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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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Date	10/30/2014
Attachments	Applicants Second Notice of Reliance_10.30.2014.pdf(4779994 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 SECOND NOTICE OF RELIANCE

Pursuant to 37 C.F.R. § 2.120(j)(3), Applicant hereby makes of record in this proceeding the following non-confidential excerpts (Exhibit A hereto) and exhibits (Exhibit B hereto) from the June 2, 2014, discovery deposition of Judy Queen. Selected confidential excerpts and confidential exhibits from the deposition are being filed separately with *Applicant's Third Notice of Reliance.*

Pages and Lines

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p. 97, ln. 14 – p. 99, ln. 3

Exhibits

Judy Queen Deposition Exhibits 1, 9

This 30th day of October, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPLICANT'S SECOND NOTICE OF RELIANCE** 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
Alston & Bird LLP
Bank of America Plaza
101 S. Tryon Street, Suite 4000
Charlotte, NC 28280-4000

This 30th day of October, 2014.

~~Cary B. Davis~~
Matthew T. Tilley

6048767v1

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

TERESA H. EARNHARDT, OPPOSER,	)	Opposition No.: 91205331 (parent)
v	)	Application Serial No. 85/383,910
KERRY EARNHARDT, INC., APPLICANT.	)	Trademark: EARNHARDT COLLECTION (Intl. Class 20)
TERESA H. EARNHARDT, OPPOSER,	)	Opposition No.: 91205338
v	)	Application Serial No. 85/391,456
KERRY EARNHARDT, INC., APPLICANT.	)	Service Mark: EARNHARDT COLLECTION (Intl. Class 37)

(Confidential portions: Pages 51 - 62)

DEPOSITION OF JUDY QUEEN

(TAKEN by APPLICANT)

CHARLOTTE, NORTH CAROLINA

JUNE 2, 2014

ALSO PRESENT: Joe Hedrick

REPORTED BY: Meredith R. Johnson
Court Reporter
Notary Public

A P P E A R A N C E S

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Deposition of Judy Queen, taken by the applicant at Robinson, Bradshaw & Hinson, 101 North Tryon Street, Charlotte, North Carolina, on the 2nd day of June, 2014, at 9:31 a.m., before Meredith R. Johnson, Notary Public.

C O N T E N T S

The Witness: JUDY QUEEN

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P R O C E E D I N G S

Whereupon,

JUDY QUEEN,

having been duly sworn,

was examined and testified as follows:

EXAMINATION BY COUNSEL FOR APPLICANT

BY MR. TILLEY:

Q Good morning, Ms. Queen.

A Good morning.

Q My name is Matthew Tilley. I'm a lawyer for Kerry Earnhardt, Incorporated. This is a trademark dispute before the TTAB, the Trademark Trial and Appeal Board.

Have you ever testified at a deposition before?

A I have.

Q Okay. I'll just go over then some basic ground rules then just as a refresher. I'll ask you a series of questions. I need you to answer -- I need you to answer audibly on the record. Head nods, yes, and no doesn't show up on the transcript.

You may hear objections from time to time. That's okay. Allow the objections to be said. Unless they're related to attorney-client privilege, you can then answer. Your attorney will tell you if that's not

the case.

Will you state your name for the record, please?

A Judy Queen.

Q And where do you live? What's your address?

A 3128 Devon Croft Lane, Charlotte.

Q And where do you work, Ms. Queen?

A Dale Earnhardt Incorporated.

Q And what's your position with Dale Earnhardt Incorporated?

A Vice president of operations.

Q And how long have you held that position?

A I'm not sure but I've been at DEI since 1998.

Q You said you have testified before -- in a deposition before?

A Yes.

Q When was that?

A Approximately 2003, 2005 maybe.

Q And what was that in connection with? What was the case?

A It was regarding a life insurance policy for Dale Earnhardt.

Q Have you testified at any other deposition?

A No, not that I remember.

Q Have you ever testified at any other

Q Are you aware that she's been deposed in this matter?

A Yes.

Q Do you know anything about what was said at that deposition?

A No.

Q And you've not seen the transcript from that deposition.

A No.

Q You said you are now the vice president of operations at DEI.

A Yes.

Q And you said you don't know how long you've held that position? Do you know how long --

A Let me do some math. Okay?

Q Okay.

