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

Proceeding	91205331
Party	Defendant Kerry Earnhardt, Inc.
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Attachments	Applicant's Pretrial Disclosures - 9-16-2014.pdf(255924 bytes)

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

TERESA H. EARNHARDT,

Opposer,

v.

KERRY EARNHARDT, INC.,

Applicant.

Consolidated Opposition Nos.:
91205331 (parent) and 91205338

In the matter of:

Application Serial No. 85/383,910
Trademark: EARNHARDT COLLECTION
(Intl. Class 20)

Application Serial No. 85/391,456
Service Mark: EARNHARDT COLLECTION
(Intl. Class 37)

APPLICANT'S PRETRIAL DISCLOSURES

Pursuant to C.F.R. § 2.121(e) and TBMP § 702.01, Applicant Kerry Earnhardt, Inc. ("KEI") hereby makes the following pretrial disclosures to Opposer, Teresa H. Earnhardt, of the witnesses from whom Applicant may take testimony during its testimony period, of the likely testimony of such witnesses, and of the likely evidence that may be introduced as exhibits during the testimony of such witnesses. Applicant's disclosures represent a good faith effort to identify information Opposer reasonably believes to be required by the applicable rules. Accordingly, Applicant reserves the right to supplement these disclosures.

Applicant intends to take testimony, or may take testimony if the need arises, from the following witnesses:

René Earnhardt, KEI (Previously Deposed by Opposer)

Ms. Earnhardt may testify regarding such matters as:

- The distinctiveness of the EARNHARDT COLLECTION mark;
- The absence of any confusion regarding the EARNHARDT COLLECTION mark;

- The licensing and marketing of the EARNHARDT COLLECTION mark and the goods and services associated therewith;
- KEI's selection of and application for the EARNHARDT COLLECTION mark; and
- The racing history of the Earnhardts and their careers, fame and status.

Certain documents and things may be introduced as exhibits during the testimony of Ms. Earnhardt, including:

- Marketing materials reflecting the use of the EARNHARDT COLLECTION mark in commerce;
- Correspondence related to the development and selection of the EARNHARDT COLLECTION mark;
- Published materials reflecting the careers, fame and status of the Earnhardts, including Kerry and René Earnhardt; and
- The application for the EARNHARDT COLLECTION mark.

Kerry Earnhardt, KEI

Mr. Earnhardt may testify regarding such matters as:

- The distinctiveness of the EARNHARDT COLLECTION mark;
- The absence of any confusion regarding the EARNHARDT COLLECTION mark;
- Licensing and marketing of the EARNHARDT COLLECTION mark and the goods and services associated therewith;
- KEI's selection of and application for the EARNHARDT COLLECTION mark;
- The racing history of the Earnhardts and their careers, fame and status;

- The registration of the KERRY EARNHARDT mark; and
- Dale Earnhardt, Sr.'s support of Kerry Earnhardt's career, including his approval of Kerry Earnhardt's use of the Earnhardt name.

Certain documents and things may be introduced as exhibits during the testimony of Mr. Earnhardt, including:

- Marketing materials reflecting the use of the EARNHARDT COLLECTION mark in commerce;
- Published materials reflecting the careers, fame and status of the Earnhardts, including Kerry and René Earnhardt;
- The registration of the KERRY EARNHARDT mark; and
- The application for the EARNHARDT COLLECTION mark.

Amy Hallman, Roush-Yates Racing Engines

Ms. Hallman may testify regarding such matters as:

- The licensing practices of Dale Earnhardt, Inc. ("DEI"), including the lack of licensing or sales efforts regarding custom homes and furniture;
- The absence of any confusion regarding the EARNHARDT COLLECTION mark;
- The use (or lack thereof) of "Earnhardt" alone on goods or services licensed or sold under the DALE EARNHARDT mark; and
- The absence of any damage to or dilution of the DALE EARNHARDT mark as a result of KEI's use of the EARNHARDT COLLECTION mark.

Certain documents and things may be introduced as exhibits during the testimony of Ms. Hallman, including:

- DEI royalty reports (to be provided to witness and introduced in evidence only upon prior consent of Opposer or order of the TTAB) and specimens produced during discovery.

