conclusion it was in error with respect to the earlier filing date. Had defendant filed the fictitious name certificate some four months earlier than issuing its first private placement memoranda, its reason for choosing its mark -- the proposed acquisition -- would be suspect as pretextual. The evidence, however, suggests that defendant selected its mark because it believed it would soon acquire a company of substantially the same name. Plaintiff contends defendant added the word "NATIONAL" to its mark precisely because it knew that consumers likely would confuse ROCKLAND MORTGAGE with ROCKWELL MORTGAGE, standing alone. This addition, according to plaintiff, shows intent to capitalize on its good will. The Court does not agree. Given its finding that defendant chose its mark in good faith, the Court finds the addition of the descriptive word "NATIONAL" to be an extension of that good faith -- an effort to prevent confusion.²⁴

Having determined defendant's initial adoption of its mark was in good faith, the Court turns its attention to the impact of plaintiff's cease and desist letter on defendant's continued use of the mark. On March 24, 1993, plaintiff sent a letter to defendant demanding it cease and desist from any use of the ROCKWELL NATIONAL MORTGAGE mark. D.I. 19 at A-3. Defendant replied by letter on April 6, 1993. D.I. 19 at A-4. In that letter, defendant requested existing evidence of actual confusion but asserted its name "is neither substantially similar to [plaintiff's] name, nor is the use of the 'Rockwell National Mortgage' name likely to cause confusion on the part of consumers." *Id.*

Neither party disputes defendant initiated use of its mark prior to its receipt of plaintiff's letter. Plaintiff argues, however, that defendant demonstrated bad faith by continuing to use its ROCKWELL NATIONAL MORTGAGE mark after being notified plaintiff considered that use an infringement of its

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own ROCKLAND MORTGAGE CORP. mark. Plaintiff's argument fails. In the Third Circuit, "[c]ontinued use of words that are claimed to infringe, even after notice of the claim, is not evidence of bad faith." *Institute for Scientific Info., Inc. v. Gordon & Breach*, 743 F.Supp. 369, 372 [17 USPO2d 1235] (E.D. Pa. 1990). See also *Andy Warhol Enterprises, Inc. v. Time, Inc.*, 700 F.Supp. 760, 766 [9 USPO2d 1454] (S.D.N.Y. 1988) (bad faith will not be found merely from the fact "defendant did not abandon its project at plaintiff's suggestion"). The Court finds defendant has continued to use its mark in good faith, before and during this litigation.

Because the Court concludes defendant did not adopt or continue to use its mark in

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order to trade upon plaintiff's good will, the intent element weighs against a finding that defendant's mark is likely to cause confusion concerning the origin of its services.

f. Element (6)

The sixth element, evidence of actual confusion, is among the more probative of the likelihood of confusion. While proof of actual confusion is not required, it is potent evidence that confusion is likely. *Fotomat Corp. v. Photo Drive-Thru, Inc.*, 425 F.Supp. 693, 703 [193 USPO 342] (D.N.J. 1977). See also 2 McCarthy Section 23.02 [2] [a]. Plaintiff offers powerful evidence that consumers, including professionals in the real estate field, have experienced actual confusion between its mark and defendant's mark. Defendant does not dispute some consumers have been confused. Instead, defendant asserts their confusion is not of the type required to prove "likelihood of confusion" for the purposes of establishing trademark infringement. Faced with a multitude of examples of misdirected mail, telephone calls, and even complaints about the quality of service, defendant claims that such examples do not constitute "confusion." D.I. 19 at 8. Instead, defendant asserts the only type of confusion worthy of judicial scrutiny is that of a party who, faced with particular mortgage services, cannot tell which retail mortgage lender is the source of those services. D.I. 19 at 8-9. Given defendant's position, the definition of "confusion" for trademark purposes assumes major importance.

Webster's New International Dictionary defines "confusion" as "an act of mistaking one thing for another, of failing to note distinctions, and of falsely identifying." Webster's New International Dictionary 477 (3d ed. 1971). The Lanham Act parallels this definition in the context of trademark infringement, forbidding any use which "is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person. . . ." 15 U.S.C. Section 1125 (a)(1)(A) (1982). Similarly, the Delaware Uniform Deceptive Trade Practices Act states that to engage in a deceptive trade practice is to cause "likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services" or to cause "likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another. . . ." Del. Code Ann. tit. 6, Section 2532(a)(2-3) (Supp. 1992). Defendant seeks to narrow this language by claiming there must be likely confusion as to the source of services. Yet "[t]he confusion that is remedied by trademark and unfair competition law is confusion not only as to source, but also as to affiliation, connection or sponsorship." 2 McCarthy Section 23.04 [4] [d] at 23-18.

To be sure, the evidence of actual confusion must be more than de minimis. 2 McCarthy Section 23.02 [2] [b] (citing *Everest & Jennings, Inc. v. E & J Mfg. Co.*, 263 F.2d 254 [120 USPO 247] (9th Cir. 1958), cert. denied, 360 U.S. 902 [121 USPO 653] (1959)). In addition, courts must find a causal connection between the use of similar marks and instances of actual confusion. Evidence must be viewed in context. *Id.* at Section 23.02 [2] [a]. Defendant urges that in context, evidence of

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misdirected communications signals carelessness, not actual confusion between the marks. Some courts, on different records, have agreed. *See United States Blind Stitch Machine Corp. v. Union Special Machine Co.*, 287 F.Supp. 468, 471 [159 USPO 637] (S.D.N.Y. 1968) (characterizing evidence of actual confusion as "secretarial carelessness caused by a failure to check business addresses"); *Allstate Ins. Co. v. Allstate Inv. Corp.*, 210 F.Supp. 25, 29 [136 USPO 156] (W.D. La. 1962), *aff'd*, 328 F.2d 608 [141 USPO 280] (5th Cir. 1964) ("mere carelessness"); *Belleville News-Democrat, Inc. v. St. Clair County Publishers, Inc.*, 26 Ill. App.2d 95, 100, 167 N.E.2d 573, 576 (4th Dist. 1960) ("inattention and indifference"). Clearly, however, defendant's arguments go to the weight of the evidence and not the type, for "evidence of misdirected letters is entitled to some weight as indicative of a likelihood of confusion." 2 McCarthy Section 23.02 [2] [b] at 23-29 (quoting *Technicon Co. v. Erickson Tool Co.*, 116 U.S.P.O. 97 (Com'r Pats. 1958)). The Court should therefore consider evidence of misdirected communications as well as other evidence, and in doing so, the Court finds plaintiff has demonstrated a great deal more than an "occasional mis-directed letter." *Everest & Jennings*, 263 F.2d at 260.

First, plaintiff offers evidence that various consumers, both ordinary and professional, placed telephone calls to plaintiff when they intended to call defendant, and vice versa. 25 See D.I. 21 at C-5-8, C-14-17, C-23-24, C-28-29, C-34; PX-4. In many cases, the caller mistakenly believed plaintiff and defendant were affiliated, attributing the services of defendant to plaintiff. Jornlin, for

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example, testified that "Ms. Leena Kauffler, a realtor with Gilpin Realty, . . . [telephoned] looking for a Kathy Anderson from our 'other' office," when Anderson was an employee of defendant. *Id.* at C-17.

Contrary to defendant's assertions, in many cases the caller also was confused as to the source of retail mortgages. Jornlin testified, for example, that

Paul Haig of Realty Associates called about a co-op deal . . . indicat [ing] that he was calling on the Hunsucker loan and that the people at the co-op had given him our number. Mr. Haig had checked with the real estate firm, Nickels Realty, which verified that the case was sent to ROCKLAND's telephone number. However, this was an error and Defendant's ROCKWELL office had been handling this account.

Id. at C-7. In this instance, Haig had verified his information in an attempt to remove any doubt as to the source of his account, but still contacted the wrong company. Plaintiff can show other such instances as well, including those in which various consumers, both ordinary and professional, called plaintiff to complain about services rendered by defendant. See D.I. 21 at C-6, C-8, C-23, C-32-33. 26

In addition, plaintiff has produced evidence demonstrating that: (1) plaintiff received mail meant for defendant (D.I. 21 at C-14, C-23, C-29; PX-1, PX-2, PX-5-8); (2) plaintiff actually paid bills by mistake which were the responsibility of defendant (D.I. 21 at C-14-15); and (3) a temporary employee presented herself to plaintiff when she was scheduled to work for defendant (D.I. 21 at C-14). Finally, even those who regularly did business with the two companies were confused. At the hearing, plaintiff offered testimony that one wholesale mortgage company, PHH US Mortgage Corporation, circulated a flyer among its employees attempting to remedy their difficulties in distinguishing plaintiff and defendant. PX-9. The flyer contains the following admonition:

Rockland vs. Rockwell: What's in a Name? Everything . . . When they both just happen to be clients of PHH US Mortgage Corporation. Two of our largest correspondent accounts, ROCK LAND Mortgage and ROCK WELL Mortgage, are experiencing frustration regarding name recognition.

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It seems PHH US Mortgage employees have been confusing the two Correspondents. At PHH, we talk about customer sensitivity. Well, this is customer sensitivity in its rarest form!

So, whether you are communicating verbally or through written communication to either company, USE CAUTION. Be certain you are using the correct name. Thank you for your cooperation.

PX-3 (emphasis in original).

In sum, the Court preliminarily finds this instance and other instances of actual confusion to be evidence of the most potent kind. 27 This element therefore heavily tips the scales in favor of a finding of likelihood of confusion.

g. Summary of Likelihood of Confusion Analysis

Of the ten potentially relevant elements enumerated by the Third Circuit Court of Appeals, defendant concedes the eighth element favors a finding of likelihood of confusion because the targets of the parties' sales efforts are identical. The parties contest all six of the remaining applicable elements.

Of those six, the most important first element, similarity of the marks, also indicates confusion is likely. Elements (2), (4) and (6) further tilt the scale in favor of a finding of likelihood of confusion. Plaintiff's mark, as an arbitrary mark with high consumer recognition value, is relatively strong both conceptually and commercially. In addition, instances of actual confusion followed closely in time upon defendant's commencing use of its similar mark. Elements (3) and (5), however, weigh against finding consumers are likely to confuse the two marks. Because the products involved are retail mortgages, consumers are expected to use greater care in making a purchase. Furthermore, defendant has not used its mark in bad faith.

[2] The Court finds on the preliminary injunction record that despite defendant's

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good faith use of its mark, 28 the similarity between the two marks has caused confusion between them and is likely to cause more confusion in the future. The greater attention which consumers are expected to pay has not prevented the instances of actual confusion demonstrated by plaintiff.

In sum, the Court finds plaintiff is likely to succeed on the merits after trial for three reasons: first, plaintiff's mark is valid and protectable; second, plaintiff is the owner of its mark; and third, defendant's use of its mark to identify its mortgages is likely to create confusion concerning their source and the affiliation, connection or sponsorship between plaintiff and defendant.

B. Irreparable Harm to the Parties

The second and third factors to be considered in determining whether to provide preliminary injunctive relief are the extent to which plaintiff is suffering irreparable harm, and the extent to which defendant will be irreparably harmed if the preliminary injunction is granted. "Irreparable injury may be shown by 'loss of control of reputation, loss of trade . . . loss of goodwill,' possibility of confusion, and most importantly in a suit for infringement of a trade or service mark, 'infringement amounts to irreparable injury as a matter of law.' " *Accu Personnel*, 823 F.Supp. at 1173 (quoting *Jiffy Lube*, 968 F.2d at 378).

In the present case, the Court has concluded plaintiff is likely to succeed at trial on its claim defendant is infringing its trademark. According to the formulation of the Third Circuit Court of Appeals, then, plaintiff has necessarily demonstrated irreparable injury. *Id.*

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Defendant's attempts to avoid this result are unavailing. First, defendant argues instances of actual confusion are not harmful because they reflect "mere inconvenience of some misdirected mail or telephone calls. . . ." D.I. 19 at 19. The Court does not agree. Notwithstanding its finding of irreparable harm as a matter of law, the Court believes the instances of actual confusion demonstrated by plaintiff indicate far greater potential for irreparable harm than defendant would have the Court believe. Plaintiff has made a strong showing that after five years in business, it is losing control of its reputation because numerous customers, both ordinary and professional, have complained to plaintiff about services rendered instead by defendant. D.I. 21 at C-6, C-8, C-23, C-32-33. One realtor, for example, testified by affidavit: "I was upset [my company] was not advised of the cancellation [of a closing] and believed that the mortgage company had 'dropped the ball' for not informing me. . . . While I later found out that the mortgage company was ROCKWELL NATIONAL MORTGAGE, . . . I called Kevin Jornlin at ROCKLAND MORTGAGE." *Id.* at C-32-33. No one knows how many were similarly upset, but did not take the time to register their complaints. Further, Jornlin testified by affidavit that plaintiff plans to "expand regionally and then nationally after establishing [itself] in the Delaware and Southeastern Pennsylvania market," the very market occupied by defendant. 29 D.I. 21 at C-1. Plaintiff's past expansion tends to support these plans. D.I. 15 at A-2 (" [p]laintiff has been continuously engaged in the business of providing retail mortgage services since the beginning of its operations in New Castle County, Delaware and later in various counties in the state of Pennsylvania"). Thus, plaintiff's injury is likely to expand as its company expands.

Second, defendant contends plaintiff's delay in moving for a preliminary injunction demonstrates a lack of irreparable injury to plaintiff. Delay in seeking preliminary injunctive relief may be some evidence plaintiff will not incur injury, *see Jiffy Lube*, 968 F.2d at 378-79, but the present record does not support this proposition.

Plaintiff first learned defendant was using the ROCKWELL NATIONAL MORTGAGE mark in February of 1993, when instances of actual confusion with its own ROCKLAND MORTGAGE CORP. mark began to arise. D.I. 21 at C-4. On March 24, 1993, plaintiff notified defendant by letter that plaintiff considered that use an infringement. D.I. 19 Ex. A-3. In its letter, plaintiff demanded defendant cease and desist from using the ROCKWELL NATIONAL MORTGAGE mark. *Id.* On April 6, 1993, defendant sent a letter denying infringement. D.I. 19 Ex. A-4. Accordingly, on April 29, 1993, plaintiff filed a complaint alleging

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trademark infringement, unfair competition, and deceptive trade practices and praying for injunctive relief. D.I. 1. On May 25, 1993, defendant filed its answer denying infringement. D.I. 5. Discussions between the parties, through their attorneys, occupied the early part of the summer. D.I. 21 at C-41. Finally, on August 2, 1993, approximately three months after the filing of its complaint, plaintiff filed the present motion for a preliminary injunction. D.I. 15.

[3] The Court holds this delay was a reasonable one, particularly because it was occupied, in part, by attempts to resolve the matter without resorting to further litigation. D.I. 21 at C-41 Para. 7. Plaintiff proceeded "as soon as it was apparent that the Defendant would not be willing to change its name to a less confusing name. . . ." *Id.* at Para. 9. *See Jiffy Lube*, 968 F.2d at 378 (finding a three and one-half month delay between institution of the action and the filing of a preliminary injunction motion to be "a reasonable delay"). Defendant's allegations at the hearing of an unexplained delay of six months or more fly in the face of the record.

Having shown its own irreparable injury, plaintiff must also show its benefits from a preliminary injunction are not outweighed by irreparable injury to defendant. *Jiffy Lube*, 968 F.2d at 379. Plaintiff

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asserts the benefits flowing from a preliminary injunction would primarily include regaining control over its reputation and good will, built over five years and with an investment of over \$100,000, pending the outcome at trial. D.I. 15 at 3, 19. In addition, an injunction barring defendant from further use of its mark would bring a halt to the confusion experienced by consumers as to which mortgage is serviced by which company. D.I. 21 at 19-20. Defendant, in turn, contends it would suffer "significant" injury from a preliminary injunction because it "has spent the last nine months establishing its name and developing a reputation" in its trade area. D.I. 19 at 9. To that end, defendant has expended \$27,000 on advertising in those months. D.I. 19 Ex. B at Para. 11. While defendant also claims to have committed \$250,000 to a one year advertising contract, *id.* at Para. 12, defendant conceded during argument at the hearing it has actually committed a much smaller sum of no greater than \$100,000. 30 In addition to these promotional costs, defendant asserts loss of good will in having to change its name in eleven offices after only nine months in business. 31 *Id.* at 10.

[4] The Court holds the benefits to plaintiff of granting a preliminary injunction outweigh the irreparable harm that injunction would cause defendant. Plaintiff's loss of control over its own reputation for service, after over five years in business, is far greater than defendant's loss of reputation as a result of having to change its name after only nine months in business. Good will tends to grow over time. In addition, regardless of its intent, defendant knew of plaintiff's mark before choosing its own. *See Jiffy Lube*, 968 F.2d at 379 (" [defendant] is certainly harmed by the threat of loss of his franchise, but his self-inflicted harm is far outweighed by the immeasurable damage done [plaintiff] by the infringement of its trademark"). Therefore, these two factors militate in favor of the grant of a preliminary injunction.

C. Public Interest

Finally, the Court considers whether granting preliminary injunctive relief would further the public interest. "Public interest can be defined a number of ways, but in a trademark case, it is most often a synonym for the right of the public not to be deceived or confused." *Opticians*, 920 F.2d at 197 (citing 2 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* Section 30:21 (2d ed. 1984)). In this case, defendant's use is likely to cause further public confusion. Injunctive relief is therefore in the public interest. *Jiffy Lube*, 968 F.2d at 379.

IV. CONCLUSION

Plaintiff is entitled to preliminary injunctive relief. Plaintiff is likely to prevail on the merits of its trademark infringement, unfair competition, and deceptive trade practices claims. Plaintiff will be irreparably harmed unless a preliminary injunction is issued, and defendant will suffer a far lesser harm if

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such relief is granted. Finally, the public interest will be served by preliminarily enjoining defendant.

An order will be entered enjoining defendant from using the ROCKWELL NATIONAL MORTGAGE mark throughout plaintiff's trade area and regional zone of expansion pending final judgment.

Footnotes

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Footnote 1. More accurately, plaintiff alleges "service mark infringement." D.I. 1 at 6. The Lanham

Act defines a service mark as "a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others." 15 U.S.C. Section 1127 (1982). A trademark is "any work, name, symbol, or device or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured or sold by others." *Id.* The Court need not determine whether retail mortgages are goods or services, for the statute "generally applies the same principles concerning . . . protection to both trade and service marks." *Country Floors, Inc. v. Gepner*, 930 F.2d 1056, 1064 n.2 [18 USPO2d 1577] (3d Cir. 1991). For ease of reference, the Court will use the term "trademark" in this opinion.