A I would say 12 years, at least 12 years maybe.

Q Okay. Did you have a position with DEI before that?

A Yes.

Q What was that position?

A I worked for Dale and Teresa personally, executive assistant.

Q And how long did you do that?

A The remainder of that math, for 16 years, maybe four years before.

Q Prior to coming -- that was 1998.

A Mm-hmm.

Q So you started as Dale Earnhardt's and Teresa Earnhardt's --

A Yes.

Q -- executive assistant in 1998.

A Yes.

Q Were you employed by DEI when were you their executive assistant?

A Yes.

Q Prior to 1998, what did you do? Did you hold any positions with DEI?

A No.

Q Where did you work prior to 1998?

A Faison Associates.

Q And what did you do there?

A I was their regional controller.

Q What business is DEI in?

A I'm not sure how to answer that. We make parts and pieces for various race teams. Plus we have a retail business. Plus --

Q Is there any other business that DEI does?

A We have a airline business.

Q Are there any -- does DEI have any other lines of business?

A Those are the only ones I can think of now.

Q So parts and pieces for race teams, retail business, and airline business --

A Yes.

Q -- those are the businesses that DEI's in?

A Mm-hmm.

Q Can you describe the parts of business that DEI is in?

A They manufacture the gears, transmissions, and various other parts for race cars plus any outside parts that vendors request.

Q And, then, what is DEI's retail business?

A They have a retail store that they sell memorabilia.

Q Does the retail store sell anything else?

A No.

Q And, then, what is DEI's airline business?

A We transport race teams to the various races, testing, and other companies that require our services. We provide those as well.

Q You said "testing." When you said "testing" in connection with the airline business, what does DEI do with testing in connection with the airline?

A The various teams have to attend tests, and we fly those crew members to those tests.

Q Okay. As VP of operations, what do your duties include at DEI?

A I oversee the daily operations of the company.

Q Is that all of its operation? Is that all of DEI's operations?

A Yes.

Q And so you oversee the parts business, the retail business, and the airline business.

A Yes, and the administrative piece of it.

Q What's involved with the administrative piece of DEI's business?

A We have administrative offices as well.

Q And that -- what does that office do for the rest of the company?

A That would be the accounting offices. We have an archival department. We have a special events department.

Q And so you oversee the administrative part of --

A Yes.

Q -- DEI's business as well?

A Yes.

Q How many employees does DEI have?

A 55 to 60.

Q And of those 55 to 60, how many of DEI's employees are involved in the parts business?

A I'm guessing here but about 20, approximately 20.

Q And how many of DEI's employees are involved in its retail business?

A Two.

Q And what do those employees do?

A They work in the retail store.

Q They're clerks for the store?

A One is a clerk and the other has a more supervision role.

Q What's involved in that supervisory role?

A Basically directing the clerk and coming up with the product to go in the retail store that's to be sold in the store.

Q When you say "coming up with the product that's to be included in the retail store," what do you mean?

A We have -- we have collectable merchandise that we've had at DEI and we're now selling it plus any new product that is made goes into the store. And she helps with the approval process of the new items.

Q And that would be approval of licensee's products?

A Approval of the products, yes.

Q What types of products are sold in the retail store?

A We have clothing. That would include all types of apparel. We have jewelry. We have decals. We have golf balls, clocks, several items, just several miscellaneous items.

Q I'm going to come back to that in just a moment. You mentioned the parts business, the retail business, and then the airline business. How many employees are involved in DEI's airline business?

A 18, approximately 18.

Q And, then, you mentioned an administrative office within DEI.

A Mm-hmm.

Q How many employees are involved with the administrative office?

A Approximately 15.

Q 15. Are they divided into teams or departments?

A Yes, departments.

Q What are those departments?

A We have special events. We have accounting.

We have maintenance. We have construction. We have farms. And I mentioned archives. I think that's --

Q Do you have a licensing department in the administrative office?

A No, we do not.

Q Do you have -- does DEI have a licensing department at all?

A No, we do not.

Q Okay. Who handles licensing for DEI?

A When you say "handles," can you elaborate on that, please?

Q Let me ask you this: You mentioned retail items that are sold at the store. Are those typically items that include -- that are licensed in connection with Dale Earnhardt's name or likeness?

A Yes.

Q Who handles the licensing of Dale Earnhardt licensed products?