Joe Hedrick

Mr. Hedrick may testify regarding such matters as:

- The licensing practices of Dale Earnhardt, Inc. (“DEI”), including the lack of licensing or sales efforts regarding custom homes and furniture;
- The absence of confusion regarding the EARNHARDT COLLECTION mark;
- The use (or lack thereof) of “Earnhardt” alone on goods or services licensed or sold under the DALE EARNHARDT mark;
- The absence of any damage to or dilution of the DALE EARNHARDT mark as a result of KEI’s use of the EARNHARDT COLLECTION mark;
- DEI’s licensing and marketing strategy regarding the DALE EARNHARDT mark; and
- The use of “Earnhardt” by others with no connection to the Earnhardt racing family.

Certain documents and things may be introduced as exhibits during the testimony of Mr. Hedrick, including:

- DEI specimens produced during discovery; and
- Documents reflecting communications concerning licensing of the DALE EARNHARDT mark.

Representative(s) of JR Motorsports, including without limitation Kelley Earnhardt Miller and/or Dale E. Earnhardt, Jr.

Representatives or Rule 30(b)(6) designees of JR Motorsports, including Ms. Miller and/or Mr. Earnhardt, Jr. may testify regarding such matters as:

- The popularity of Dale Earnhardt, Jr.;
- The racing history of the Earnhardts and their careers, fame and status;
- The use of the “Earnhardt” surname by members of the Earnhardt family;
- The absence of any confusion regarding the EARNHARDT COLLECTION mark; and
- Dale Earnhardt, Sr.’s support of his children’s business pursuits and approval of their use of the name “Earnhardt.”

Certain documents and things may be introduced as exhibits during the testimony of the representative(s) of JR Motorsports, including:

- Published materials reflecting the careers, fame and status of the Earnhardts; and
- Exemplars of the use of the “Earnhardt” surname alone to refer to the Earnhardts in racing, individually and collectively.

Stephanie Nance, Robinson Bradshaw & Hinson, P.A. research librarian

Ms. Nance may testify regarding such matters as:

- The use of the term “Collection” to refer to various categories of goods and services; and
- Registered trademarks containing the word “Collection.”

Certain documents and things may be introduced as exhibits during the testimony of Ms. Nance, including:

- Exemplars of the use of the term “Collection” by individuals and firms in a wide variety of industries; and
- The results of searches run using the TTAB’s public database showing trademark registrations containing the term “COLLECTION.”

Mary Becker or other representative(s) of Schumacher Homes (Previously Deposed by Opposer)

Ms. Becker or other representative(s) of Schumacher Homes (“Schumacher”) may testify regarding such matters as:

- The licensing and use of the EARNHARDT COLLECTION mark in connection with Schumacher’s marketing and sale of custom homes;
- The absence of any confusion regarding the use of the EARNHARDT COLLECTION mark;
- Schumacher’s business relationship with Kerry and René Earnhardt; and
- The association, in the mind of the public, of the mark EARNHARDT COLLECTION with Kerry and René Earnhardt.

Certain documents and things may be introduced as exhibits during the testimony of Ms. Becker or other representative(s) of Schumacher, including:

- License agreements pertaining to Schumacher’s license to use the EARNHARDT COLLECTION mark;
- Correspondence related to the development and selection of the EARNHARDT COLLECTION mark; and
- Marketing materials and exemplars of Schumacher’s use of the EARNHARDT COLLECTION mark in connection with the marketing and sale of custom homes.

Any witness identified by Opposer in her Pretrial Disclosures or deposed during her initial testimony period

Applicant reserves the right to call any witness identified by Opposer in her Pretrial Disclosures, deposed during Opposer's initial testimony period or deposed by Applicant during discovery, including Opposer herself. The testimony of any such witness may cover the topics listed in Opposer's pretrial disclosures, topics about which the witness has testified previously in connection with this proceeding, or any matter pertaining to the issues, claims and defenses involved in this proceeding. Applicant may introduce as exhibits during the testimony of any such witness any document or thing produced in discovery by Opposer, Applicant, or any third party.

This 16th day of September, 2014.



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPLICANT'S PRETRIAL DISCLOSURES** has been served upon each of the parties to this action by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

Larry C. Jones
Bruce J. Rose
Carla H. Clements
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Bank of America Plaza
101 S. Tryon Street, Suite 4000
Charlotte, NC 28280-4000

This 16th day of September, 2014.



D. Blaine Sanders