Footnote 2. The Court will not consider both motions in the same opinion because "credibility evaluations are inappropriate in deciding a motion for summary judgment." *Country Floors*, 930 F.2d at 1061. As the Third Circuit Court of Appeals noted, "[i]t is error to rely on the previous resolution of credibility issues [as part of a motion for preliminary injunction] in deciding a motion for summary judgment because such reliance cannot coexist with the requirement . . . that no genuine issues of material fact remain outstanding." *Id. See also id.* at 1062 ("the considerations that determine a motion for a preliminary injunction are foreign to those that govern decision on a motion for summary judgment"). The Court therefore has issued its decision on defendant's motion for summary judgment in a separate opinion.

Footnote 3. In its answering brief, defendant alleges it began doing business under its ROCKWELL NATIONAL MORTGAGE name in Pennsylvania during November of 1992, D.I. 19 at 5, but at the hearing defendant conceded it could not begin doing business without its license, which was issued in Pennsylvania on December 4, 1992.

Footnote 4. The Court admitted PX-3 over defendant's hearsay objection on the ground that the exhibit was not offered to prove the truth of its assertions, and even if it were, it fell under the state of mind exception to the hearsay rule. Fed. R. Evid. 803(3). Courts have responded to such hearsay objections in several ways. "Some have rejected such employee testimony as unreliable hearsay which does not permit cross-examination of the customer, sender or caller as to the reason for the 'confusion.' Other courts have either held that such testimony is not hearsay because not offered to prove the truth of any customer's assertion or is admissible under an exception to the hearsay rule." 2 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* Section 23.02 [2] [c] (3d ed. 1992) (citations omitted) [hereinafter "McCarthy"].

Footnote 5. During argument at the hearing, upon being prodded by the Court, defense counsel conceded it was extremely unlikely there was any connection between the incident at the party and the mailing of the letter from plaintiff's counsel.

Footnote 6. The Third Circuit Court of Appeals has enunciated two different standards for determining when a preliminary injunction should be instituted. One standard is that just given, i.e., a finding that all four factors have been met. *Jiffy Lube*, 968 F.2d at 374. *See also Opticians Ass'n v. Indep. Opticians*, 920 F.2d 187, 191-92 [17 USPO2d 1117] (3d Cir. 1990); *ECRI v. Mc-Graw-Hill, Inc.*, 809 F.2d 223, 226 (3d Cir. 1987). The other, and more traditional standard, requires the movant demonstrate a likelihood of success on the merits and the probability of harm if relief is not granted. It does not, however, require the movant to prove "the possibility of harm to other interested persons from the grant or denial of the injunction" or that the public interest will be best served by a grant of relief. Instead, it indicates these two latter factors should be taken into account when they are relevant. *Noxworth v. Blinder*, 903 F.2d 186, 197-98 (3d Cir. 1990); *Morton v. Beyer*, 822 F.2d 364, 367 & n.3 (3d Cir. 1987); *Oburn v. Shapp*, 521 F.2d 142, 147 (3d Cir. 1975).

Footnote 7. In its complaint, plaintiff alleges it "has operated under the name 'Rockland Mortgage Corp.' continuously" since August 5, 1988. D.I. 1 at 2. At no time does plaintiff allege it registered its

mark with the Patent and Trademark Office.

Footnote 8. That element is nonetheless easily disposed of because the Third Circuit Court of Appeals has held that absent federal registration, "the first party to adopt a trademark can assert ownership rights, provided it continuously uses it in commerce." *Ford Motor Co. v. Summit Motor Products, Inc.*, 930 F.2d 277, 292 [18 USPO2d 1417] (3d Cir. 1991), *cert. denied sub nom. Altran Corp. v. Ford Motor Co.*, 112 S.Ct. 373 (1991).

Footnote 9. McCarthy offers the following example of each classification: "the word 'apple' would be arbitrary when used on personal computers, suggestive when used in 'Apple-A-Day' on vitamin tablets, descriptive when used in 'Tomapple' for combination tomato-apple juice and generic when used on apples." 1 McCarthy Section 11.22 at 11-118.

Footnote 10. Plaintiff originally urged its mark was arbitrary. Because arbitrary marks are chosen so as to "neither suggest nor describe any ingredient, quality or characteristic" of the underlying good or service, *Ford Motor Co.*, 930 F.2d at 292 n.18 (quoting 1 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* Section 11:4 (2d ed. 1984)), plaintiff's attorney has since abandoned the argument that its mark is arbitrary because plaintiff's intent in choosing the mark was to suggest stability in the retail mortgage business. Of course, a user's intent is not controlling on a mark's classification, and the Court is not bound by plaintiff's new arguments.

Footnote 11. Accordingly, Jorlin and Smith claim, they considered names such as UNIVERSAL MORTGAGE and GUARDIAN MORTGAGE before selecting ROCKLAND MORTGAGE CORP. D.I. 21 at C-2, C-13.

Footnote 12. Accordingly, Fasick claims, they considered local geographic names such as BRANDYWINE, ASHLAND, WILMINGTON, KENTMERE, and ROCKFORD before selecting ROCKLAND. D.I. 19 Ex. A at Para. 3.

Footnote 13. The Court does not consider the protectability of the "MORTGAGE" and "CORP." portions of plaintiff's mark because they are generic, and such names "are regarded by the law as free for all to use." 1 McCarthy Section 12.01 [2] at 12-5. *See A.J. Canfield Co. v. Honickman*, 808 F.2d 291, 296 [1 USPO2d 1364] (3d Cir. 1986) (" [t]he jurisprudence of genericness revolves around the primary significance test, which inquires whether the primary significance of a term in the minds of the consuming public is the product or the producer").

Footnote 14. Even if plaintiff's mark originally were linked to the obscure geographic location of the same name, it would still be arbitrary and not descriptive. According to McCarthy, three questions are relevant to determining whether a geographic term is descriptively used: (1) Is the mark the name of the place from which the goods or services actually come? (2) Is the geographic term likely to denote to reasonable buyers that the goods or services come from the place named? (3) Is the place named noted for these particular goods or services? If the answers are "no," as they would be in this case, then the term is most likely arbitrary rather than descriptive. That the mark happens to mirror a geographic location is not decisive. *See* 1 McCarthy Section 14.03.

Footnote 15. In *Dominion Bankshares Corp. v. Devon Holding Co.*, 690 F.Supp. 338, 345 [6 USPO2d 1855] (E.D. Pa. 1988), the court held that the "likelihood of confusion" standard is reduced to only a 'possibility of confusion' standard where, as here, a newcomer enters a field already occupied by a long-established business." In that case, the plaintiff had been in business nearly one hundred years. In this case, the Court does not decide whether five years constitutes "long-established," for the Court finds a likelihood of confusion, not a mere possibility of confusion, between the marks of the parties.

Footnote 16. Defendant claims all but the first of these elements are not applicable because they were formulated to determine the likelihood of confusion in cases involving non-competing goods or services. D.I. 19 at 16. In the federal courts, however, these elements "while originally devised for cases of non-competitive goods or services, have often been applied as a tool to analyze the likelihood of confusion question in all types of trademark infringement cases, both competitive and non-competitive." 2 McCarthy Section 24.06 [4] at 24-46. *See, e.g., Ford Motor Co.*, 930 F.2d 277 [18 USPO2d 1417] (3d Cir. 1991); *Accu Personnel*, 823 F.Supp. 1161 [27 USPO2d 1801] (D. Del. 1993).

Footnote 17. Elements (7) and (10) do not apply because the "goods" -- to the extent mortgages can be considered goods -- are competing in the same market. Element (9) does not apply because the mortgages sold by plaintiff and defendant do not "function" as do tangible goods. In any event, to the extent these elements could apply to competing intangibles such as mortgages, they are fully covered by elements (1) through (6) and element (8).

Footnote 18. The word "NATIONAL" is descriptive of a geographic area. As such, its addition does not aid in distinguishing defendant's mark from plaintiff's mark.

Footnote 19. In an unrelated arbitration proceeding, Fasick himself asserted defendant's employees answer its telephones with the phrase "ROCKWELL MORTGAGE." D.I. 19 Ex. A-1 at 21.

Footnote 20. Plaintiff properly adds, however, that "when there is a strong likelihood of confusion from other factors, even a high level of care exercised by a consumer [] will not be sufficient to overcome likelihood of confusion." D.I. 15 at 11 (citing *Banff Ltd. v. Federated Department Stores, Inc.*, 841 F.2d 486 [6 USPO2d 1187] (2d Cir. 1988); *Omega Importing Corp. v. Petri-Kine Camera Co.*, 451 F.2d 1190 [171 USPQ 769] (2d Cir. 1971)).

Footnote 21. Defendant does dispute timing, but only concerning the issue of irreparable harm. According to defendant, plaintiff had known of defendant's mark for months, but only brought suit when faced with an imprudent remark by a principal of defendant to the effect that plaintiff's recent radio advertisements had led to inquiries at the offices of defendant. D.I. 19 at 6, Ex. A at Para. 15. Defendant has never seriously disputed the instances of misdirection which followed the commencement of business under its mark.

Footnote 22. Instead, defendant urges any confusion stems from the "proximity of the names in listings," and nothing more. D.I. 19 at 18. As the Court noted at the hearing, defendant is walking a narrow line as to the definition of "confusion." The Court discusses these arguments in the context of the sixth element. *See infra* at 31-36.

Footnote 23. As McCarthy notes, however, "good faith intentions of an infringer are no defense to a finding of liability." 2 McCarthy Section 23.30 [2] at 23-192-193.

Footnote 24. In its opening brief and at the hearing, plaintiff made reference to what is known as the "second comer doctrine," that a junior user has a "duty" to choose a mark so as to avoid likelihood of confusion. D.I. 15 at 18. At best, the doctrine is questionable. McCarthy opines "it is improper to say that a junior user has a 'duty' to entirely avoid any possibility of confusion. Rather, the rule . . . of presuming confusion is triggered only where the senior user's mark is 'highly distinctive' and the junior user is guilty of 'bad faith.'" 2 McCarthy Section 23.33 [3] [d]. *See Thompson Medical Co. v. Pfizer, Inc.*, 753 F.2d 208 [225 USPQ 124] (2d Cir. 1985) (holding such intent to confuse is merely a part of an overall weighing of all factors). Every case cited by plaintiff in its opening brief concerns such bad faith, in the form of intentional copying. D.I. 15 at 18. *See Opticians*, 920 F.2d at 197.

Footnote 25. Plaintiff even offers a list of some of their names. *See* D.I. 21 at C-15.

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Page: 191

Footnote 26. Finally, the Court notes what is perhaps the most celebrated instance of actual confusion as to source: At an industry cocktail party, Fasick, a principal of defendant, told Smith, an employee of plaintiff that defendant had gained the attention of potential customers as a result of plaintiff's radio advertisements. D.I. 21 at C-13-14. Fasick, by affidavit, testifies he made the statement merely as a "joke." D.I. 19 Ex. A at Para. 14. Fasick's intent, however, does not remove the basis for the statement - actual confusion among consumers as to the source of the advertised mortgages.

Footnote 27. Indeed, every class of consumer has experienced confusion in distinguishing between plaintiff's ROCKLAND MORTGAGE CORP. mark and defendant's ROCKWELL NATIONAL MORTGAGE mark.

Footnote 28. This may be an unusual case, for " [i]t may be that only in unusual cases will a defendant be found to have both knowledge of a senior user and good faith adoption of the allegedly infringing mark." *GTE Corp. v. Williams*, 904 F.2d 536, 541 [14 USPO2d 1971] (10th Cir.), cert. denied, 498 U.S. 998 (1990).

Footnote 29. As of August 27, 1993, when defendant filed its answering brief, defendant had one office in Wilmington, Delaware; seven in Pennsylvania; one in southern New Jersey; one in Maryland; and one in Virginia. D.I. 19 Ex. B at Para. 3. The Court notes all eleven are in the region surrounding plaintiff's offices.

Footnote 30. Plaintiff claims "the monies could equally be applied to Defendant's promotion of a new less confusing name to identify its company," D.I. 21 at 18, but the parties adduced no evidence as to this assumption. Therefore, the Court does not consider it.

Footnote 31. Interestingly enough, defendant makes other assertions which, if true, would eliminate any possibility of harm from changing its name. First, defendant claims that ordinary consumers choose a retail mortgage company not on the basis of its name, but on the basis of its rates. D.I. 19 at 1. Second, defendant claims professional consumers choose a retail mortgage company not on the basis of its name, but on the basis of past business relationships. *Id.* If defendant is correct, it has made its claims of irreparable harm disappear. *Bill Blass, Ltd. v. SAZ Corp.*, 751 F.2d 152, 156 [224 USPQ 753] (3d Cir. 1984) (finding the defendant was not "irreparably harmed" because it could remove the label from its goods and then sell them). At bottom, defendant is arguing that its name is important but plaintiff's name is not.

- End of Case -

Print-Friendly
Version 

Exhibit: A
Page: 192

Supplement to the Information Memorandum Supplement
dated January 28, 2002 and to the Information Memorandum dated January 28, 2002

Ford Credit Floorplan Master Owner Trust A

Trust/Issuer

Ford Credit Floorplan Corporation
Ford Credit Floorplan LLC
Transferors

Ford Motor Credit Company
Seller and Servicer

MotownSM Notes Program Series 2002-1

Before you purchase any Motown notes, you should carefully consider the risk factors beginning on page S-14 of the accompanying information memorandum supplement and on page 9 of the accompanying information memorandum.

The Motown notes are obligations of the trust only and are not interests in or obligations of Ford Motor Company, Ford Motor Credit Company, Ford Credit Floorplan Corporation, Ford Credit Floorplan LLC or any other person.

This supplement may be used to offer and sell the Motown notes only if it is accompanied by the information memorandum supplement and the information memorandum.

MotownSM Notes Program:

The trust began issuing Motown notes in book-entry form on January 28, 2002. The trust issues sub-classes of Motown notes having different expected final payment dates and final maturity dates.

- Expected final payment date 1 to 99 days from sub-class issuance date
- Final maturity date 390 days from sub-class issuance date
- Short-term program rating:
 - Standard & Poor's A-1+
 - Moody's P-1
 - Fitch F1+
- Current program size \$5 billion
- Expected program size \$8.5 billion

The terms of the Motown notes are more fully described in the attached information memorandum supplement and information memorandum. This document supplements the attached information memorandum supplement by updating and replacing the sections entitled "Ford Credit's U.S. Floorplan Portfolio", "The Trust Portfolio" and "Series Provisions — Liquidity Support — Paired Notes". You should carefully read this supplement and the attached information memorandum supplement and information memorandum, each in its entirety, before you purchase any Motown notes.

The Motown notes will be eligible for purchase by money market funds under Rule 2a-7 of the Investment Company Act of 1940, as amended.

This supplement and the attached information memorandum supplement and information memorandum relate solely to the offering of the Motown notes.

The Motown notes have not been registered with the Securities and Exchange Commission or any state securities commission. Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this supplement or the attached information memorandum supplement or information memorandum. Any representation to the contrary is a criminal offense.

The Motown notes may be offered or sold only to "qualified institutional buyers" as defined in Rule 144A under the Securities Act of 1933, as amended. Any resale of the Motown notes will be subject to restrictions under the Securities Act as described in this supplement and the attached information memorandum supplement and information memorandum.

Dealers

Lehman Brothers

Morgan Stanley

Ford Financial Services, Inc.

The date of this supplement is December 19, 2002

Ford Credit Announces Motown Notes Investment Program

DEARBORN, Mich., Jan. 31 /PRNewswire-FirstCall/ -- Ford Motor Credit Company announced today that the Ford Credit Floorplan Master Owner Trust A, a securitization trust administered by Ford Credit, on January 29, 2002, launched its Motown(SM) Notes program. Motown Notes is an asset-backed extendible commercial paper program for qualified institutional buyers.

The trust consists of a revolving pool of receivables originated by Ford Credit in connection with the purchasing and financing of U.S. dealers' automobile and light truck inventory. The program's initial size is \$3 billion, and has been rated A1+ by Standard and Poor's, P1 by Moody's, and F1+ by Fitch.

"This program continues our strategy of ensuring our liquidity through diversified and low cost funding sources," said Ann Marie Petach, Vice President - Funding Matters and Assistant Treasurer of Ford Motor Credit Company.

The Motown Notes have not been registered under the Securities Act of 1933, as amended, and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements.

Ford Credit is a wholly owned subsidiary of Ford Motor Company and is the world's largest automotive finance company. Now in its 43rd year, Ford Credit provides vehicle financing in 40 countries to more than 10 million customers and more than 12,500 automotive dealers. More information about Ford Credit can be found at <http://www.fordcredit.com>.

SOURCE Ford Motor Credit Company
Web Site: <http://www.fordcredit.com>

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Ford Credit is a wholly owned subsidiary of Ford Motor Company and is the world's largest automotive finance company. Now in its 43rd year, Ford Credit provides vehicle financing in 40 countries to more than 10 million customers and more than 12,500 automotive dealers. More information about Ford Credit can be found at <http://www.fordcredit.com>.

SOURCE Ford Motor Credit Company
Web Site: <http://www.fordcredit.com>

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Page: 195

Int. Cls.: 35 and 36

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,768,460

Registered Sep. 23, 2003

**SERVICE MARK
SUPPLEMENTAL REGISTER**

MOTOWN

FORD MOTOR COMPANY (DELAWARE CORPORATION)
1 THE AMERICAN ROAD
DEARBORN, MI 48121

FOR: ACCOUNTS RECEIVABLE SERVICES, NAMELY, ACCOUNTS RECEIVABLE MANAGEMENT, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 1-28-2002; IN COMMERCE 1-28-2002.

FOR: FINANCIAL SERVICES, NAMELY, ASSET BACKED COMMERCIAL PAPER PROGRAM IN THE NATURE OF STRUCTURING AND ISSUING COMMERCIAL PAPER, ADMINISTRATION OF COMMERCIAL PAPER PROGRAMS, BROKERING

COMMERCIAL PAPER, CONSUMER AND COMMERCIAL LOAN FINANCING SERVICES, LOAN COLLECTION SERVICES, SERVICES RELATING TO THE TRADING OF EQUITY DERIVATIVES, NAMELY PROVIDING INVESTMENT OF FUNDS FOR OTHERS IN EQUITY DERIVATIVES, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 1-28-2002; IN COMMERCE 1-28-2002.