A Alston & Bird.

Q And who within Alston & Bird?

A George Taulbee.

Q And what is his role in the licensing program?

A He -- I would say he handles the daily operations of the licensing department to include

dealing with all the licensees and providing the contracts to the licensees and presenting the items for approval.

Q Are you involved in administrating the licensing program for DEI?

A No, sir.

Q You don't have any involvement in licensing Dale Earnhardt --

A No --

Q -- merchandise?

A -- other than reviewing the reports.

Q And how often do you get reports?

A They're on a monthly basis.

Q And who provides those reports?

A The accounting department.

Q And what do the reports contain?

A It's more or less a royalty report. We cut checks on a monthly basis or quarterly basis, depending upon the contracts.

Q After you review those reports, do you share them with anyone else?

A No.

Q Does anyone else receive those royalty reports?

A Well, of course, the accounting department

has them, and they are in my office for Mrs. Earnhardt's review.

Q And do you present them to Ms. Earnhardt -- the royalty reports to Ms. Earnhardt for review?

A Yes.

Q How often?

A Whenever she requests those.

Q How often has she -- does she request them?

A Probably quarterly.

Q When was the last time she requested a royalty report?

A Year end.

Q Which -- for -- when is --

A December.

Q -- DEI's year end? Are royalty reports provided to Mr. Taulbee?

A Yes.

Q Does Mr. Taulbee ever give comments in response to royalty reports?

A No.

Q I asked you about Mr. Taulbee's involvement, and you said that he administers the day-to-day licensing program for DEI and Dale Earnhardt licensed merchandise; is that correct?

A Yes.

Q You said one of his duties in doing so was providing or approving items. What did you mean by that?

A If I said he approves them, I didn't mean to say that.

Q Okay.

A He prepares the items for approval by Mrs. Earnhardt.

Q And what does he do when he prepares items for approval by Mrs. Earnhardt?

A What they call them is samples, and he -- because we're in two different locations, he arranges the samples with the various contracts/term sheets and presents them to her.

Q When he prepares these samples, are these samples from licensees who have already entered into license agreements with DEI?

A Maybe or maybe not.

Q So both?

A Yes.

Q When he prepares samples for a licensee that has already entered into an agreement with DEI, what is the purpose of preparing the sample?

A The sample may have various different designs on it. And if they have a contract with us or a

license with us, they're forever changing the content or what is ever on the product. So he has to present it each time that that product is changed.

Q And what is the purpose of preparing it for approval? What are we -- what is -- well, does Mr. Taulbee give recommendations with respect to whether the samples should be approved?

A No.

Q Okay.

A Mrs. Earnhardt has final approval.

Q Does anyone discuss with Mrs. Earnhardt whether or not a sample should be approved from a licensee before she makes a decision?

A She listens to recommendations, yes.

Q And who provides those recommendations?

A Sometimes Mr. Taulbee and sometimes Mrs. Clifton, Sherry Clifton.

Q Is Mrs. Clifton a DEI employee?

A Yes.

Q What is her role at DEI?

A Special events and manager of the retail store.

Q When Ms. Clifton and Mr. Taulbee give recommendations whether to approve samples from licensees, have you ever heard -- excuse me -- what

considerations have you -- do they take into account? Do you know?

A No, I don't.

Q Have you ever been party to their recommendations?

A Yes. And it's mainly -- their recommendations mainly would be to color content.

Q To color content? What do you mean by saying that Mr. Taulbee and Ms. Clifton would recommend to color content?

A If we're talking about a T-shirt, there are various colors on the T-shirts and whether or not they like that particular color or the color looks good on that shirt with the design that's in it.

Q Do Ms. Clifton and Mr. Taulbee inspect samples to see if they comply with licensees' license agreements?

A Mr. Taulbee does.

Q And does Mr. Taulbee -- excuse me. Do Mr. Taulbee or Ms. Clifton review samples to see that the Dale Earnhardt trademarks are used correctly?

A Mr. Taulbee does that.

Q Have you ever heard Mr. Taulbee recommend that a sample shouldn't be approved?

A Not that I recall.

Q Have you heard Mr. Taulbee recommend that a sample should be changed before it went into production?

A Yes. If the -- yes, I have.

Q How many times have you heard Mr. Taulbee make that recommendation?

A Not that often.

Q Do you have an estimate of how many times?

A I don't. No.

Q What was the basis for making that -- why has Mr. Taulbee made recommendations to change a sample?

A If the trademark registration was not correct on it, the logo that was on it.

Q And what was Mr. Taulbee's recommendation when the logo was not correct?

A That they change the logo.

Q How did he recommend that they change the logo?

A How is --

Q What change did Mr. Taulbee recommend that the licensee make to the logo?

A That they put the registered trademark on there.

Q And when you say that "they put the registered trademark on there," what do you mean?

A The Dale Earnhardt trademark is registered, and it has to appear a certain way in order for it to be a registered item.

Q So Mr. Taulbee's recommendation was to change the trademark to make sure it matched the registered mark.

A Yes.

Q Is Pat Legare involved in licensing for DEI?

A No.

Q What is Pat Legare's role with DEI?

A She is -- she has no position at DEI. She is a board member of the DEI Foundation.

Q As a board member of the DEI Foundation, does Ms. Legare have any role in licensing of Dale Earnhardt licensed products?

A No.

Q What about Cindy Sims? Is Cindy Sims involved in licensing for DEI?

A No.

Q What is Cindy Sims' role with DEI?

A She is property manager.

Q What do her duties include as property manager?

A She's responsible for the -- she is over the maintenance department of DEI, and she is responsible

for the -- I guess, the maintenance of all the properties.

Q But she doesn't have any role in licensing.

A No.

Q Okay. Let me ask you more about DEI's licensing business. Who negotiates contracts for Dale Earnhardt licensed merchandise?

A Alston & Bird.

Q Mr. Taulbee?

A Yes.

Q Anyone else at Alston & Bird?

A No.

Q Who identifies new or potential licensing deals?

A Normally they knock on DEI's door, and we refer them to Alston & Bird.

Q So licensees come to you.

A Yes.

Q Do you know of a time when DEI ever sought out a licensee?

A Yes.

Q When was that?

A I don't know the years, but I know that DEI has reached out to a few vendors to see if they would be interested in producing items.

Q Do you remember what types of products were involved?

A I remember one of the licensees as being Remington. So some sort of guns.

Q Do you remember any other products?

A Not off the top of my head, no.

Q Who makes the decision whether or not to enter into a licensing deal on behalf of DEI?

A Teresa Earnhardt.

Q Is anyone else involved in that decision?

A No.

Q Is Mr. Taulbee involved in those decisions?

A He brings the licensee to her, and she makes the final decision.

Q Does Ms. Earnhardt normally meet with the licensee before Mr. Taulbee brings them to her?

A No.

Q Does Mr. Taulbee have the initial meetings with the potential licensee?

A He has the initial conversation. I'm not sure about the meetings, but he has the initial conversation.

Q Is the -- are deals with potential licensees already negotiated by the time they're brought to Ms. Earnhardt?

A Not necessarily, no.

Q So Ms. Earnhardt may learn of potential deals with potential licensees before the negotiations have completed.

A Yes.

Q Would Ms. Earnhardt direct -- or has Ms. Earnhardt directed negotiations with respect to licensees?

A Would you repeat that, please.

Q Has she negotiated directly with licensees?

A No.

Q I'll change the question. Is Ms. Earnhardt involved with the decisions about how to negotiate with licensees or potential licensees?

A Not to my knowledge.

Q Who keeps track of revenue that comes in from licensing of Dale Earnhardt merchandise?

A Our accounting department.

Q Does the accounting department receive the checks from the licensees directly?

A Yes.

Q Okay. And you said that the accounting department prepares monthly royalty reports.

A Or quarterly.

Q Or quarterly. And you said that those

reports go to Mr. Taulbee and Mrs. Earnhardt and you.

A Yes.

Q Do they go to anyone else?

A No.

Q Who owns the marks "Dale Earnhardt" and his image? Do you know?

A I think that's Mrs. Earnhardt.

Q If Mrs. Earnhardt owns the Dale Earnhardt marks and his image, how does DEI license them?

MR. JONES: Objection to the form of the question. Assumes a fact not in evidence.

BY MR. TILLEY:

Q You can answer.

A If my attorney says no --

MR. JONES: I'm not saying no. Go ahead and answer to the best of your knowledge.

THE WITNESS: Would you repeat the question.