SER. NO. 78-101,526, FILED P.R. 1-8-2002; AM. S.R. 6-20-2003.

SUSAN HAYASH, EXAMINING ATTORNEY

Int. Cls.: 35 and 36

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,768,460

Registered Sep. 23, 2003

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SUPPLEMENTAL REGISTER**

MOTOWN

FORD MOTOR COMPANY (DELAWARE CORPORATION)
1 THE AMERICAN ROAD
DEARBORN, MI 48121

FOR: ACCOUNTS RECEIVABLE SERVICES, NAMELY, ACCOUNTS RECEIVABLE MANAGEMENT, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 1-28-2002; IN COMMERCE 1-28-2002.

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COMMERCIAL PAPER, CONSUMER AND COMMERCIAL LOAN FINANCING SERVICES, LOAN COLLECTION SERVICES, SERVICES RELATING TO THE TRADING OF EQUITY DERIVATIVES, NAMELY PROVIDING INVESTMENT OF FUNDS FOR OTHERS IN EQUITY DERIVATIVES, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 1-28-2002; IN COMMERCE 1-28-2002.

SER. NO. 78-101,526, FILED P.R. 1-8-2002; AM. S.R. 6-20-2003.

SUSAN HAYASH, EXAMINING ATTORNEY

*** User: shayash ***

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
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Session started 7/28/03 10:31:22 AM
Session finished 7/28/03 10:32:09 AM
Total search duration 0 minutes 5 seconds
Session duration 0 minutes 47 seconds

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Sent to TICRS as Serial Number: 78101526

Intent-To-Use

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

4AAU

APPLICANT: FORD MOTOR COMPANY
MARK: MOTOWN
SERIAL NO.: 78/101,526
FILED: January 08, 2002
CLASS: International Class 36
ATTORNEY REF. NO.: FMCR 0787 TUS

AMENDMENT TO ALLEGE USE UNDER 37 CFR 2.76

BOX TTAB - FEE
2900 Crystal Drive
Arlington, VA 22202-3513

TO THE ASSISTANT COMMISSIONER FOR TRADEMARKS:

Applicant requests registration of the above-identified service mark in the United States Patent and Trademark Office on the Supplemental Register established by the Act of July 5, 1946 (15 U.S.C. 1051 et. seq., as amended).

Applicant is using the mark in commerce on or in connection with the following services:

FINANCIAL SERVICES, NAMELY, ASSET BACKED COMMERCIAL PAPER PROGRAM IN THE NATURE OF STRUCTURING AND ISSUING COMMERCIAL PAPER, ADMINISTRATION OF COMMERCIAL PAPER PROGRAMS, BROKERING COMMERCIAL PAPER, CONSUMER AND COMMERCIAL LOAN FINANCING SERVICES, LOAN COLLECTION SERVICES, SERVICES RELATING TO THE TRADING OF EQUITY DERIVATIVES, NAMELY PROVIDING INVESTMENT OF FUNDS FOR

07/15/2003 WMBERSO 00000022 061510 78101526
01 FC:6002 100.00 DA

Exhibit: A
Page: 199

**OTHERS IN EQUITY DERIVATIVES IN INTERNATIONAL
CLASS 36.**

The mark was first used by Applicant on or in connection with the services at least as early as January 28, 2002; was first used on or in connection with the services in interstate commerce at least as early as January 28, 2002; and is now in use in such commerce.

The mark is used on promotional brochures and advertising describing the services; and two specimens showing the mark as currently used in commerce are submitted with this Amendment.

Please charge any fees to our Deposit Account No. 06-1510.

DECLARATION

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he is properly authorized to execute this Amendment to Allege Use on behalf of the Applicant, he believes the Applicant to be the owner of the service mark sought to be registered; the service mark is now in use in commerce; and all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

FORD MOTOR COMPANY

By: 
Thomas DeZure
Assistant Secretary DBS

Dated: June 17, 2003

TRADEMARK LAW OFFICE 110
Serial No. 78/101,526
Mark: MOTOWN

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Ford Motor Credit Company

Serial No.: 78/101,526

Filed: January 2, 2002

Mark: MOTOWN

Class: 036

Atty. Docket
No.: FMCR 0787 TUS

Examining
Attorney: Susan C. Hayash
Law Office 110

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**RESPONSE TO FINAL OFFICE ACTION
AND REQUEST FOR RECONSIDERATION
PURSUANT TO 37 C.F.R. § 2.64 (b)**

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

Sir:

This document is filed in response to the Examiner's Final Office Action mailed

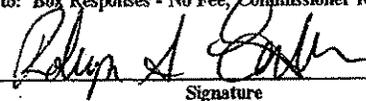
December 18, 2002.

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that this paper, including all enclosures referred to herein, is being deposited with the United States Postal Service as first-class mail, postage pre-paid, in an envelope addressed to: Box Responses - No Fee, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513:

June 18, 2003
Date of Deposit

Robyn S. Lederman
Name of Person Signing


Signature

**Exhibit: A
Page: 201**

The Examining Attorney has refused registration of the Applicant's mark under the Trademark Act §2(e)(2) because the term is geographically descriptive of the applicant's services. The Applicant respectfully disagrees and requests the Examiner to reconsider her refusal based on the Applicant's following response and amendments in support of registration of this mark on the Supplemental register. The Applicant respectfully refers to a telephone conference with Examiner Hayash on June 16, 2003, whereby Examiner Hayash indicated that this application would be accepted for registration on the Supplemental Register should the application be amended to reflect use of the mark. It was further discussed and agreed that a Motion for Reconsideration and Notice of Appeal should be filed simultaneously with such amendment in order to insure that this application shall be preserved by continuing the final refusal. Likewise, it was acknowledged that amending both the basis and the register would raise sufficient new issues to allow for reconsideration of this matter under TMEP § 715.03.

AMENDMENTS

- (i) Delete Applicant's request for registration on the "Principal Register" in the application and add a request for registration on the ~~Supplemental Register~~;
- (ii) Delete Class 35 services from the identification of services in the application; and maintain the whole of the services described in International Class 36;
- (iii) Delete the intent to use basis under Section 1(b) for registration in the application and add use as the basis for registration under Section 1(a), as supported by the attached Amendment to Allege Use with specimens for the Class 36 services.

CONCLUSION

In light of the foregoing amendments, the applicant respectfully requests the Examiner to reverse her refusal and to allow the application to progress to registration on the Supplemental Register.

Respectfully submitted,

Ford Motor Credit Company

By 
Robyn S. Lederman
Maria Angileri
Attorneys/Agents for Applicant

Date: June 18, 2003

BROOKS & KUSHMAN P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075
Phone: 248-358-4400
Fax: 248-358-3351

Serial No.: 78/101,526

Atty. Docket No.: FMCR 0787 TUS

TRADEMARK LAW OFFICE 110
Serial No. 78/101,526
Mark: MOTOWN

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Ford Motor Company

Serial No.: 78/101,526

Filed: January 08, 2002

Mark: MOTOWN

Class: 36

Atty. Docket No.: FMCR 0787 TUS

Examining Attorney: Susan C. Hayash
Law Office 110

NOTICE OF APPEAL

Box TTAB - FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Sir:

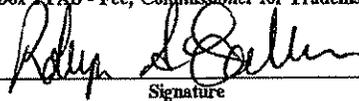
Applicant hereby appeals to the Trademark Trial and Appeal Board from the final decision of the Examiner dated December 18, 2002, refusing registration of the above-identified

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that this paper, including all enclosures referred to herein, is being deposited with the United States Postal Service as first-class mail, postage pre-paid, in an envelope addressed to: Box TTAB - Fee, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513:

June 18, 2003
Date of Deposit

Robyn Lederman
Name of Person Signing


Signature

trademark. This notice is filed in accordance with 15 U.S.C. § 1070 and 37 C.F.R. §§ 2.141 and 2.142(a).

Please charge any fees to our Deposit Account No. 06-1510. A duplicate copy of this Notice of Appeal is attached for this purpose.

Respectfully submitted,

By 
Robyn Lederman
Attorney/Agent for Applicant

Date: June 18, 2003

BROOKS & KUSHMAN P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075
Phone: 248-358-4400
Fax: 248-358-3351

Serial No.: 78/101,526

Atty. Docket No.: FMCR 0787 TUS

TRADEMARK LAW OFFICE 110
Serial No. 78/101,526
Mark: MOTOWN

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Ford Motor Company

Serial No.: 78/101,526

Filed: January 08, 2002

Mark: MOTOWN

Class: 36

Atty. Docket No.: FMCR 0787 TUS

Examining Attorney: Susan C. Hayash
Law Office 110

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2900 Crystal Drive
Arlington, Virginia 22202-3513

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Name of Person Signing


Signature

Exhibit: A
Page: 206

Serial No.: 78/101,526

Atty. Docket No.: FMCR 0787 TUS

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By 
Robyn Lederman
Attorney/Agent for Applicant

Date: June 18, 2003

BROOKS & KUSHMAN P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075
Phone: 248-358-4400
Fax: 248-358-3351

FORD MOTOR COMPANY
Mark: MOTOWN
Class: International Class 36
Serial No. 78/101,526

Two Specimens of the Mark

Intent-To-Use

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: FORD MOTOR COMPANY
MARK: MOTOWN
SERIAL NO.: 78/101,526
FILED: January 08, 2002
CLASS: International Class 36
ATTORNEY REF. NO.: FMCR 0787 TUS

AMENDMENT TO ALLEGE USE UNDER 37 CFR 2.76

BOX TTAB - FEE
2900 Crystal Drive
Arlington, VA 22202-3513

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**OTHERS IN EQUITY DERIVATIVES IN INTERNATIONAL
CLASS 36.**

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FORD MOTOR COMPANY

By: 
Thomas DeZare
Assistant Secretary DBS

Dated: June 17, 2003

FORD MOTOR COMPANY
Mark: MOTOWN
Class: International Class 36
Serial No. 78/101,526

Two Specimens of the Mark

Supplement to the Information Memorandum Supplement
dated January 28, 2002 and to the Information Memorandum dated January 28, 2002

Ford Credit Floorplan Master Owner Trust A
Trust/Issuer

Ford Credit Floorplan Corporation
Ford Credit Floorplan LLC
Transferors

Ford Motor Credit Company
Seller and Servicer

MotownSM Notes Program
Series 2002-1

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The Motown notes are obligations of the trust only and are not interests in or obligations of Ford Motor Company, Ford Motor Credit Company, Ford Credit Floorplan Corporation, Ford Credit Floorplan LLC or any other person.

This supplement may be used to offer and sell the Motown notes only if it is accompanied by the information memorandum supplement and the information memorandum.

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The trust began issuing Motown notes in book-entry form on January 28, 2002. The trust issues sub-classes of Motown notes having different expected final payment dates and final maturity dates.

- Expected final payment date 1 to 99 days from sub-class issuance date
- Final maturity date 390 days from sub-class issuance date
- Short-term program rating:
 - Standard & Poor's A-1+
 - Moody's P-1
 - Fitch F1+
- Current program size \$5 billion
- Expected program size \$8.5 billion

The terms of the Motown notes are more fully described in the attached information memorandum supplement and information memorandum. This document supplements the attached information memorandum supplement by updating and replacing the sections entitled "Ford Credit's U.S. Floorplan Portfolio", "The Trust Portfolio" and "Series Provisions — Liquidity Support — Paired Notes". You should carefully read this supplement and the attached information memorandum supplement and information memorandum, each in its entirety, before you purchase any Motown notes.

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Dealers

Lehman Brothers

Morgan Stanley

Ford Financial Services, Inc.

The date of this supplement is December 19, 2002

Incoming Correspondence Routing Sheet

To: TMO LAW OFFICE 110 - AWAITING RESPONSE DOCKET

Word Mark: MOTOWN

Serial No: 78101526



Mail Date: 06202003



Doc. Type: Responses to Office Actions



No Fee

RAM Mail Date: 062003



TRADEMARK LAW OFFICE 110
Serial No. 78/101,526
Mark: MOTOWN

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Ford Motor Credit Company

Serial No.: 78/101,526

Filed: January 2, 2002

Mark: **MOTOWN**

Class: 036

Atty. Docket
No.: FMCR 0787 TUS

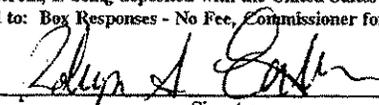
Examining
Attorney: Susan C. Hayash
Law Office 110

**RESPONSE TO FINAL OFFICE ACTION
AND REQUEST FOR RECONSIDERATION
PURSUANT TO 37 C.F.R. § 2.64 (b)**

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

Sir:

This document is filed in response to the Examiner's Final Office Action mailed
December 18, 2002.

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8		
I hereby certify that this paper, including all enclosures referred to herein, is being deposited with the United States Postal Service as first-class mail, postage pre-paid, in an envelope addressed to: Box Responses - No Fee, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513:		
<u>June 18, 2003</u> Date of Deposit	<u>Robyn S. Lederman</u> Name of Person Signing	 Signature

**Exhibit: A
Page: 214**

The Examining Attorney has refused registration of the Applicant's mark under the Trademark Act §2(e)(2) because the term is geographically descriptive of the applicant's services. The Applicant respectfully disagrees and requests the Examiner to reconsider her refusal based on the Applicant's following response and amendments in support of registration of this mark on the Supplemental register. The Applicant respectfully refers to a telephone conference with Examiner Hayash on June 16, 2003, whereby Examiner Hayash indicated that this application would be accepted for registration on the Supplemental Register should the application be amended to reflect use of the mark. It was further discussed and agreed that a Motion for Reconsideration and Notice of Appeal should be filed simultaneously with such amendment in order to insure that this application shall be preserved by continuing the final refusal. Likewise, it was acknowledged that amending both the basis and the register would raise sufficient new issues to allow for reconsideration of this matter under TMEP § 715.03.

AMENDMENTS

- (i) Delete Applicant's request for registration on the "Principal Register" in the application and add a request for registration on the --Supplemental Register--;
- (ii) Delete Class 35 services from the identification of services in the application; and maintain the whole of the services described in International Class 36;
- (iii) Delete the intent to use basis under Section 1(b) for registration in the application and add use as the basis for registration under Section 1(a), as supported by the attached Amendment to Allege Use with specimens for the Class 36 services.

CONCLUSION

In light of the foregoing amendments, the applicant respectfully requests the Examiner to reverse her refusal and to allow the application to progress to registration on the Supplemental Register.

Respectfully submitted,

Ford Motor Credit Company

By 

Robyn S. Lederman
Maria Angileri
Attorneys/Agents for Applicant

Date: June 18, 2003

BROOKS & KUSHMAN P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075
Phone: 248-358-4400
Fax: 248-358-3351

Serial No.: 78/101,526

Atty. Docket No.: FMCR 0787 TUS

TRADEMARK LAW OFFICE 110
Serial No. 78/101,526
Mark: MOTOWN

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Ford Motor Company

Serial No.: 78/101,526

Filed: January 08, 2002

Mark: MOTOWN

Class: 36

Atty. Docket No.: FMCR 0787 TUS

Examining Attorney: Susan C. Hayash
Law Office 110

NOTICE OF APPEAL

Box TTAB - FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Sir:

Applicant hereby appeals to the Trademark Trial and Appeal Board from the final decision of the Examiner dated December 18, 2002, refusing registration of the above-identified

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that this paper, including all enclosures referred to herein, is being deposited with the United States Postal Service as first-class mail, postage pre-paid, in an envelope addressed to: Box TTAB - Fee, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513:

June 18, 2003
Date of Deposit

Robyn Lederman
Name of Person Signing


Signature

trademark. This notice is filed in accordance with 15 U.S.C. § 1070 and 37 C.F.R. §§ 2.141 and 2.142(a).

Please charge any fees to our Deposit Account No. 06-1510. A duplicate copy of this Notice of Appeal is attached for this purpose.

Respectfully submitted,

By 
Robyn Lederman
Attorney/Agent for Applicant

Date: June 18, 2003

BROOKS & KUSHMAN P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075
Phone: 248-358-4400
Fax: 248-358-3351

Serial No.: 78/101,526

Atty. Docket No.: FMCR 0787 TUS

TRADEMARK LAW OFFICE 110
Serial No. 78/101,526
Mark: MOTOWN

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Ford Motor Company

Serial No.: 78/101,526

Filed: January 08, 2002

Mark: MOTOWN

Class: 36

Atty. Docket No.: FMCR 0787 TUS

Examining Attorney: Susan C. Hayash
Law Office 110

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Date: June 18, 2003

BROOKS & KUSHMAN P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075
Phone: 248-358-4400
Fax: 248-358-3351

Intent-To-Use

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: FORD MOTOR COMPANY
MARK: MOTOWN
SERIAL NO.: 78/101,526
FILED: January 08, 2002
CLASS: International Class 36
ATTORNEY REF. NO.: FMCR 0787 TUS

AMENDMENT TO ALLEGE USE UNDER 37 CFR 2.76

BOX TTAB - FEE
2900 Crystal Drive
Arlington, VA 22202-3513

TO THE ASSISTANT COMMISSIONER FOR TRADEMARKS:

Applicant requests registration of the above-identified service mark in the United States Patent and Trademark Office on the Supplemental Register established by the Act of July 5, 1946 (15 U.S.C. 1051 et. seq., as amended).

Applicant is using the mark in commerce on or in connection with the following services:

FINANCIAL SERVICES, NAMELY, ASSET BACKED COMMERCIAL PAPER PROGRAM IN THE NATURE OF STRUCTURING AND ISSUING COMMERCIAL PAPER, ADMINISTRATION OF COMMERCIAL PAPER PROGRAMS, BROKERING COMMERCIAL PAPER, CONSUMER AND COMMERCIAL LOAN FINANCING SERVICES, LOAN COLLECTION SERVICES, SERVICES RELATING TO THE TRADING OF EQUITY DERIVATIVES, NAMELY PROVIDING INVESTMENT OF FUNDS FOR

**OTHERS IN EQUITY DERIVATIVES IN INTERNATIONAL
CLASS 36.**

The mark was first used by Applicant on or in connection with the services at least as early as January 28, 2002; was first used on or in connection with the services in interstate commerce at least as early as January 28, 2002; and is now in use in such commerce.

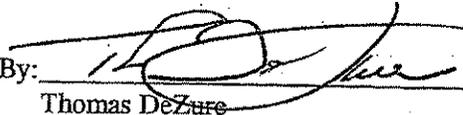
The mark is used on promotional brochures and advertising describing the services; and two specimens showing the mark as currently used in commerce are submitted with this Amendment.