BY MR. TILLEY:

Q Well, let me go back. You said Ms. Earnhardt owns the Dale Earnhardt mark --

A Yes.

Q -- and the rights in his persona.

A Yes.

Q DEI licenses the Dale Earnhardt marks and the rights in his persona to manufacturers of goods;

correct?

A Yes.

Q Okay. If Ms. Earnhardt owns the marks, how does DEI have the right to license them?

MR. JONES: If you know.

THE WITNESS: I don't know. I don't.

BY MR. TILLEY:

Q Has Ms. Earnhardt ever licensed the Dale Earnhardt marks and the rights in Dale Earnhardt's persona to DEI?

A Not to my knowledge.

Q Okay. Do you know if she's ever assigned the rights and the Dale Earnhardt marks that are in his persona to DEI?

A Not to my knowledge.

Q Does Ms. Earnhardt own any other companies that license the Dale Earnhardt trademarks or rights in his persona?

A The foundation.

Q Foundation. And what is the business of the foundation?

A It's a charitable organization, the purpose of perpetuating Dale's legacy.

Q And does the Dale Earnhardt Foundation license Dale Earnhardt's name or his likeness?

A Their logo is "continue the legend" with a photo of Dale.

Q Does the Dale Earnhardt Foundation ever license that logo to anyone else to use?

A No.

Q So the foundation uses the logo with "continue the legend" and Dale Earnhardt's picture but doesn't license it to anyone else.

A Not to my knowledge.

Q I asked you what kind of items were sold in the retail store at DEI, and you told me clothing, apparel, jewelry, decals, golf balls, clocks, and miscellaneous items. Can you think of any other Dale Earnhardt licensed merchandise that is sold in the DEI retail store?

A There would be some maybe home apparel, sheets, drapes.

Q You said there are sheets and drapes?

A Mm-hmm.

Q Can you describe those sheets and drapes for me? What do they look like?

A They would have probably the car, Dale's image, and his signature.

Q Are there any other products you can think of that are sold, Dale Earnhardt licensed products that

are sold, in the retail store that you can think of?

A Pens, pencils, posters, paper.

Q And you said that -- well, let me ask you this: How is the Dale Earnhardt marks or his likeness used on Dale Earnhardt licensed merchandise?

A It is his photo and his signature.

Q And does his signature include both his first name and his last name?

A It's a combination of both. We have items that have "Dale Earnhardt" and "Earnhardt."

Q What items do you have that use just "Earnhardt" as the signature?

A Offhand, it is apparel.

Q Generally when Dale Earnhardt's signature is included on Dale Earnhardt licensed merchandise, is it both names?

A Yes.

Q So most of the time it's both names.

A Mm-hmm.

(Exhibit 1 Marked for Identification)

BY MR. TILLEY:

Q I'll hand you what is to be Exhibit 1. Mrs. Queen, I'll represent to you that this is the -- a printout from the page marked "Store" on the Dale Earnhardt Incorporated Web site.

Q And why would you say no?

A Because it's very few of the items that we sell. The list is significant.

Q Okay. Let me ask you about how the Dale Earnhardt trademarks and his likeness are used on these products. If you'll look at the hat on the brim, on the front of the hat there's a picture of a man standing over a checkered flag and then a signature, "Dale Earnhardt." Have you seen that image before?

A Yes.

Q Is that one of the Dale Earnhardt trademarks?

A To answer that honestly, you'd have to see if there's a registered sticker on the back of it or a tag on the back of it. I can't answer that without seeing that.

Q Let me ask it this way: When -- I asked you when licensees license the Dale Earnhardt trademarks, how do they use those trademarks on those products? You said there are signatures, pictures -- or Dale Earnhardt's picture, and Dale Earnhardt's name; is that correct?

A Or "Earnhardt."

Q Or "Earnhardt."

A Yes.

Q Does Teresa Earnhardt have a registration for

the name "Earnhardt" alone?

A I don't know that.

Q Do you know if the name "Earnhardt" alone is included in licensing agreements?

A I don't know that.

Q Does DEI have a registration for "Earnhardt" alone?

A I don't know that either.

Q Have you ever reviewed or signed a licensing agreement on behalf of DEI? Have you ever reviewed a licensing agreement for DEI?

A Yes.

Q When was that?

A Several years ago. Maybe seven years ago.