Please charge any fees to our Deposit Account No. 06-1510.

DECLARATION

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he is properly authorized to execute this Amendment to Allege Use on behalf of the Applicant, he believes the Applicant to be the owner of the service mark sought to be registered; the service mark is now in use in commerce; and all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

FORD MOTOR COMPANY

By: 

Thomas DeZure
Assistant Secretary

Dated: June 17, 2003

FORD MOTOR COMPANY
Mark: **MOTOWN**
Class: International Class 36
Serial No. 78/101,526

Two Specimens of the Mark

Supplement to the Information Memorandum Supplement
dated January 28, 2002 and to the Information Memorandum dated January 28, 2002

Ford Credit Floorplan Master Owner Trust A

Trust/Issuer

Ford Credit Floorplan Corporation
Ford Credit Floorplan LLC
Transferors

Ford Motor Credit Company
Seller and Servicer

MotownSM Notes Program Series 2002-1

Before you purchase any Motown notes, you should carefully consider the risk factors beginning on page S-14 of the accompanying information memorandum supplement and on page 9 of the accompanying information memorandum.

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Dealers

Lehman Brothers

Morgan Stanley

Ford Financial Services, Inc.

The date of this supplement is December 19, 2002

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"This program continues our strategy of ensuring our liquidity through diversified and low cost funding sources," said Ann Marie Petach, Vice President - Funding Matters and Assistant Treasurer of Ford Motor Credit Company.

The Motown Notes have not been registered under the Securities Act of 1933, as amended, and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements.

Ford Credit is a wholly owned subsidiary of Ford Motor Company and is the world's largest automotive finance company. Now in its 43rd year, Ford Credit provides vehicle financing in 40 countries to more than 10 million customers and more than 12,500 automotive dealers. More information about Ford Credit can be found at <http://www.fordcredit.com>.

SOURCE Ford Motor Credit Company
Web Site: <http://www.fordcredit.com>

Issuers of news releases and not PR Newswire are solely responsible for the accuracy of the content.

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Intent-To-Use

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: FORD MOTOR COMPANY
MARK: MOTOWN
SERIAL NO.: 78/101,526
FILED: January 08, 2002
CLASS: International Class 36
ATTORNEY REF. NO.: FMCR 0787 TUS

AMENDMENT TO ALLEGE USE UNDER 37 CFR 2.76

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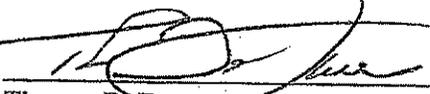
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Assistant Secretary

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Web Site: <http://www.fordcredit.com>

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Exhibit: A
Page: 230

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/101526

APPLICANT: Ford Motor Company

CORRESPONDENT ADDRESS:
Gregory P. Brown
Ford Global Technologies, Inc.
1 Parklane Boulevard
Dearborn MI 48126

RETURN ADDRESS:
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513
ecom110@uspto.gov

MARK: MOTOWN

CORRESPONDENT'S REFERENCE/DOCKET NO: 200211

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

FINAL OFFICE ACTION

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.

Serial Number 78/101526

This letter responds to the applicant's communication filed on November 4, 2002, in which the applicant (1) argued against the refusal to register the mark under Section 2(e)(2) of the Trademark Act; (2) amended the recitation of services; and (3) added a class. Numbers 2 and 3 are accepted.

For the following reasons, the refusal to register the mark is **maintained and made FINAL**.

Registration Refused – Mark is Geographically Descriptive – Maintained and Made FINAL

The term MOTOWN is geographically descriptive under Trademark Act Section 2(e)(2), 15 U.S.C. Section 1052(e)(2) because the term is geographically descriptive of the applicant's services.

The examining attorney has considered the applicant's arguments carefully but has found them unpersuasive. For the reasons below, the refusal to register the mark under Section 2(e)(2) of the Trademark Act is maintained and made *FINAL*.

The applicant proposes the mark MOTOWN for use in connection with "accounts receivable services, namely, accounts receivable management" and for "financial services, namely, asset backed commercial paper program in the nature of structuring and issuing commercial paper, administration of commercial paper programs, brokering commercial paper, consumer and commercial loan financing services, loan collection services, services relating to the trading of equity derivatives, namely providing investment of funds for others in equity derivatives".

The primary significance of the term "MOTOWN" is geographic, and applicant's goods/services come from the geographical place named in the mark. Therefore, a public association of the goods/services with the place is presumed. *In re JT Tobacconists*, 59 USPQ2d 1080 (TTAB 2001); *In re U.S. Cargo, Inc.*, 49 USPQ2d 1702 (TTAB 1998); *In re Carolina Apparel*, 48 USPQ2d 1542 (TTAB 1998); *In re Chalk's International Airlines Inc.*, 21 USPQ2d 1637 (TTAB 1991); *In re California Pizza Kitchen*, 10 USPQ2d 1704 (TTAB 1989); *In re Handler Fenton Westerns, Inc.*, 214 USPQ 848 (TTAB 1982). TMEP §1210.04(b). As shown by the definitions and articles found on the Internet^[1], MOTOWN refers directly to the largest city in Michigan, specifically, Detroit, where the major manufacturers of motor vehicles, such as the applicant, are located. See definitions and articles attached to the first Office Action dated May 1, 2002 and incorporated herein by reference.

The applicant argues that MOTOWN is not primarily geographically descriptive when used in connection with the applicant's services.

Where there is no genuine issue that the geographic significance of the term is its primary significance and where the geographic place is neither obscure or remote, a public association of the services with the place named in the mark may ordinarily be presumed from the fact that applicant's own goods or services come from that place. *In re California Pizza Kitchen Inc.*, 10 USPQ2d 1704, 1705 (TTAB 1988) and *In re Handler Fenton Westerns, Inc.*, 214 USPQ 848 (TTAB 1982). The present case is one in which it is proper to presume a goods/place association.

Applicant argues that MOTOWN is not particularly known for its financial services. It is a common for applicants to argue that, no matter what presumption seems appropriate under prevailing case law, the examining attorney must submit evidence to establish a goods/place association. Motown, or Detroit, Michigan, does not need to be "known" (or famous) for financial services in order for Motown to be

geographically descriptive. There only needs to be a goods/place association that is reasonable.

Here there is no genuine issue that the geographic significance of the term is its primary significance and the geographic place is neither obscure or remote. Accordingly, a public association of the goods with the place named in the mark may be presumed from the fact that applicant's own goods come from the place name in the mark.

That such an association is reasonable is established by the case law. It is further backed up by the attached excerpts from the website, <http://www.guide2detroit.com/banks.shtml> and several excerpts from the referenced banking sites and the applicant's own website, all of which evidence that financial services such as the applicant's are widely available in Motown, or Detroit, Michigan.

The mark ROCKLAND MORTGAGE CORP. is not a good comparison to the present case. The District Court found in this inter-parties infringement case, that the "combination of "ROCK" and "LAND" may, in the minds of Jornlin and Smith, suggest certain qualities of stability in the mortgage business. In the minds of potential retail mortgage purchasers, however, the combination is more likely to be simply arbitrary. Potential purchasers may just as easily take the "ROCKLAND" portion of the mark to signify "stony terrain" as "a stable business pertaining to real estate." *Cf. Accu Personnel*, 823 F.Supp. at 1166 (holding the ACCU mark suggestive because it "derives from the word accurate, but is not the word itself. . . . [and] [t]he short leap of the imagination required to derive this meaning renders the mark suggestive"). Plaintiff's mark requires more than "imagination, thought and perception to reach a conclusion as to the nature" of its products. 1 McCarthy Section 11.21 [1] at 11-107 (quoting *Stix Products, Inc.*, 295 F.Supp. at 488). It requires mind reading." *Rockland Mortgage Corp. v. Shareholders Funding*, 30 USPQ2d 1270, 1275 (D. Del. 1993). The case law cited by the applicant deals with marks where the geographical term is not used in a straightforward manner as here, so that the geographical significance of the terms in those case is not primary.

In sum, because the mark's primary significance is geographic and there would be a goods/place association with the mark, the refusal to register the mark under Section 2(e)(2) of the Trademark Act is maintained and made **FINAL**.

Response to a Final Action

Please note that the only appropriate responses to a final action are either (1) compliance with the outstanding requirements, if feasible, or (2) filing of an appeal to the Trademark Trial and Appeals Board. 37 C.F.R. Section 2.64(a). If the applicant fails to respond within six months of the mailing date of this refusal, this Office will declare the application abandoned. 37 C.F.R. Section 2.65(a).

If the applicant has any questions concerning this action, please contact the assigned Examining Attorney at the number listed below.

/Susan C. Hayash/
Trademark Examining Attorney
Law Office 110
Office: (703) 308-9110 x.144
Fax: (703) 746-8110
ecom110@uspto.gov (FORMAL responses)
susan.hayash@uspto.gov (INFORMAL responses)

How to respond to this Office Action:

To respond formally using the Office's Trademark Electronic Application System (TEAS), visit <http://www.uspto.gov/teas/index.html> and follow the instructions.

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To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.

[1] The Trademark Trial and Appeal board has considered the admissibility of Internet evidence and held it to be admissible. *Raccioppi v. Apogee Inc.*, 47 USPQ2d 1368 (TTAB 1998).

Business Organizations

Business Services

Financial Services and Real Estate

Personal and Household Services

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Savings.**

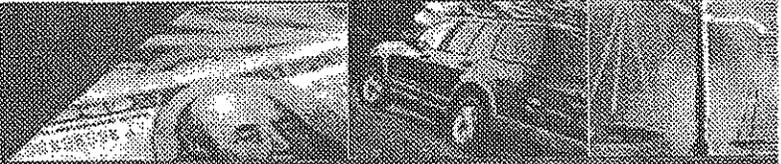


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- Credit Unions of Michigan
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- Michigan Heritage Bank
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- Monroe Bank & Trust
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- PNC Bank
- The Private Bank
- Republic Bank
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- Standard Federal Bank
- Sterling Bank & Trust
- TCF Bank
- Telecom Credit Union
- USA Federal Credit Union

Verify a bank's FDIC Membership
Verify a credit union's NCUA Membership



INVESTMENT PRODUCTS

FORD MONEY MARKET ACCOUNT

FIXED-RATE NOTES

BACKPAGE SERVICES

INSTITUTIONAL PRODUCTS

COMMERCIAL PAPER

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ASSET-BACKED SECURITIES
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The Monthly Settlement Statement and Compliance Tests for the FCAR Owner Trust commercial paper program are available in PDF format and require [Acrobat Reader](#). (This link takes you to a non-Ford Motor Company website where Ford has no control over the content.)

Please select the information you would like to review.

Monthly Settlement Statement

Settlement Statement	Current	Historical			
	Oct-2002	Sep-2002	Aug-2002	Jul-2002	Jun-2002
	May-2002	Apr-2002	Mar-2002	Feb-2002	
	Jan-2002	Dec-2001	Nov-2001	Oct-2001	

Compliance Tests

	Current	Historical			
	Nov-2002	Oct-2002	Sep-2002	Aug-2002	Jul-2002
	Jun-2002	May-2002	Apr-2002	Mar-2002	
	Feb-2002	Jan-2002	Dec-2001	Nov-2001	

	Current	Historical			
	Nov-2002	Oct-2002	Sep-2002	Aug-2002	Jul-2002
	Jun-2002	May-2002	Apr-2002	Mar-2002	
	Feb-2002	Jan-2002	Dec-2001	Nov-2001	

	Current	Historical			
	Nov-2002	Oct-2002	Sep-2002	Aug-2002	Jul-2002
	Jun-2002	May-2002	Apr-2002	Mar-2002	
	Feb-2002	Jan-2002	Dec-2001	Nov-2001	

Ford
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INVESTMENT PRODUCTS

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FIXED-RATE NOTES *

BROKERAGE SERVICES *

INSTITUTIONAL INVESTMENTS

COMMERCIAL PAPER **

Electronic Trading *

ASSET-BACKED SECURITIES *

AUTOMOTIVE FINANCING



FORD CREDIT *



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FOR INSTITUTIONAL AND CORPORATE INVESTORS

Ford Motor Credit Company finances its business in the U.S. in part through the issuance of commercial paper. These senior notes are available for maturity on any business day selected by the investor between 1 and 270 days.

For more information on these notes and the convenience of Electronic Trading, contact the following U.S. Financial Sales Offices:

Eastern United States:
(800) 331-9254
(800) 331-9256

Western United States:
(800) 331-9258
(800) 521-4012

Commercial Paper notes issued by Ford Credit Canada Limited are rated R1 (LOW) by Dominion Bond Rating Service. For more information on these notes, contact the following Financial Sales Office:

Ford Credit Canada Limited:
(800) 437-5051

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Ford Motor Company



24/7 Account Access Now there are two ways to access your account 24 hours a day, 7 days a week: Private Banker Access (telephone service), and fidelity.com.

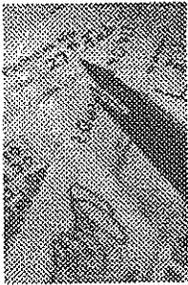
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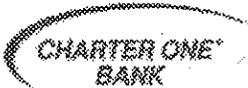
Fidelity Bank has been providing banking services to the community since 1971. We have many products and services to offer business entities, which are described below. If you live or do business in the area of our [banking offices](#), we would be delighted to help you with your banking needs. Please [Contact Us](#). At your convenience, we can gather most of the information we need by phone, fax, or mail. However, unless you are an established customer, it will be necessary for you to visit one of our offices to complete the account opening process.

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Fidelity Bank has several checking account options to offer business entities, which are detailed below. The comparison chart is provided to give you a brief overview of the different account types, features, and pricing.



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 You'll find our **Business Advantage Checking Account** perfect for the small business or to fulfill the need for a secondary business checking account. The low monthly fee allows for a reasonable level of activity. Checks are returned monthly with your statement, however, if you do not need your checks the fees associated with the account are reduced.



Home | Personal Finance | Small Business | Commercial

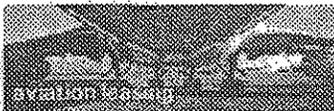
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LAW OFFICE 110
SERIAL NO. 78/101526
MARK: MOTOWN

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Ford Motor Company
Mark: MOTOWN
Serial No.: 78/101526
Filed: January 8, 2002
Class: 36
Trademark Atty: Susan C. Hayash
Law Office No.: 110
Attorney Ref.: FMCR0787TUS

RESPONSE TO OFFICE ACTION NO. 01

BOX RESPONSES - FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Sir:

This document is filed in response to the Examiner's Office Action No. 01 mailed

May 1, 2002.

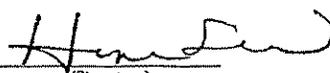
11/13/2002 GTHOMAS2 00000177 061510 78101526
01 FC:6001 325.00 CH

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:
BOX RESPONSES - NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on:

October 31, 2002
(Date of Deposit)

By: Hope Shovein
(Person Signing)


(Signature)

SECTION 2(e)(2) REFUSAL TO REGISTER

The examiner has issued a refusal of registration on the Principal Register under Section 2(e)(2) of the Trademark Act because she believes the mark "MOTOWN" is primarily geographically descriptive of the applicant's financial related services, as further amended below. The examiner maintains that the primary significance of the term "MOTOWN" is geographic, and the applicant's goods/services come from the geographical place named in the mark, and therefore a public association of the goods/services with the place is presumed. The applicant respectfully disagrees. As discussed below, the applicant's use of "MOTOWN" is not geographically descriptive of applicant's services because there is no proof that purchasers/consumers would reasonably associate applicant's financial services with "MOTOWN," as a geographical location.

While applicant does not disagree with the examiner's contention that "MOTOWN" refers to Detroit, Michigan, "MOTOWN" is probably equally known as a style of music or the music recording label founded by music producer, Barry Gordy, in the 1960s. It is highly unlikely that sophisticated purchasers/consumers will believe or care that applicant's *financial services*, originated in Detroit — since Detroit or MOTOWN are not places well known for financial services.

The applicant's use of the mark "MOTOWN" is arbitrary since only a very naive or uninformed buyer would believe or care that the financial services offered by applicant came from Detroit. Furthermore, a mark is arbitrary when it is a word in common use that is applied to a product or service unrelated to its meaning so that the word neither describes nor suggests the product or service. *See Tisch Hotels, Inc. v. Americana Inn, Inc.*, 146 USPQ 566, 568, n. 2 (7th Cir. 1965). The applicant's use of "MOTOWN" is similar to the situation in *Rockland Mortgage Corp.*

Serial No. 78/101526

v. Shareholders Funding, 30 USPQ2d 1270 (D. Del. 1993), in which the Court found the use of "ROCKLAND" for a mortgage company arbitrary because it was not credible to associate financial security with a small town in northern Delaware. It is equally beyond belief that consumers would associate the financial services offered by applicant with the music industries in Detroit or care whether such services originate in Detroit.

The applicant requests registration of the mark "MOTOWN" because it is arbitrary when applied to its financial services. Because there is no meaningful connection between the geographical meaning of the mark and the services in the public mind, the mark is arbitrary when applied to the services and registration should not be refused under Section 2(e)(2). *See In re Nantucket, Inc.*, 213 USPQ 889, 892 (CCPA 1982), "Nantucket" for mens shirts; *Madera Wine & Liquor Co. v. RWL Wine & Liquor Co.*, 100 USPQ 173 (Md. 1654), "Mt. Zion" for wine; *In re Jacques Bernier, Inc.*, 13 USPQ2d 1725 (CAFC 1990), "Rodeo Drive" for perfume; *In re Sharkey's Dry Goods Co.*, 23 USPQ2d 1061 (TTAB 1992), "Paris Beach Club" for T-shirts and sweatshirts.

AMENDMENTS
RECITATION OF SERVICES

In accordance with the examiner's request, please amend the identification of services to read as follows:

Accounts receivable services, namely, accounts receivable management, in International Class 35.

Financial services, namely, asset backed commercial paper program in the nature of structuring and issuing commercial

Serial No. 78/101526

paper, administration of commercial paper programs, brokering commercial paper, consumer and commercial loan financing services, loan collection services, services relating to the trading of equity derivatives, namely providing investment of funds for others in equity derivatives in International Class 36.

Given that applicant is now prosecuting this application as a multi-class application, please charge applicant's Deposit Account No. 06-1510 the \$325.00 fee for the additional class.