Q Have you ever signed a licensing agreement for DEI?

A Not that I recall.

Q So that would not be included in your duties as vice president of operations.

A No.

Q Have you ever been presented a licensing agreement that was -- that had a line for your signature but was later changed?

A Not that I recall.

(Exhibit 2 Marked for Identification)

(Exhibit 3 Marked for Identification)

BY MR. TILLEY:

Q Ms. Earnhardt [sic], I'm going to give you two documents here.

A I'm Ms. Queen but I'll be glad to look at them.

Q I'm sorry. Ms. Queen, will you look at the document marked Exhibit 2, do you recognize that document?

A Not off the top of my head, no. I would have to review it.

Q Mrs. Queen, as vice president of operations for DEI, are you familiar with DEI's licensees?

A Vaguely.

Q Are you familiar with who they are?

A I do know some of the names, yes.

Q Is Press Pass a licensee of Dale Earnhardt Incorporated?

A I don't know if they're a current licensee. I know for sure they're a former licensee.

Q Ms. Earnhardt -- excuse me -- Ms. Queen -- I'll stop doing that in a minute -- you'll notice that there's a serial number down here at the bottom right hand of the document. Do you see that?

A Mm-hmm.

Q And if you'll see the first page of this document, it's a license agreement by and between Dale Earnhardt Incorporated and RCR Race Operations as licensors and Press Pass as licensee. Do you see that?

A Yes.

Q Okay. Will you turn to the page numbered OPP001670.

Do you see the lines for signatures on that page?

A Yes.

Q Do you see where it says "Dale Earnhardt Incorporated" under "licensors"?

A Yes.

Q Who is set up to sign for Dale Earnhardt Incorporated in this agreement?

A Myself and Bill Patterson.

Q Do you know if you ever signed this agreement?

A I don't know that.

Q Would you turn back to the second page of the document. Do you see where it says "recitals"?

A Yes.

Q And do you see where they're Numbered A and B, the recitals?

A Yes.

Q Recital A says, "Licensors are the legal and equitable owners of or have rights and authority to and desire to license certain famous and valuable property which are set forth on the attached Exhibit A."

MR. JONES: I object. You not only misread that. You didn't read all of that --

MR. TILLEY: I --

MR. JONES: No, no. You put something on the record. I'm going to correct it. It says, "Licensors are the legal and equitable owners of or have rights and authority to with the right to sublicense and desire to license certain famous and valuable property which are set forth on the attached Exhibit A," et cetera, et cetera.

BY MR. TILLEY:

Q Do you agree that that's what Recital A says, what Larry just read -- excuse me -- Mr. Jones just read?

A Yes.

Q And do you see Recital B?

A Yes.

Q Can you read Recital B for me?

A "Licensee is engaged in the business of manufacturing, marketing, selling, and distributing the products set forth on Exhibit B attached hereto and

desires to obtain a limited license from licensors to manufacturer or have manufactured, market, sell, and distribute such projects [sic] bearing the property as more specifically set forth herein."

Q Do you understand that recital?

A Yes.

Q What does that recital mean?

A It means that this licensee can manufacture products for Dale Earnhardt Incorporated.

Q And what does the license give the licensor the right to do?

A To market, sell, and distribute.

Q Okay. Does it give the licensor the right to -- or the licensee the right to use the Dale Earnhardt trademarks?

MR. JONES: Objection. The document speaks for itself.

BY MR. TILLEY:

Q You can answer.

A The document speaks for itself.

Q And what does that mean to you?

A If it is a licensed product, then the licensee can market, sell, and distribute.

Q Do you understand Recital A?

A Yes.

Q What does Recital A mean to you?

A That the licensors are the owners and have the rights and authority with the right to sublicense.

Q To sublicense what?

A Product, articles, merchandise, apparel, products, collectables, memorabilia, and souvenirs.

Q Okay. It says "certain famous and valuable property which are set forth on the attached Exhibit A." Do you see that?

A Yes.

Q Do you understand that famous and valuable property set forth on the Exhibit A as the property being licensed?

A Yes.

Q Okay. Ms. Queen, will you turn now to the back of the document -- let me get the right page for you -- on the page marked OPP001674. What is -- what is the title to that page?

A Marks -- "Exhibit A Marks."

Q And so do you understand this exhibit to be the list of property that is being licensed by this agreement?