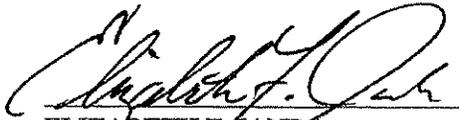
CONCLUSION

In light of the foregoing arguments, the applicant believes that this application is now in a form suitable for publication and subsequent registration on the Principal Register. Such action is respectfully requested. If the examiner has any further questions, she is requested to contact the undersigned attorneys.

Respectfully submitted,

Ford Motor Company

BROOKS & KUSHMAN P.C.

By: 
ELIZABETH F. JANBA
MARIA F. ANGILERI
Attorney for Applicant
1000 Town Center, 22nd Floor
Southfield, MI 48075
(248) 358-4400

Dated: October 31, 2002

Drawing Page

Serial Number:

78101526

Applicant:

Ford Motor Company
1 The American Road
Dearborn MI USA 48121



Goods and Services:

Financial services, namely, asset backed commercial paper program, consumer and commercial loan lending services, loan collection services, accounts receivable management, services relating to the trading of equity derivatives.

Mark:

MOTOWN

Exhibit: A
Page: 242



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01-08-2002

Internet Transmission Date:
2002/01/08

Serial Number:
78101526

Filing Date:
2002/01/08



TRADEMARK APPLICATION

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

TOTAL FEES PAID: \$325

RAM SALE NUMBER: 91
RAM ACCOUNTING DATE: 20020109



NO OCR

Exhibit: A
Page: 243



01-08-2002

<SERIAL NUMBER> 78101526
<FILING DATE> 01/08/2002

<DOCUMENT INFORMATION>
<TRADEMARK/SERVICEMARK APPLICATION>
<VERSION 1.24>

<APPLICANT INFORMATION>

<NAME> Ford Motor Company
<STREET> 1 The American Road
<CITY> Dearborn
<STATE> MI
<COUNTRY> USA
<ZIP/POSTAL CODE> 48121
<TELEPHONE NUMBER> 313-323-2023
<FAX NUMBER> 313-323-2647
<E-MAIL ADDRESS> tmgroup@ford.com
<AUTHORIZE E-MAIL COMMUNICATION> Yes

<APPLICANT ENTITY INFORMATION>

<CORPORATION: STATE/COUNTRY OF INCORPORATION> Delaware

<TRADEMARK/SERVICEMARK INFORMATION>

<MARK> MOTOWN
<TYPED FORM> Yes

* Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq., as amended). *

<BASIS FOR FILING AND GOODS/SERVICES INFORMATION>

<INTENT TO USE: SECTION 1(b)> Yes

* Applicant has a bona fide intention to use or use through a related company the mark in commerce on or in connection with the below-identified goods/services. (15 U.S.C. Section 1051(b), as amended.) *

<INTERNATIONAL CLASS NUMBER> 036

<LISTING OF GOODS AND/OR SERVICES> Financial services, namely, asset backed commercial paper program, consumer and commercial loan lending services, loan collection services, accounts receivable management, services relating to the trading of equity derivatives.

<ATTORNEY INFORMATION>

<NAME> Gregory P. Brown
<STREET> 1 Parklane Boulevard

Exhibit: A
Page: 244

<CITY> Dearborn
<STATE> MI
<COUNTRY> USA
<ZIP/POSTAL CODE> 48126
<FIRM NAME> Ford Global Technologies, Inc.
<TELEPHONE NUMBER> 313-323-1826
<FAX NUMBER> 313-323-2647
<ATTORNEY DOCKET NUMBER> 200211
<OTHER APPOINTED ATTORNEY(S)> Susan N. McFee; Donald B. Aiken

<FEE INFORMATION>

<TOTAL FEES PAID> 325
<NUMBER OF CLASSES PAID> 1
<NUMBER OF CLASSES> 1

<LAW OFFICE INFORMATION>

* The USPTO is authorized to communicate with the applicant at the below e-mail address *
<E-MAIL ADDRESS FOR CORRESPONDENCE> tmgroup@ford.com

<SIGNATURE AND OTHER INFORMATION>

* PTO-Application Declaration: The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

*

<SIGNATURE> /thomas dezure/
<DATE> 01/08/2002
<NAME> Thomas DeZure
<TITLE> Assistant Secretary

<MAILING ADDRESS>

<LINE> Gregory P. Brown
<LINE> Ford Global Technologies, Inc.
<LINE> 1 Parklane Boulevard

Exhibit: A
Page: 245

78101526

<LINE> Dearborn MI 48126

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RAM-91-20020108172314522

E-MAIL ADDRESS FOR ACKNOWLEDGMENT> tmgroup@ford.com

Exhibit: A
Page: 246

78101526

Drawing Page

Serial Number:

78101526

Applicant:

Ford Motor Company
1 The American Road
Dearborn MI USA 48121



Goods and Services:

Financial services, namely, asset backed commercial paper program, consumer and commercial loan lending services, loan collection services, accounts receivable management, services relating to the trading of equity derivatives.

Mark:

MOTOWN

Exhibit: A
Page: 247



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01-08-2002

[Handwritten signature]

TRADEMARK



75625492

75625492



JUL 12 1999

LAW OFFICE 115

CONTENTS

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1.		JUL 15 1999	AW
2.	<i>[Handwritten]</i>		
3.		JUL 16 2001	<i>[Handwritten]</i>
4.	Amend P2 <i>CefM</i>	8/18/00	
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6.	NOP 04/24/01		
7.			
8.			
9.	NOA 7/17/01		
10.			
11.	EXT REQ FILED	1/22/02	<i>[Handwritten]</i>
12.	EXT REQ GRANTED	2/11/02	<i>[Handwritten]</i>
13.	EXT REQ FILED	7/16/02	<i>[Handwritten]</i>
14.	SOU FILED	7/16/02	<i>[Handwritten]</i>
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See inside of file for additional entries.

9-28-60

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2649776
11/2/02

75-625492



TYPED DRAWING
MOTOWN MISSILE

ITU

LAW OFFICE 105

PRINCIPAL

ATTORNEY ADVISOR: _____

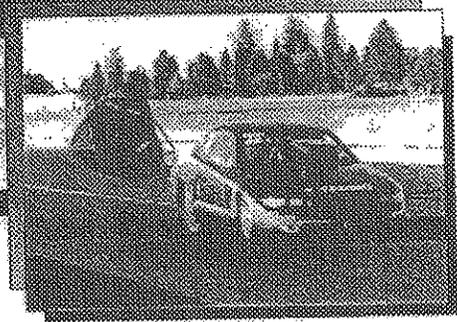
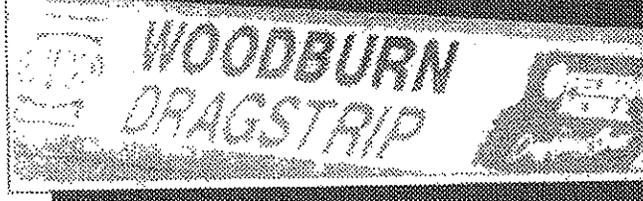
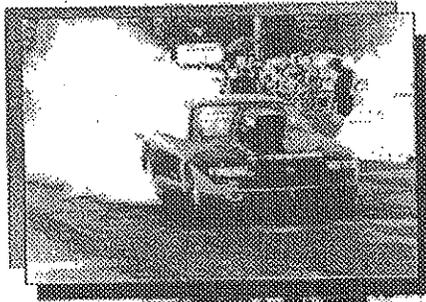
Farah Bhatti

11/2/02

Examining Attorney: (Please Print Name)	Date Published in Trademark O.G.
Approved for Publication (Principal Register) — (Signature) <i>[Signature]</i> 12/12/02	Section 4 Accepted — (Signature)
Approved for Registration (Section 1(d)) — (Signature) <i>Michael B...</i> 9/23/02	<div data-bbox="883 1732 1131 1837" data-label="Text"><p>PUBLISHED 04/24/01</p></div>
Approved for Registration (Supplemental Register) — (Signature)	



WOODBURN, OR



Midtown Missile™



/ TRADEMARK EXAMINATION WORKSHEET

AMENDMENT STAGE NO CHANGE PUBLICATION/REGISTRATION STAGE

Name: SYLVIA HAMMETT L.O. 115

Date

9/28/02

Serial No. 74-75-76-78

625492

INSTRUCTIONS: Place a check mark in the appropriate column and/or box to indicate which data elements have been amended/coded.		
Legal Instrument Examiner (LIE)		
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	<input type="checkbox"/>	First Use in Commerce Date
Mark Data	<input type="checkbox"/>	In Another Form
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	<input type="checkbox"/>	1b
	<input type="checkbox"/>	Word Mark
Misc. Mark Data	<input type="checkbox"/>	Pseudo Mark
	<input type="checkbox"/>	Design Search Code
	<input type="checkbox"/>	Sizing/Lining Code
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Foreign Reg. Data	<input type="checkbox"/>	Translation
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I certify that all corrections have been entered in accordance with text editing guidelines.	<input type="checkbox"/>	Address 2
	<input type="checkbox"/>	City
	<input type="checkbox"/>	State/Country
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Patent and Trademark Office	<input type="checkbox"/>	Concurrent Use
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	<input type="checkbox"/>	Attorney
Law Office 115 (703) 308-9115 #123	<input type="checkbox"/>	Domestic Representative
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	<input type="checkbox"/>	Correspondence Firm Name/Address Phone NO./ Fax No/Email no.

I certify that all corrections have been entered in accordance with text editing guidelines.
 Sylvia Hammett *[Signature]* 9/20/02
 Legal Instrument Examiner
 Patent and Trademark Office
 Law Office 115 (703) 308-9115 #123

Knobbe Martens Olson & Bear LLP
Intellectual Property Law

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Tel 415-954-4114
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I.T.U. UNIT

2002 JAN 24 A 10 29

January 16, 2002

01-22-2002

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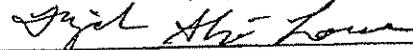
U.S. Patent & TMO/TM Mail Rpt Dt #34

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

I hereby certify that this correspondence and all marked attachments are being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on

January 16, 2002

(Date)


Tirzah Abé Lowe

Re: Mark: MOTOWN MISSILE
Serial No.: 75/625,492
Filing Date: January 22, 1999
Class: 41
Applicant: Arkenol, Inc.
Our Reference No.: ARKENOL.018T

Dear Sir:

Enclosed for filing is a Request for a Six-Month Extension of Time to file a Statement of Use for the subject mark on the Principal Register, including the following:

1. A FIRST REQUEST FOR EXTENSION OF TIME TO FILE A STATEMENT OF USE with signed Declaration under 37 C.F.R. § 2.89;
2. A stamped, self-addressed postcard to acknowledge receipt;
3. A check in the amount of \$150 for the filing fee.

Please charge Deposit Account No. 11-1410 for any additional fees which may be required, or credit any overpayment to this account.

Respectfully submitted,



Tirzah Abé Lowe

Enclosures

H:\DOCS\TAL\TAL-4563.DOC\011602

Newport Beach
949-760-0404

San Diego
619-235-8550

Los Angeles
310-551-3450

Riverside
909-781-9231

Exhibit: A
Page: 253

ITU

ARKENOL.018T

SERVICE MARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

EXT REQ GRANTED

Applicant	:	Arkenol, Inc.)	
Serial No.	:	75/625,492)	Examining Attorney: Farah P. Bhatti
Filed	:	January 22, 1999)	Law Office: 115
Mark	:	MOTOWN MISSILE)	
Mailing Date of Notice of Allowance	:	July 17, 2001)	



01-22-2002
U.S. Patent & TMO/TM Mail Rpt Dt. #34

FIRST REQUEST FOR EXTENSION OF TIME UNDER 37 C.F.R. § 2.89(a)
TO FILE STATEMENT OF USE

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

Dear Sir:

Applicant hereby requests a six-month extension of time in which to file the Statement of Use. This is the first such request for extension of time.

Applicant has a continued bona fide intention to use the mark in commerce in connection with the Class 41 services identified in the Notice of Allowance. Applicant respectfully requests the PTO to remove the Class 4 goods from the application.

The fee for this First Request for Extension of Time for one (1) class is enclosed.

01/23/2002 6THMMS2 00000175 75625492
01 FC:364 150.00 DP

Exhibit: A
Page: 254

Mark : MOTOWN MISSILE
Serial No. : 75/625,492

DECLARATION

I, Tirzah Abé Lowe, declare as follows: I am properly authorized to execute this First Request for Extension of Time to File a Statement of Use on behalf of the applicant; I believe the applicant to be entitled to use the mark sought to be registered; all statements made herein of my own knowledge are true, and all statements made on information and belief are believed to be true; these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

Arkenol, Inc.

Dated: 1-16-02

By: Tirzah Abé Lowe
Tirzah Abé Lowe
Attorney for Applicant

H:\DOCS\TAL\TAL-4560.DOC
011602

U.S. Patent and Trademark Office (PTO)
NOTICE OF ALLOWANCE

(NOTE: If any data on this notice is incorrect, please submit a written request for correction of the NOA to: Assistant Commissioner for Trademarks, Box ITU, 2900 Crystal Drive, Arlington, VA 22202-3513. Please include the serial number of your application on ALL correspondence with the PTO. 15 U.S.C. 1063(b)(2))

ISSUE DATE OF NOA: Jul 17, 2001

DANIEL E. ALTMAN
 KNOBBE, MARTENS, OLSON & BEAR, LLP
 620 NEWPORT CENTER DRIVE
 SIXTEENTH FLOOR
 NEWPORT BEACH, CALIFORNIA 92660

ATTORNEY
 REFERENCE NUMBER
 ARKENOL.018T

**** IMPORTANT INFORMATION: 6 MONTH DEADLINE ****

To avoid ABANDONMENT of this application, either a "Statement of Use" (a.k.a. "Allegation of Use") or a "Request for Extension of Time to File a Statement of Use" (a.k.a. "Extension Request") and the appropriate fee(s) must be received in the PTO within six months of the issue date of this Notice Of Allowance (NOA) for those goods and/or services based on intent to use. Failure to do so will result in the ABANDONMENT of this application.

Please note that both the "Statement of Use" and "Extension Request" have many legal requirements, including fees. These requirements are explained in the PTO booklet "Basic Facts About Trademarks", which can be obtained upon request at (703)308-9000. In addition, there are printed forms contained in this booklet (for "Statements of Use" and "Extension Requests") for your use.

The following information should be reviewed for accuracy:

SERIAL NUMBER: 75/625492
 MARK: MOTOWN MISSILE
 OWNER: Arkenol, Inc.
 27401 Los Altos, Suite 400
 Mission Viejo, CALIFORNIA 92691

This application has the following bases, but not necessarily for all listed goods/services:
 Section 1(a): NO Section 1(b): YES Section 44(e): NO

GOODS/SERVICES BY INTERNATIONAL CLASS

004-chemical additive compounds for motor oils and motor fuels

041-sports-related entertainment, namely, organizing and maintaining automobile racing teams for others

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trade Mark Office

ASSISTANT COMMISSIONER FOR TRADEMARKS
2900 Crystal Drive
Arlington, Virginia 22202-3513

April 11, 2001

NOTICE OF PUBLICATION UNDER 12(a)

1. Serial No.: 75/625,492
2. Mark: MOTOWN MISSILE
3. International Class(es): 4, 41
4. Publication Date: Apr 24, 2001
5. Applicant: Arkenol, Inc.

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a notice of allowance pursuant to section 13(b) of the Statute.

Copies of the trademark portion of the Official Gazette containing the publication of the mark may be obtained at \$38.00 each for domestic orders, or at \$47.50 each for foreign orders from:

The Superintendent of Documents
U.S. Government Printing Office
PO Box 371954
Pittsburgh, PA 15250-7954
Phone: (202)512-1800

By direction of the Commissioner.

DANIEL E. ALTMAN
KNOBBE, MARTENS, OLSON & BEAR, LLP
620 NEWPORT CENTER DRIVE
SIXTEENTH FLOOR
NEWPORT BEACH, CALIFORNIA 92660

TMP&I

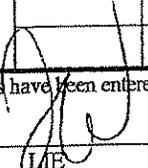
T DEMARK EXAMINATION WORK SHEET

AMENDMENT STAGE

NO CHANGE

PUBLICATION/REGISTRATION STAGE

Name: Theresa Williams LO. 114 Date 02/21/2001 Serial No. 75025492

INSTRUCTIONS: Place a check mark in the appropriate column and/or box to indicate which data elements have been amended/coded.			
Legal Instrument Examiner (LIE)			
	Amended	Data Element	
Class Data	<input type="checkbox"/>	<input type="checkbox"/> Prime/International Class	<input type="checkbox"/> Goods and Services
	<input type="checkbox"/>	<input type="checkbox"/> First Use Date	<input type="checkbox"/> First Use in Commerce Date
	<input type="checkbox"/>	<input type="checkbox"/> In Another Form	<input type="checkbox"/> Certification
	<input type="checkbox"/>	<input type="checkbox"/> 1b	
Mark Data	<input type="checkbox"/>	<input type="checkbox"/> Word Mark	<input type="checkbox"/> Pseudo Mark
	<input type="checkbox"/>	<input type="checkbox"/> Mark Drawing Code	<input type="checkbox"/> Design Search Code
	<input type="checkbox"/>	<input type="checkbox"/> Scan Sub Drawing	
Misc. Mark Data	<input type="checkbox"/>	<input type="checkbox"/> Mark Description	<input type="checkbox"/> Disclaimer
	<input type="checkbox"/>	<input type="checkbox"/> Lining/Stippling	<input type="checkbox"/> Name/Portrait/Consent
	<input type="checkbox"/>	<input type="checkbox"/> Translation	
Section 2(f)	<input type="checkbox"/>	<input type="checkbox"/> Section 2(f) Entire Mark	<input type="checkbox"/> Section 2(f) in Part
	<input type="checkbox"/>	<input type="checkbox"/> Section 2(f) Limitation Statement	<input type="checkbox"/> Amended Register Date
	<input type="checkbox"/>	<input type="checkbox"/> Amended Register	
Foreign Reg. Data	<input type="checkbox"/>	<input type="checkbox"/> Foreign Country	<input type="checkbox"/> 44(d)
	<input type="checkbox"/>	<input type="checkbox"/> Foreign Application Number	<input type="checkbox"/> Foreign Application Filing Date
	<input type="checkbox"/>	<input type="checkbox"/> Foreign Registration Number	<input type="checkbox"/> Foreign Registration Date
	<input type="checkbox"/>	<input type="checkbox"/> Foreign Registration Expiration Date	<input type="checkbox"/> Foreign Renewal Reg. Number
	<input type="checkbox"/>	<input type="checkbox"/> Foreign Reg. Renewal Expiration Date	<input type="checkbox"/> Foreign Renewal Reg. Date
Owner Data	<input type="checkbox"/>	<input type="checkbox"/> Owner Name	<input type="checkbox"/> DBA/AKA/TA
	<input type="checkbox"/>	<input type="checkbox"/> Address 1	<input type="checkbox"/> Address 2
	<input type="checkbox"/>	<input type="checkbox"/> City	<input type="checkbox"/> State
	<input type="checkbox"/>	<input type="checkbox"/> Zip Code	
	<input type="checkbox"/>	<input type="checkbox"/> Citizenship	<input type="checkbox"/> Entity
	<input type="checkbox"/>	<input type="checkbox"/> Entity Statement	<input type="checkbox"/> Composed of
	<input type="checkbox"/>	<input type="checkbox"/> Assignment(s)/Name Change	
Amd/Corr Restr.	<input type="checkbox"/>	<input type="checkbox"/> Concurrent Use	
Prior U.S. Reg.	<input type="checkbox"/>	<input type="checkbox"/> Prior Registration	
Correspondence	<input type="checkbox"/>	<input type="checkbox"/> Attorney	<input type="checkbox"/> Domestic Representative
	<input type="checkbox"/>	<input type="checkbox"/> Attorney Docket Number	
	<input type="checkbox"/>	<input type="checkbox"/> Correspondence Firm Name/Address	
I certify that all corrections have been entered in accordance with text editing guidelines.			
 _____ LIE			02/21/2001 DATE
Other: _____			

TRADEMARK EXAMINATION WORKSHEET

AMENDMENT STAGE
 NO CHANGE
 PUBLICATION/REGISTRATION STAGE

Name: TANYA L. BAYLOR L.O. 115 Date: 11/27/00 Serial No. (75)-76 1025492

INSTRUCTIONS: Place a check mark in the appropriate column and/or box to indicate which data elements have been amended/coded.		
Legal Instrument Examiner (LIE)		
	Amended	Data Element
Class Data	<input checked="" type="checkbox"/>	<input type="checkbox"/> Prime/International Class <input checked="" type="checkbox"/> Goods and Services
		<input type="checkbox"/> First Use Date <input type="checkbox"/> First Use in Commerce Date
		<input type="checkbox"/> In Another Form <input type="checkbox"/> Certification
		<input type="checkbox"/> 1b
Mark Data		<input type="checkbox"/> Word Mark <input type="checkbox"/> Pseudo Mark
		<input type="checkbox"/> Mark Drawing Code <input type="checkbox"/> Design Search Code
		<input type="checkbox"/> Sizing/Lining Code
Misc. Mark Data		<input type="checkbox"/> Mark Description <input type="checkbox"/> Disclaimer
		<input type="checkbox"/> Lining/Stippling <input type="checkbox"/> Name/Portrait/Consent
		<input type="checkbox"/> Translation
Section 2(f)		<input type="checkbox"/> Section 2(f) Entire Mark
		<input type="checkbox"/> Section 2(f) Limitation Statement <input type="checkbox"/> Section 2(f) in Part
		<input type="checkbox"/> Amended Register <input type="checkbox"/> Amended Register Date
Foreign Reg. Data		<input type="checkbox"/> Foreign Country <input type="checkbox"/> 44(d)
		<input type="checkbox"/> Foreign Application Number <input type="checkbox"/> Foreign Application Filing Date
		<input type="checkbox"/> Foreign Registration Number <input type="checkbox"/> Foreign Registration Date
		<input type="checkbox"/> Foreign Registration Expiration Date <input type="checkbox"/> Foreign Renewal Reg. Number
		<input type="checkbox"/> Foreign Reg. Renewal Expiration Date <input type="checkbox"/> Foreign Renewal Reg. Date
Owner Data		<input type="checkbox"/> Owner Name <input type="checkbox"/> DBA/AKA/TA
		<input type="checkbox"/> Address 1 <input type="checkbox"/> Address 2
		<input type="checkbox"/> City <input type="checkbox"/> State
		<input type="checkbox"/> Zip Code
		<input type="checkbox"/> Citizenship <input type="checkbox"/> Entity
		<input type="checkbox"/> Entity Statement <input type="checkbox"/> Composed of
		<input type="checkbox"/> Assignment(s)/Name Change
Amd/Corr Restr.		<input type="checkbox"/> Concurrent Use
Prior U.S. Reg.		<input type="checkbox"/> Prior Registration
Correspondence		<input type="checkbox"/> Attorney <input type="checkbox"/> Domestic Representative
		<input type="checkbox"/> Attorney Docket Number
		<input type="checkbox"/> Correspondence Firm Name/Address
I certify that all corrections have been entered in accordance with text editing guidelines.		
<u>TANYA BAYLOR</u> LIE		<u>11/27/00</u> DATE
Other: _____ _____ _____		

LO-115

ARKENOL.018T

TRADEMARK/SERVICE MARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

4B

Applicant : Arkenol, Inc.)
 Serial No. : 75/625,492)
 Filed : January 22, 1999)
 Mark : MOTOWN MISSILE)
 Examining Attorney : Farah P. Bhatti)
 Law Office : 115)

I hereby certify that this correspondence and all marked attachments are being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on

August 16, 2000
 (Date)

Tirzah Abé Lowe
 Tirzah Abé Lowe



08-18-2000

U.S. Patent & TMO/TM Mail Rpt Dt. #10

RESPONSE TO OFFICE ACTION NO. 02

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

RECEIVED
 2000 AUG 22 A 10: 01
 TMED
 LAW OFFICE 115

Dear Sir:

The following amendment and remarks are submitted in response to Office Action No. 02.

AMENDMENT

Please amend the identification of goods and classification of goods in the application and the drawing page to read as follows:

-CHEMICAL ADDITIVE COMPOUNDS FOR MOTOR OILS AND MOTOR FUELS in International Class 1; SPORTS-RELATED ENTERTAINMENT, NAMELY, ORGANIZING AND MAINTAINING AUTOMOBILE RACING TEAMS FOR OTHERS in International Class

41.-

Mark : MOTOWN MISSILE
Serial No.: 75/625,492

REMARKS

Identification and Classification of Goods

In the Office Action, the Examining Attorney stated that the identification and classification of goods were unacceptable in their present forms. The Examining Attorney suggested the following amendment to the identification of goods: "CHEMICAL ADDITIVE COMPOUNDS FOR MOTOR OILS AND MOTOR FUELS." In addition, the Examining Attorney recommended that the goods be classified in International Class 1, rather than International Class 4. Applicant has complied with both of these suggestions. Please note that Applicant has not amended the International Class 41 recitation of services. Thus, Applicant respectfully requests the Examining Attorney to withdraw the objection to the identification and classification of goods.

No Similar Pending Applications Or Registrations

Applicant acknowledges that the Examining Attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under § 2(d) of the Trademark Act.

CONCLUSION

In view of the foregoing amendment and remarks, Applicant respectfully submits that the application is now in condition for allowance. Thus, Applicant respectfully requests that the mark be passed to publication. The Examining Attorney is requested to telephone the undersigned if the Examining Attorney has any questions or if there are any additional issues which can be addressed by an Examining Attorney's amendment.

Respectfully submitted,
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: August 16, 2000

By: Tirzah Abé Lowe
Tirzah Abé Lowe
620 Newport Center Drive, Sixteenth Floor
Newport Beach, CA 92660
(949) 760-0404

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO. 75/625492 Arkenol, Inc.		APPLICANT		PAPER NO.	
MARK MOTOWN MISSILE		ADDRESS DANIEL E. ALTMAN KNOBBE, MARTENS, OLSON & BEAR, LLP 620 NEWPORT CENTER DRIVE SIXTEENTH FLOOR NEWPORT BEACH, CALIFORNIA 92660		ADDRESS: Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513 www.uspto.gov	
FORM PTO-1525 (5-90)		U.S. DEPT. OF COMM. PAT. & TM OFFICE		If no fees are enclosed, the address should include the words "Box Responses - No Fee."	
		ACTION NO. 02		Please provide in all correspondence:	
		MAILING DATE 05/16/00		1. Filing Date, serial number, mark and Applicant's name.	
		REF. NO. ARKENOL. 018T		2. Mailing date of this Office action.	
				3. Examining Attorney's name and Law Office number.	
				4. Your telephone number and ZIP code.	

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT. For your convenience and to ensure proper handling of your response, a label has been enclosed. Please attach it to the upper right corner of your response. If the label is not enclosed, print or type the Trademark Law Office No., Serial No., and Mark in the upper right corner of your response.

RE: Serial Number: 75/625492 MOTOWN MISSILE

This letter responds to the applicant's communication filed on January 7, 2000.

The applicant (1) amended the identification of goods and services, and (2) argued against the refusal to register the mark under Section 2(e)(3). No. 2 is acceptable.

Identification of Goods/Services

The wording in the identification of goods for International Class 4 is unacceptable as indefinite. The applicant must indicate whether the additive compounds are chemical or non-chemical in nature. The applicant may amend this wording to the following, if accurate:

- Chemical additive compounds for motor oils and motor fuels, in International Class 1.
- Non-chemical additive compounds for motor oils and motor fuels, in International Class 4.

Applicant should note that the amended identification of services in International Class 41 IS acceptable and should NOT be changed or altered.

The applicant is further advised that the Trademark Acceptable Identification of Goods and Services Manual is accessible via the PTO homepage at <http://www.uspto.gov> under the heading

Information by Topic. Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. Section 2.71(b); TMEP section 804.09. Therefore, the applicant may not amend to include any goods or services that are not within the scope of the goods or services recited in the present identification.

This requirement is continued and made FINAL.

Classification of Goods

If the applicant adopts the suggested amendment to the identification of goods, the applicant must amend the classification to the International Class or Classes as indicated above. 37 C.F.R. Sections 2.32(a)(7) and 2.85; TMEP sections 805 and 1401.

This requirement is continued and made FINAL.

Combined Classes of Goods/Services

If the applicant prosecutes this application as a combined, or multiple-class, application, the applicant must comply with each of the following.

- (1) The applicant must list the goods/services by international class with the classes listed in ascending numerical order. TMEP section 1113.01.
- (2) The applicant must submit a filing fee for each international class of goods/services not covered by the fee already paid. 37 C.F.R. Sections 2.6(a)(1) and 2.86(b); TMEP sections 810.01 and 1113.01. Currently, the fee for filing a trademark application is \$245.00 for each class of goods or services. *Effective January 10, 2000, the fee for filing a trademark application is \$325 for each class.* This applies to classes added to pending applications as well as to new applications filed on or after that date.

This requirement is continued and made FINAL.

GENERAL INFORMATION

Please note that the only appropriate responses to a final action are either:

- (1) compliance with the outstanding requirements, if feasible, or
- (2) filing of an appeal to the Trademark Trial and Appeal Board. 37 C.F.R. Section 2.64(a).

If the applicant fails to respond within six months of the mailing date of this refusal, this Office will declare the application abandoned. 37 C.F.R. Section 2.65(a).

Increase in Trademark Fees

Effective January 10, 2000, the following trademark filing fees increased:

37 C.F.R. Section	Description of Paper Filed	Old Fee Amount	New Fee Amount (effective 1/10/2000)
2.6(a)(1)	Application for Registration, per class	\$245	\$325
2.6(a)(4)	Request for Extension of time for filing Statement of Use, per class	\$100	\$150

2.6(a)(5)	Application for Renewal, per class	\$300	\$400
2.6(a)(13)	Filing Section 15 Affidavit, per class	\$100	\$200
2.6(a)(16)	Petition for Cancellation, per class	\$200	\$300
2.6(a)(17)	Notice of Opposition, per class	\$200	\$300

See notices at 64 FR 67774 (Dec. 3, 1999) and 1229 TMOG 12 (Dec. 7, 1999).

If the applicant has any questions or needs assistance regarding this application, please contact the examining attorney indicated below.

Farah P. Bhatti
Farah P. Bhatti
Examining Attorney
Law Office 115
(703)-308-9115, ext. 107

TRADE MARK EXAMINATION WORKSHEET

AMENDMENT STAGE

NO CHANGE

PUBLICATION/REGISTRATION STAGE

Name: La Wana Durant L.O. 115

Date: 3 2000

Serial No. 75-625492

INSTRUCTIONS: Place a check mark in the appropriate column and/or box to indicate which data elements have been amended/coded.

Legal Instrument Examiner (LIE)

	Amended	Data Element	
Class Data	<input checked="" type="checkbox"/>	<input type="checkbox"/> Prime/International Class	<input checked="" type="checkbox"/> Goods and Services
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	<input checked="" type="checkbox"/>	<input type="checkbox"/> 1b	
Mark Data	<input checked="" type="checkbox"/>	<input type="checkbox"/> Word Mark	<input type="checkbox"/> Pseudo Mark
	<input checked="" type="checkbox"/>	<input type="checkbox"/> Mark Drawing Code	<input type="checkbox"/> Design Search Code
	<input checked="" type="checkbox"/>	<input type="checkbox"/> Sizing/Lining Code	
Misc. Mark Data	<input checked="" type="checkbox"/>	<input type="checkbox"/> Mark Description	<input type="checkbox"/> Disclaimer
	<input checked="" type="checkbox"/>	<input type="checkbox"/> Lining/Stippling	<input type="checkbox"/> Name/Portrait/Consent
	<input checked="" type="checkbox"/>	<input type="checkbox"/> Translation	
Section 2(f)	<input checked="" type="checkbox"/>	<input type="checkbox"/> Section 2(f) Entire Mark	
	<input checked="" type="checkbox"/>	<input type="checkbox"/> Section 2(f) Limitation Statement	<input type="checkbox"/> Section 2(f) in Part
	<input checked="" type="checkbox"/>	<input type="checkbox"/> Amended Register	<input type="checkbox"/> Amended Register Date
Foreign Reg. Data	<input checked="" type="checkbox"/>	<input type="checkbox"/> Foreign Country	<input type="checkbox"/> 44(d)
	<input checked="" type="checkbox"/>	<input type="checkbox"/> Foreign Application Number	<input type="checkbox"/> Foreign Application Filing Date
	<input checked="" type="checkbox"/>	<input type="checkbox"/> Foreign Registration Number	<input type="checkbox"/> Foreign Registration Date
	<input checked="" type="checkbox"/>	<input type="checkbox"/> Foreign Registration Expiration Date	<input type="checkbox"/> Foreign Renewal Reg. Number
	<input checked="" type="checkbox"/>	<input type="checkbox"/> Foreign Reg. Renewal Expiration Date	<input type="checkbox"/> Foreign Renewal Reg. Date
Owner Data	<input checked="" type="checkbox"/>	<input type="checkbox"/> Owner Name	<input type="checkbox"/> DBA/AKA/TA
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	<input checked="" type="checkbox"/>	<input type="checkbox"/> City	<input type="checkbox"/> State
	<input checked="" type="checkbox"/>	<input type="checkbox"/> Zip Code	
	<input checked="" type="checkbox"/>	<input type="checkbox"/> Citizenship	<input type="checkbox"/> Entity
	<input checked="" type="checkbox"/>	<input type="checkbox"/> Entity Statement	<input type="checkbox"/> Composed of
	<input checked="" type="checkbox"/>	<input type="checkbox"/> Assignment(s)/Name Change	
Amd/Corr Restr.	<input checked="" type="checkbox"/>	<input type="checkbox"/> Concurrent Use	
Prior U.S. Reg.	<input checked="" type="checkbox"/>	<input type="checkbox"/> Prior Registration	
Correspondence	<input checked="" type="checkbox"/>	<input type="checkbox"/> Attorney	<input type="checkbox"/> Domestic Representative
	<input checked="" type="checkbox"/>	<input type="checkbox"/> Attorney Docket Number	
	<input checked="" type="checkbox"/>	<input type="checkbox"/> Correspondence Firm Name/Address	

I certify that all corrections have been entered in accordance with text editing guidelines.

La Wana Durant
LIE

3 2000
DATE

Other: _____



115

01-07-2000

U.S. Patent & TMO/TM Mail Rpt Dt. #54

ARKENOL.018T

TRADEMARK/SERVICE MARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Arkenol, Inc.)
 Serial No. : 75/625,492)
 Filed : January 22, 1999)
 Mark : MOTOWN MISSILE)
 Examining Attorney : Farah P. Bhatti)
 Law Office : 115)

I hereby certify that this correspondence and all marked attachments are being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on

January 4, 2000

(Date)

Daniel Altman
 Daniel E. Altman

RESPONSE TO OFFICE ACTION NO. 01

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

RECEIVED
 2000 JAN 13 A 3:42
 TMO
 LAW OFFICE 115

Dear Sir:

The following amendment and remarks are submitted in response to Office Action No. 01.

AMENDMENT

Please amend the identification of goods and recitation of services in the application and the drawing page to read as follows:

--ADDITIVE COMPOUNDS FOR MOTOR OILS AND MOTOR FUELS in International Class 4; SPORTS-RELATED ENTERTAINMENT, NAMELY, ORGANIZING AND MAINTAINING AUTOMOBILE RACING TEAMS FOR OTHERS in International Class 41.--

Mark : MOTOWN MISSILE
Serial No. : 75/625,492

REMARKS

Identification of Goods and Recitation of Services

In the Office Action, the Examining Attorney stated that the identification of goods and the recitation of services were unacceptable in their present forms. In response to the Examining Attorney's remarks, Applicant amends the descriptions as follows: "Additive compounds for motor oils and motor fuels in International Class 4; Sports-related entertainment, namely organizing and maintaining automobile racing teams for others in International Class 41." Applicant respectfully notes that the amended Class 4 identification is identical to the identification of goods in Registration No. 0827102. Thus, Applicant respectfully requests the Examining Attorney to withdraw the objection to the identification of goods and the recitation of services.

No Similar Pending Applications Or Registrations

Applicant acknowledges that the Examining Attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under § 2(d) of the Trademark Act.

Applicant's Mark Is Not Geographically Deceptively Misdescriptive

In the Office Action, the Examining Attorney refused the registration of Applicant's MOTOWN MISSILE mark on the ground that the mark is primarily geographically misdescriptive under 2(e)(3) of the Trademark Act. For the reasons set forth below, Applicant respectfully submits that the primary significance of the mark MOTOWN MISSILE is not geographic and that consumers presented with the mark would not believe Applicant's goods and services originate in Detroit, Michigan. Therefore, Applicant maintains that its mark is not primarily geographically deceptively misdescriptive and that it is entitled to registration.

A. The Primary Significance Of The Mark Is No Longer Geographic

In the Office Action, the Examining Attorney stated that the primary significance of the word "MOTOWN" is geographic. In support of this statement, the Examining Attorney submitted a printout from Funk and Wagnalls' online dictionary, which states that one definition

Mark : MOTOWN MISSILE
Serial No. : 75/625,492

of MOTOWN is a nickname for Detroit, Michigan and another definition is an upbeat music style. The Funk and Wagnalls online dictionary is merely one source for determining the primary significance of a word. There are many other sources available that demonstrate that the primary significance of the word MOTOWN is that of an upbeat musical style rather than simply a moniker for Detroit, Michigan. While the word MOTOWN may have referred solely to the city of Detroit and one time, the strongest association for this word in the present era is that of a musical style and attitude.

Attached hereto as Exhibit 1 is a printout from the Cambridge University Press "Cambridge Dictionaries Online" web site. A search for the word MOTOWN in all four (4) of the site's available dictionaries revealed a single definition.¹ The definition reads, in part, as follows: "[P]opular music which is quite like rhythm and blues." While the definition in full alludes to the fact that Motown Records used to be based in Detroit, Michigan, no mention was made of the use of MOTOWN as a nickname for the city. The sole definition provided by the Cambridge University Press is that of the musical style.

In addition, Applicant notes that a search for the word MOTOWN on the Encyclopedia.com web site reveals similar results. Attached hereto as Exhibit 2 is a printout of the search result on the Encyclopedia.com web site. The site contains only one entry under the word MOTOWN. The entry equates the word MOTOWN with the phrase "rock music." The city of Detroit is not even mentioned.

Further, a search of the word MOTOWN on the Encyclopedia Britannica Online site also fails to reveal any references to Detroit's nickname. Enclosed herewith is Exhibit 3, which shows that the word MOTOWN elicited nine (9) separate entries, all of which refer to either, the popular music style, the record label or artists who performed with the record label.

Finally, Applicant respectfully notes that a search of three well respected dictionaries, the American Heritage Dictionary², the Riverside Webster's II New College Dictionary³ and the

¹ The definition was located in the "Cambridge International Dictionary Of English."

² See Exhibit 4.

³ Houghton Mifflin Company, 1995.

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Merriam-Webster Dictionary⁴, reveals not a single entry for the word MOTOWN. The fact that so many dictionaries fail to include the word MOTOWN suggests that a dictionary may not be the best place to determine the primary significance of MOTOWN. Cultural references like the encyclopedias noted above are better indicators of the public's primary associations with the word MOTOWN.

Thus, a solitary dictionary definition like the one submitted by the Examining Attorney is not sufficient to prove the primary meaning of MOTOWN. Many other sources, including the ones cited in this response, demonstrate that the primary meaning of the word MOTOWN is to a particular style, rather than to a geographic location.

B. Consumers Are Not Likely To Believe That Applicant's Goods And Services Originate From Detroit, Michigan

Purchasers are highly unlikely to believe that Applicant's goods and services are manufactured in or conducted from Detroit, Michigan. There are numerous common law users of the mark whose goods or services do not emanate from Detroit, Michigan. Thus, consumers do not assume upon hearing the word "MOTOWN" that there is an association with the city.

A prime example involves the very company that gave the word "MOTOWN" its primary definition: Motown Records. The legendary music label was founded in 1958 in Detroit, Michigan. While admittedly, the company's beginnings were in Detroit, Motown Records has long since left the city of its youth. Over 25 years ago, Motown Records closed its Detroit offices and made Los Angeles the official headquarters of the company. Since making this move, Motown Records has introduced many hit albums by such artists as Stevie Wonder, Michael Jackson, and Boyz II Men. These well-known albums identify Motown Records as being located in Los Angeles. Today the company still operates out of its Los Angeles office. Clearly, consumers are not deceived into believing that the music from the Motown Records label comes from Detroit, Michigan merely because the title contains the word "MOTOWN." Customers have disassociated the word from the city.

⁴ Located at www.m-w.com.

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Further evidence can be found by conducting a general search for businesses that use the word "MOTOWN." A common law search conducted by Thomson & Thomson revealed numerous uses of the word "MOTOWN" in business names where the businesses did not operate out of Detroit, or even the state of Michigan. See enclosed Exhibit 5. Some of the business names and locations are Motown Beauty Supply in Madison, Wisconsin, Mo-town Classic Car Wash in Columbus, Ohio, Motown Café in New York, New York and Las Vegas, Nevada, Motown Center in Shreveport, Louisiana, Motown Electric in Barnesville, Georgia, Motown Investments in Opa Locka, Florida, Motown Machine in Lamar, Colorado, Motown Motorsports in Albuquerque, New Mexico, Motown Nails Inc. in Miami, Florida, White's Motown Café in Saint Louis, Missouri and Uptown Motown in Amarillo, Texas. Clearly, purchasers are accustomed to seeing the MOTOWN mark without any affiliation with Detroit, Michigan. Thus, Applicant respectfully submits that Applicant's customers are not likely to believe that its goods and services originate from the city of Detroit.

CONCLUSION

In view of the foregoing amendment and remarks, Applicant respectfully submits that the application is now in condition for allowance. Thus, Applicant respectfully requests that the mark be passed to publication. The Examining Attorney is requested to telephone the undersigned if the Examining Attorney has any questions or if there are any additional issues which can be addressed by an Examining Attorney's amendment.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 4 Jan. 2000

By: Daniel Altman
Daniel E. Altman
620 Newport Center Drive
Sixteenth Floor
Newport Beach, CA 92660
(949) 760-0404

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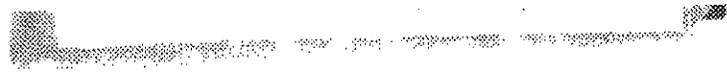
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You searched for
Motown



1. - rock music
 hybrid of African-American and white American musical forms: . . .



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• **Motown**

the first large black-owned music company in the United States, and the originator of a regional variant of black popular music that earned wide acclaim in the 1960s.

• **Gordy, Berry, Jr.**

American businessman, founder of the Motown Record Corporation (1959), the most successful black-owned music company in the United States. Through Motown, he developed the majority of the great rhythm-and-blues performers of the 1960s and '70s, including Diana Ross and the Supremes, Smokey Robinson and the Miracles...



Gordy

• **Walker, Junior**

from Year in Review 1995: Obituary

(AUTRY DEWALT), U.S. rhythm-and-blues tenor saxophonist and leader of Motown's Junior Walker and the All Stars, the group that scored such hits as "These Eyes" and "How Sweet It Is" (b. 1942--d. Nov. 23, 1995).

◆ **Payton, Lawrence**
from Year in Review 1997: Obituary

American singer who for more than 40 years was a member of the Motown group the Four Tops, which sold over 50 million records and had almost 30 singles, including "Baby I Need Your Loving," and "Reach Out I'll Be There," on the pop charts (b. 1938--d. June 20, 1997).

◆ **soul music**

form of popular music sung and performed primarily by black musicians, having its roots in black American gospel singing and rhythm and blues. The term was first used in the 1960s to describe music that combined rhythm and blues, gospel, jazz, and rock and that was characterized by intensity of feeling and earthiness. In its earliest stages...

◆ **Wonder, Stevie**

American singer, songwriter, and musician, one of the outstanding soul music performers.



Wonder, 1994.

◆ **Jackson, Michael**

American rock singer, one of the first stars of music videos, whose recording *Thriller* was one of the most popular albums ever released.



Michael Jackson, 1996.

◆ **Boyz II Men**
from Year in Review 1995: Biography

By 1995 the vocal quartet Boyz II Men had harmonized their way into the record books and earned many of the music industry's top prizes, including multiple Grammy awards for best rhythm and blues vocal group performance. In 1992 their recording of "End of the Road," from the movie sound track of *Boomerang*, spent 13 consecutive weeks in...

● Popular music
from popular art

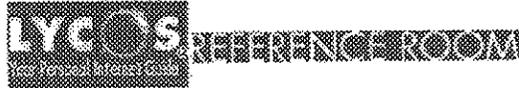
Unlike traditional folk music, popular music is written by known individuals, usually professionals, and does not evolve through the process of oral transmission. In the West, since the 1950s, "pop" music has come to mean the constantly changing styles derived from the electronically amplified music form known as rock and roll.

1 - 9

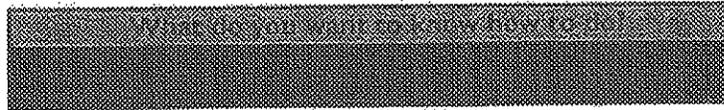
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American Heritage Dictionary

Your full-text search for "motown" in the American Heritage Dictionary returned no results.

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MOTOWN MISSILE

COMPANY NAME SECONDARY NAME	RECORD# SOURCE	SIC CODE/DESCRIPTION
A-1 MOTOWN PLUMBING 25140 LAHSER RD SOUTHFIELD, MI 48034 248-350-9085	962141818-ABI	171105 PLUMBING CONTRACTORS 162307 SEWER CONTRACTORS
CHOOHO ACKO MOTOWN BEAUTY SUPPLY MADISON, WI 53713-1213 608-257-8747 SALES VOL.\$80,000 ACTUAL	806950630-D&B	59991304 HAIR CARE PRODUCTS 59991301 COSMETICS
EARTHMAN LACEY MO-TOWN CLASSIC CAR WASH COLUMBUS, OH 43211-2569 614-291-7880 SALES VOL.\$110,000 ESTIMATE	010257843-D&B	75420000 CARWASHES
FORMER MOTOWN RECORDING ARTIST 1545 N ALDEN ST PHILADELPHIA, PA 19131 215-473-3428	946975331-ABI	792903 BANDS-ORCHESTRAS ACTORS & OTHER ENTRYN
J & J MOTOWN RECORD CTR 111 N LA BREA AVE # 600 INGLEWOOD, CA 90301 310-677-3938	896994217-ABI	792905 ENTERTAINMENT BUREAUS
J&J MOTOWN RECORD CENTER INGLEWOOD, CA 90301-4606 310-677-3938 SALES VOL.\$110,000 ESTIMATE	839238912-D&B	79220105 ENTERTAINMENT PROMOTION
JESSICA YASSO INC MOTOWN BEVERAGE DETROIT, MI 48224-3217 313-885-3588 SALES VOL.\$350,000 ESTIMATE	800248957-D&B	59210101 BEER (PACKAGED) 59210102 WINE 54110200 CONVENIENCE STORES
MARK'S MOTOWN CONEY ISLAND 8528 VAN DYKE DETROIT, MI 48213 313-924-8544	440346971-ABI	581208 RESTAURANTS
MO-TOWN INC PRT WASHINGTON, NY 11050-2943 516-883-3962 SALES VOL.\$500,000 ACTUAL	833035025-D&B	75380000 GENERAL AUTOMOTIVE REPAIR SHOPS 55210000 USED CAR DEALERS
MO-TOWN PHARMACY INC MEDIC-AID PHARMACY DETROIT, MI 48206-1423 313-869-2222 SALES VOL.\$82,000 ESTIMATE	055844237-D&B	59120000 DRUG STORES AND PROPRIETARY STORES
MO-TOWN'S AUTO CLINIC 7465 PURITAN ST DETROIT, MI 48238 313-345-6500	909839185-ABI	753801 AUTOMOBILE REPAIRING & SERVICE
MOTOWN 2520 GRAND RIVER AVE DETROIT, MI 48201 313-964-6540	475835666-ABI	754201 CAR WASHING & POLISHING 754206 TRUCK WASHING & CLEANING
MOTOWN 1603 MEDICAL DR # A LAURINBURG, NC 28352 910-277-9164	401269063-ABI	801101 PHYSICIANS & SURGEONS
MOTOWN ART 35502 MOUND RD STERLING HEIG, MI 48310 810-939-5211	950345640-ABI	599965 ARTISTS MATERIALS & SUPPLIES 599969 ART GALLERIES & DEALERS
MOTOWN ASSOCIATE ELECTRIC DALLAS, TX 75231-1809 214-340-8120 SALES VOL.\$130,000 ESTIMATE	941194037-D&B	17310000 ELECTRICAL WORK

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EXHIBIT 5

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MOTOWN MISSILE

COMPANY NAME SECONDARY NAME	RECORD# SOURCE	SIC CODE/DESCRIPTION
MOTOWN AUTO WASH INC 2735 W DAVISON DETROIT, MI 48238 313-868-3900	821973187-ABI	754201 CAR WASHING & POLISHING
MOTOWN AUTOMOTIVE 24600 CRESTVIEW CT FARMINGTON HI, MI 48335 248-471-7222	310304290-ABI	501313 AUTOMOBILE PARTS & SUPPLIES-WHOLESALE 509998 DISTRIBUTION CENTERS
MOTOWN AUTOMOTIVE DISTRG CO FARMINGTN HLS, MI 48335-1504 248-471-7222 SALES VOL:\$4,000,000 ESTIMATE	058815911-D&B	50130100 AUTOMOTIVE SUPPLIES AND PARTS
MOTOWN AUTOMOTIVE NORTH WATERFORD, MI 48329-3511 248-618-9750 SALES VOL:\$560,000 ESTIMATE	160196382-D&B	50130000 MOTOR VEHICLE SUPPLIES AND NEW PARTS
MOTOWN AUTOMOTIVE NORTH 4480 DIXIE HWY WATERFORD, MI 48329 248-618-9750	959927963-ABI	501313 AUTOMOBILE PARTS & SUPPLIES-WHOLESALE 753207 AUTOMOBILE SEATCOVERS TOPS & UPHOLSTERY
MOTOWN BEAUTY SELMA, AL 36701-5366 334-875-9220 SALES VOL:\$42,000 ESTIMATE	826874216-D&B	72310000 BEAUTY SHOPS
MOTOWN BEAUTY 1401 LAUDERDALE ST SELMA, AL 36701 334-875-9220	803727668-ABI	723106 BEAUTY SALONS
MOTOWN BEAUTY SUPPLY GARY, IN 46406-1747 219-944-2111 SALES VOL:\$120,000 ESTIMATE	173421348-D&B	59991300 TOILETRIES, COSMETICS, AND PERFUMES
MOTOWN BEAUTY SUPPLY 4409 W 5TH AVE GARY, IN 46406 219-944-2111	614823274-ABI	599992 COSMETICS & PERFUMES-RETAIL
MOTOWN BEAUTY SUPPLY & FASHION MINNEAPOLIS, MN 55445-2722 612-425-3309 SALES VOL:\$230,000 ESTIMATE	949202998-D&B	50870102 BEAUTY PARLOR EQUIPMENT AND SUPPLIES
MOTOWN BEVERAGE 15801 E WARREN AVE DETROIT, MI 48224 313-885-3588	457002897-ABI	541103 CONVENIENCE STORES
MOTOWN CAFE 104 W 57TH ST NEW YORK, NY 10019 212-581-8030	903361533-ABI	504604 RESTAURANT EQUIPMENT & SUPPLIES (WHOL.) 581208 RESTAURANTS 792917 ENTERTAINERS-CHILDREN & FAMILY
MOTOWN CAFE 1780 BROADWAY # 800 NEW YORK, NY 10019 212-489-0097	884114521-ABI	581208 RESTAURANTS
MOTOWN CAFE LAS VEGAS 3790 LAS VEGAS BLVD S LAS VEGAS, NV 89109 702-740-6440	973366446-ABI	581208 RESTAURANTS
MOTOWN CAFE LLC LAS VEGAS, NV 89109-4338 702-740-6440 SALES VOL: N/A	967524455-D&B	58120000 EATING PLACES
MOTOWN CAFE LLC NEW YORK, NY 10019-1414 212-489-0097 SALES VOL:\$1,900,000 ESTIMATE	878527290-D&B	87419905 RESTAURANT MANAGEMENT

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Analyst: JAMI GIORDANO

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MOTOWN MISSILE

COMPANY NAME SECONDARY NAME	RECORD# SOURCE	SIC CODE/DESCRIPTION
MOTOWN CELLULAR & PAGING DETROIT, MI 48227-1037 313-835-7000 SALES VOL:\$140,000 ESTIMATE	019251805-D&B	5999000 MISCELLANEOUS RETAIL STORES, NEC
MOTOWN CELLULAR & PAGING 16600 PLYMOUTH RD DETROIT, MI 48227 313-835-7000	975987371-ABI	599902 CELLULAR TELEPHONES-EQUIPMENT & SUPLS
MOTOWN CENTER 3903 HOLLYWOOD AVE SHREVEPORT, LA 71109 318-636-6644	951595461-ABI	783201 THEATRES
MOTOWN CHICKEN 315 N TELEGRAPH RD # 119 WATERFORD, MI 48328 248-738-7125	983039454-ABI	581208 RESTAURANTS
MOTOWN CONEY ROCHESTER, MI 248-852-2144 SALES VOL: N/A	175001205-D&B	79960000 AMUSEMENT PARKS
MOTOWN CONEY & DELI RESTAURANT DETROIT, MI 48207-4223 313-259-3393 SALES VOL:\$96,000 ESTIMATE	800248999-D&B	58120308 FAST-FOOD RESTAURANT, INDEPENDENT
MOTOWN CONEY & DELI RESTAURANT 3242 E JEFFERSON AVE DETROIT, MI 48207 313-259-3393	820828622-ABI	581208 RESTAURANTS
MOTOWN CUSTOM CYCLES INC DETROIT, MI 48210-3036 313-895-2800 SALES VOL:\$220,000 ESTIMATE	826681668-D&B	55719905 MOTORCYCLE PARTS AND ACCESSORIES
MOTOWN EATERY 1959 W AUBURN RD ROCHESTER HIL., MI 48309 248-852-2144	142474386-ABI	581208 RESTAURANTS
MOTOWN ELECTRIC BARNESVILLE, GA 30204-3461 770-358-2355 SALES VOL:\$35,000 ESTIMATE	171745953-D&B	17310000 ELECTRICAL WORK
MOTOWN ELECTRIC 750 CANNAFAX RD BARNESVILLE, GA 30204 770-358-2355	127918241-ABI	173101 ELECTRIC CONTRACTORS
MOTOWN EXPRESS LTD 9701 VAN DYKE DETROIT, MI 48213 313-922-4273	494844590-ABI	554101 SERVICE STATIONS-GASOLINE & OIL
MOTOWN GIFT SHOP NEW YORK, NY 10007-2214 212-233-0408 SALES VOL:\$130,000 ESTIMATE	943750208-D&B	59470000 GIFT, NOVELTY, AND SOUVENIR SHOP
MOTOWN HARLEY DAVIDSON INC MOTOWN HARLEY DAVIDSON-BUELL TAYLOR, MI 48180-8208 734-947-4647 SALES VOL:\$6,000,000 ACTUAL	003143042-D&B	55719904 MOTOR SCOOTERS 76940200 MOTOR REPAIR SERVICES
MOTOWN HARLEY-DAVIDSON & BUELL 14100 TELEGRAPH RD TAYLOR, MI 48180 734-947-4647	982885782-ABI	557106 MOTORCYCLES & MOTOR SCOOTERS-DEALERS
MOTOWN HISTORICAL MUSEUM 2648 W GRAND BLVD DETROIT, MI 48208 313-875-2264	143145514-ABI	841201 MUSEUMS 839998 NON-PROFIT ORGANIZATIONS

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Analyst: JAMI GIORDANO

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MOTOWN MISSILE

COMPANY NAME SECONDARY NAME	RECORD# SOURCE	SIC CODE/DESCRIPTION
MOTOWN HISTORICAL MUSEUM INC DETROIT, MI 48208-1237 313-875-2264 SALES VOL:\$210,000 ESTIMATE	800080855-D&B	84129902 MUSEUM
MOTOWN INTERNATIONAL TRAVEL 13119 W 7 MILE RD DETROIT, MI 48235 313-345-5171	143390649-ABI	472901 AIRLINE TICKET AGENCIES
MOTOWN INTERNATIONAL TRVL SVC DETROIT, MI 48235-1338 313-345-5171 SALES VOL:\$700,000 ESTIMATE	614633543-D&B	47240000 TRAVEL AGENCIES
MOTOWN INVESTMENTS OPA LOCKA, FL 33055-1411 305-620-5324 SALES VOL:\$82,000 ESTIMATE	014318070-D&B	62110204 INVESTMENT FIRM. GENERAL BROKERAGE
MOTOWN LOUNGE 651 MAIN ST ARLINGTON, IA 50606 319-633-4100	902526888-ABI	581301 BARS
MOTOWN MACHINE LAMAR, CO 81052-2527 719-336-3959 SALES VOL:\$88,000 ESTIMATE	883335762-D&B	35990303 MACHINE SHOP, JOBBING AND REPAIR
MOTOWN MONIQUE BEAUTY SUPPLY 1821 S PARK ST MADISON, WI 53713 608-257-8747	467741849-ABI	723106 BEAUTY SALONS 508702 BEAUTY SALONS-EQUIPMENT & SUPLS (WHOL) 599948 AFRICAN GOODS-RETAIL 399910 BEAUTY SALONS-EQUIPMENT & SUPPLIES-MFRS
MOTOWN MOTORSPORTS ALBUQUERQUE, NM 87102-1135 505-247-2990 SALES VOL:\$80,000 ESTIMATE	019881960-D&B	75420000 CARWASHES
MOTOWN NAILS INC MIAMI, FL 33169 305-474-0102 SALES VOL:\$33,000 ESTIMATE	007990364-D&B	72310104 MANICURIST, PEDICURIST
MOTOWN ON LIVERNOIS PORTRAIT 19320 LIVERNOIS AVE DETROIT, MI 48221 313-863-1630	821962412-ABI	722101 PHOTOGRAPHERS-PORTRAIT 733501 PHOTOGRAPHERS-COMMERCIAL
MOTOWN PORTRAIT 19616 VAN DYKE ST DETROIT, MI 48234 313-893-7755	494837313-ABI	722101 PHOTOGRAPHERS-PORTRAIT
MOTOWN PORTRAIT PHOTOGRAPHY DETROIT, MI 313-893-7755 SALES VOL: N/A	884626151-D&B	72219004 SCHOOL PHOTOGRAPHER
MOTOWN PORTRAIT PHOTOGRAPHY DETROIT, MI 48221-1761 313-863-1630 SALES VOL:\$370,000 ESTIMATE	602016685-D&B	72219904 SCHOOL PHOTOGRAPHER
MOTOWN PRODCTNS INC NEW YORK, NY 10019-2701 212-753-4592 SALES VOL:\$250,000 ESTIMATE	930164330-D&B	78129901 AUDIO-VISUAL PROGRAM PRODUCTION
MOTOWN RECORD CO LP 11150 SANTA MONICA BLVD # 1000 LOS ANGELES, CA 90025 310-996-7200	009363029-ABI	781205 MOTION PICTURE PRODUCERS & STUDIOS 765201 RECORDS-PHONOGRAPH-MANUFACTURERS
MOTOWN RECORD COMPANY L P A LOS ANGELES, CA 90025-3380 310-996-7200 SALES VOL:\$34,100,000 ESTIMATE	005550095-D&B	78120201 MUSIC VIDEO PRODUCTION 78120202 VIDEO TAPE PRODUCTION 67940100 MUSIC LICENSING AND ROYALTIES

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MOTOWN MISSILE

COMPANY NAME SECONDARY NAME	RECORD# SOURCE	SIC CODE/DESCRIPTION
MOTOWN RECORD COMPANY L P A JERSEY CITY, NJ 201-432-1696 SALES VOL: N/A	876521477-D&B	5735000 RECORD AND PRERECORDED TAPE STORES
MOTOWN RECORD COMPANY L P A POLLEY GRAHM GROUP DIST DALLAS, TX 972-387-2797 SALES VOL: N/A	805931706-D&B	87439904 SALES PROMOTION
MOTOWN RECORDS PO BOX 3325 CROFTON, MD 21114 301-858-1578	935003715-ABI	731901 DISPLAY DESIGNERS & PRODUCERS
MOTOWN RECORDS CO MARIETTA, GA 30067-8752 770-916-7340 SALES VOL:\$140,000 ESTIMATE	933426157-D&B	57350203 RECORDS
MOTOWN TECHNOLOGY PO BOX 32798 DETROIT, MI 48232 313-836-1301	929388569-ABI	573107 SATELLITE EQUIPMENT & SYSTEMS-RETAIL 573101 ANTENNAS
MOTOWN VIDEO INC DALLAS, TX 75216-6248 214-376-9912 SALES VOL:\$210,000 ESTIMATE	017195541-D&B	78410000 VIDEO TAPE RENTAL
MOTOWNMAGIC COMMUNICATIONS DETROIT, MI 48221-2855 313-341-5470 SALES VOL:\$130,000 ESTIMATE	160195954-D&B	73740000 DATA PROCESSING AND PREPARATION
MOTOWNMAGIC COMMUNICATIONS 16162 GRIGGS ST DETROIT, MI 48221 313-341-5470	950896449-ABI	737416 INTERNET HOME PAGE DEV CONSULTING
MURRAY HILL MOTEL MOTOWN MOTEL DETROIT, MI 48235-2104 313-836-4488 SALES VOL:\$350,000 ACTUAL	157347428-D&B	70110100 MOTELS
UP TOWN MOTOWN RMB 201 W 16TH AVE AMARILLO, TX 79101 806-374-3892	301083663-ABI	864108 CLUBS
WHITE'S MOTOWN CAFE 6240 NATURAL BRIDGE RD ST LOUIS, MO 63121 314-381-4881	969895861-ABI	581208 RESTAURANTS
AERO MISSILE COMPONENTS 351 CAMER DR BENSALEM, PA 19020 215-245-5700	009090523-ABI	342902 HARDWARE-MANUFACTURERS 507205 FASTENERS-INDUSTRIAL (WHOLESALE) 376998 GUIDED MISSILE/SPC VHCL-PARTS NEC (MFRS) 372801 AIRCRAFT COMPONENTS-MANUFACTURERS
AERO-MISSILE COMPONENTS INC AMC BENSALEM, PA 19020-7341 215-245-5700 SALES VOL:\$5,000,000 ACTUAL	001738046-D&B	50720000 HARDWARE 34290400 AIRCRAFT & MARINE HARDWARE, INC. PULLEYS & SIMILAR
AIRCRAFT MISSILE PARTS MFG AMP SIMI VALLEY, CA 93065-1777 805-522-3911 SALES VOL:\$400,000 ACTUAL	083005405-D&B	37280000 AIRCRAFT PARTS AND EQUIPMENT, NEC
AIRCRAFT MISSILE PARTS MFG 255 E EASY ST # F SIMI VALLEY, CA 93065 805-522-3911	100901933-ABI	559908 AIRCRAFT EQUIPMENT PARTS & SUPPLIES 345298 BOLTS NUTS SCREWS RIVETS WASHERS (MFRS) 356898 MECHANICAL POWER TRANS EQUIP NEC (MFRS) 376998 GUIDED MISSILE/SPC VHCL-PARTS NEC (MFRS)

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Analyst: JAMI GIORDANO

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Patent and Trademark Office**

SERIAL NO. 75/625492 Arkenol, Inc.		APPLICANT		PAPER NO.	
MARK MOTOWN MISSILE				ADDRESS: Assistant Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513	
ADDRESS DANIEL E. ALTMAN KNOBBE, MARTENS, OLSON & BEAR, LLP 620 NEWPORT CENTER DRIVE SIXTEENTH FLOOR NEWPORT BEACH, CALIFORNIA 92660		ACTION NO. 01		If no fees are enclosed, the address should include the words "Box Responses - No Fee."	
		MAILING DATE 07/16/99			
		REF. NO. ARKENOL. 018T			
FORM PTO-1523 (5-90)		U.S. DEPT. OF COMM. PAT. & TM OFFICE		Please provide in all correspondence: 1. Filing Date, serial number, mark and Applicant's name. 2. Mailing date of this Office action. 3. Examining Attorney's name and Law Office number. 4. Your telephone number and ZIP code.	

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT. For your convenience and to ensure proper handling of your response, a label has been enclosed. Please attach it to the upper right corner of your response. If the label is not enclosed, print or type the Trademark Law Office No., Serial No., and Mark in the upper right corner of your response.

RE: Serial Number: 75/625492 MOTOWN MISSILE

The assigned examining attorney has reviewed the referenced application and determined the following.

Refusal Based on Section 2(e)(3) – Mark is Geographically Deceptively Misdescriptive

The applicant applied to register the mark MOTOWN MISSILE for "motor oil, fuel etc." and "sports-related entertainment." The examining attorney refuses registration on the Principal Register because the mark is primarily geographically deceptively misdescriptive. Trademark Act Section 2(e)(2), 15 U.S.C. Section 1052(e)(2); TMEP section 1210.06.

The primary significance of the term "MOTOWN" is geographic. Motown is a nickname of Detroit. (See attached.) The applicant's goods and services do not come from this place. The mark is geographically deceptively misdescriptive because the public would believe that the goods and services do come from Detroit. *In re Loew's Theatres, Inc.*, 769 F.2d 764, 226 USPQ 865 (Fed. Cir. 1985).

If the primary significance of a mark is to indicate a geographic location which is neither obscure nor remote and the applicant's goods are manufactured or produced in the location indicated, or the

applicant's services are performed, at least in part, in the location indicated, then the public is likely to believe that the geographic term identifies the place from which the goods or services originate. See *In re Nantucket Allserve, Inc.*, 28 USPQ2d 1144 (TTAB 1993). The applicant must indicate specifically whether the goods will be manufactured or produced in, or will have any other connection with, the geographic location named in the mark. 37 C.F.R. Section 2.61(b). Furthermore, the applicant must indicate specifically whether any aspect of the services will be rendered in, or will have any other connection with, the geographic location named in the mark. 37 C.F.R. Section 2.61(b).

Therefore, because applicant is from California and because the goods and services will not originate from MOTOWN (Detroit), registration is refused on the Principal Register under Section 2(e)(3).

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration. If the applicant chooses to respond to the refusal to register, the applicant must also respond to the following informalities.

Identification of Goods/Recitation of Services

CLASS 4:

The wording "fuel, lubricants and cleaners for use with vehicles" is unacceptable as it is indefinite and may be classified in more than one International Classification. The applicant may amend this wording to the following, if accurate:

- Fuel [indicate oil or diesel]; lubricants [indicate all-purpose, automobile, industrial], in International Class 4.
- Cleaners for use on [indicate vehicles, e.g. automobiles], in International Class 3.

CLASS 41:

The wording "sports-related entertainment, namely, organizing and maintaining automobile racing teams" is unacceptable as indefinite. The applicant may amend this wording to the following, if accurate:

- Sports-related entertainment, namely, organizing and maintaining automobile racing teams for others, in International Class 41

The applicant should note that the wording "Motor Oil" IS acceptable in International Class 4 and should not be changed or altered.

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. Section 2.71(b); TMEP section 804.09. Therefore, the applicant may not amend to include any goods or services that are not within the scope of the goods and services recited in the present identification.

Classification of Goods/Services

If the applicant adopts the suggested amendment to the identification of goods and services, the applicant must amend the classification to the International Classes as stated above. 37 C.F.R. Sections 2.33(a)(1)(vi) and 2.85; TMEP sections 805 and 1401.

Multi-Class Application

If the applicant prosecutes this application as a combined, or multiple-class, application, the applicant must comply with each of the following.

(1) The applicant must list the goods/services by international class with the classes listed in ascending numerical order. TMEP section 1113.01.

(2) The applicant must submit a filing fee for each international class of goods/services not covered by the fee already paid. The filing fee is \$245.00 per class. 37 C.F.R. Sections 2.6(a)(1) and 2.86(b); TMEP sections 810.01 and 1113.01.

No Conflicting Marks Noted

The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 1105.01.

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.


Farah P. Bhatti
Examining Attorney
Law Office 115
(703)-308-9115, ext. 107

Motown



Motown (mə'toun), *n.*

1. Detroit, Michigan: a nickname.
2. an upbeat, often pop-influenced style of rhythm and blues associated with Detroit and with numerous black vocalists since the 1950s.

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ARKENOL.018T

TRADEMARK/SERVICE MARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION FOR TRADEMARK AND SERVICE MARK REGISTRATION UNDER

SECTION 1(b) PRINCIPAL REGISTER

Mark : MOTOWN MISSILE

Int. Classes : 4 and 41

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

Dear Sir:

The Applicant is:

Arkenol, Inc.,
a Nevada corporation,
27401 Los Altos, Suite 400,
Mission Viejo, CA 92691,
United States of America.

Applicant has a bona fide intention to use the trademark and service mark shown in the accompanying drawing in commerce on or in connection with the following goods and services: **MOTOR OIL, FUEL, LUBRICANTS AND CLEANERS FOR USE WITH VEHICLES IN INTERNATIONAL CLASS 4; SPORTS-RELATED ENTERTAINMENT, NAMELY, ORGANIZING AND MAINTAINING AUTOMOBILE RACING TEAMS IN INTERNATIONAL CLASS 41;** and requests that the mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. § 1051, *et seq.*, as amended).

Applicant intends to use the mark by applying it directly to the goods, to labels attached to the goods, to packaging, and in other ways customary to the trade.

Applicant intends to use the mark on written materials which advertise and promote the services, and in other ways customary to the trade.

POWER OF ATTORNEY

Applicant hereby appoints Louis J. Knobbe, Don W. Martens, Gordon H. Olson, James B. Bear, Darrell L. Olson, William B. Bunker, William H. Nieman, Lowell Anderson, Arthur S. Rose, James F. Lesniak, Ned A. Israelsen, Drew S. Hamilton, Jerry T. Sewell, John B. Sganga, Jr., Edward A. Schlatter, Gerard von Hoffmann, Joseph R. Re, Catherine J. Holland, John M. Carson, Karen Vogel Weil, Andrew H. Simpson, Jeffrey L. Van Hoosear, Daniel E. Altman, Ernest A. Beutler, Marguerite L. Gunn, Vito A. Canuso, Lynda J. Zadra-Symes, William H. Shreve, Stephen C. Jensen, Steven J. Nataupsky, Paul A. Stewart, Joseph F. Jennings, Craig S. Summers, AnneMarie Kaiser, Brenton R. Babcock, Thomas F. Smegal, Jr., Michael H. Trenholm, Diane M. Reed, Jonathan A. Barney, Ronald J. Schoenbaum, John R. King, Frederick S. Berretta, Nancy Ways Vensko, Richard C. Gilmore, John P. Giezentanner, Adeel S. Akhtar, Thomas R. Arno, David N. Weiss, Dan Hart, James T. Hagler, Douglas G. Muehlhauser, Lori L. Yamato, Stephen M. Lobbin, Ann A. Byun, Robert F. Gazdzinski, Fred C. Hernandez, Stacey R. Halpern, Joseph J. Basista, Michael K. Friedland, Dale C. Hunt, Lee W. Henderson, Mark M. Abumeri, Jon W. Gurka, Katherine W. White, Deborah S. Shepherd, Richard E. Campbell, Eric M. Nelson, Alex C. Chen, Mark R. Benedict, Paul N. Conover, Michael T. Cruz, John P. Musone, Robert J. Roby, Sabing H. Lee, Jenny G. Ko, Karoline A. Delaney, John W. Holcomb, James J. Mullen, III, Joseph S. Cianfrani, Joseph M. Reisman, William R. Zimmerman, Glen L. Nuttall, Do Te Kim, Tirzah Abe Lowe, Geoffrey Y. Iida, Alexander Franco, Sanjivpal S. Gill, and Susan M. Moss of KNOBBE, MARTENS, OLSON & BEAR, LLP, 620 Newport Center Drive, Sixteenth Floor, Newport Beach, California 92660, Telephone (949) 760-0404, as its attorneys with full power of substitution and revocation to prosecute this application and to transact all business in the U.S. Patent and Trademark Office connected with it.

DECLARATION

I, Arnold Klann, declare as follows: I am properly authorized to execute this application and declaration on behalf of Applicant; I believe Applicant to be the owner of the mark sought to be registered, or, if the application is being filed under Section 1051(b) of Title 15 of the United States Code, I believe that Applicant is entitled to use the mark in commerce; to the best of my knowledge and belief, no other person, firm, corporation or association has the right to use the mark in commerce, either in its identical form or in such near resemblance to it as to be likely, when used

on or in connection with the goods or services of any other person, to cause confusion, or to cause mistake, or to deceive; all statements made herein of my own knowledge are true; all statements made on information and belief are believed to be true; these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful, false statements may jeopardize the validity of the application or document or any resulting registration.

ARKENOL, INC.

Dated:

20 January 1999

By:



Arnold Klann
President

ATK-3218-AK/12149E