A Yes.

Q You see where there's a chart, and it says "DEI as licensor" and then "properties" and a bulleted

list?

A Yes.

Q Will you read that bulleted list and let me know when you've finished.

A I'm finished.

Q Mrs. Queen, are any of the properties on that bulleted list the name "Earnhardt" alone?

MR. JONES: Object to the form of the question. You know very well it says the name of "Dale Earnhardt."

BY MR. TILLEY:

Q Mrs. Queen, you can answer.

A Again, it says the name "Dale Earnhardt."

Q Does the name "Earnhardt" by itself appear anywhere on that list of properties?

MR. JONES: Object to the form of the question.

THE WITNESS: I have no response.

BY MR. TILLEY:

Q You don't know if the name "Earnhardt" appears by itself in the list of --

A It reads --

Q -- category of properties?

A -- "the Dale Earnhardt trademark."

Q And then the Dale Earnhardt signature trademark.

A Yes.

Q And the name, image, and signature and likeness of Dale Earnhardt. It also says that.

A Yes.

Q Anywhere in that list is there any place in that list where the name "Earnhardt" appears without "Dale"?

MR. JONES: Object to the form of the question. You're misleading the witness, and you failed to read "Each as provided and approved by DEI on a case-by-case basis."

BY MR. TILLEY:

Q You can answer.

A No response.

Q No response?

A No response.

Q The clause that Mr. Jones just mentioned, "each as provided and approved by DEI on a case-by-case basis," do you understand what that means?

A Yes.

Q What does that mean?

A Exactly what it says.

Q Can you explain it for me?

A Each is provided on a case-by-case basis, and it is also approved on a case-by-case basis.

Q We discussed earlier that Mr. Taulbee at times reviews and recommends changes to product samples. Do you remember that?

A Yes.

Q And you told me that, when he recommends changes to product samples, it's so that the use of the trademark conforms to the registered mark.

A Yes.

Q When he does that, is his review and recommendation part of this approval provided for in this agreement?

(Record read as requested)

MR. JONES: I object to the form of the question.

BY MR. TILLEY:

Q You can answer.

A I don't understand your question.

Q Do you understand that this agreement provides DEI the right to approve use of the DEI -- or the Dale Earnhardt marks on licensed products?

A Yes.

Q Okay. And you said that Mr. Taulbee reviews samples of licensed products.

A Yes.

Q Is Mr. Taulbee's review of samples of licensed products part of the approval process provided

for in this agreement?

A Yes.

Q Do you know if a licensee has the right on their own to modify the Dale Earnhardt marks they've licensed on their products? Can they use something other than the registered mark?

MR. JONES: Object to the form of the question.

THE WITNESS: Even if they did, it wouldn't be approved.

BY MR. TILLEY:

Q And so DEI would not -- does not approve licensees using modified versions of its trademarks or of the Dale Earnhardt trademark.

A I didn't say that. If DEI approves it, yes. It's on a case-by-case basis.

Q Do you know if -- do you know if the license agreements with DEI's licensees prohibit modification of the trademarks?

A I don't know that.

Q Will you turn to page OPP001648 -- actually, first turn to OPP001647. Do you see Section 2.2?

A Yes.

Q Will you read Section 2.2. You don't need to read on to Subparagraph A. But will you read Section 2.2 where it says "limitations and

restrictions."

A "The license and rights granted herein shall be limited to the express terms set forth herein and without limitation. Licensee shall not -- and such license and right shall not include any right of licensee to do any of the following acts, each of which is expressly prohibited hereby."

Q Do you understand what that means?

A Yes.

Q What does it mean to you?

A It puts limits and restrictions on what a licensee can and cannot do.

Q Will you turn to the next page, Subparagraph F. And so do you understand what follows after that paragraph is a list of things that licensees cannot -- or this licensee cannot do?

A Yes.

Q Will you look at Subparagraph F.

A Yes.

Q Will you read Subparagraph F for me.

A "No misuse or alterations: Use or knowingly permit the use of any of the properties in any manner or for any purpose not specifically authorized under this agreement or change, alter, add to, delete from, augment or modify the properties of the licensed

products in any way."

Q Do you understand what that paragraphs means?

A Yes.

Q What does it mean?

A It means you cannot misuse or alter the samples, the merchandise.

Q It prohibits the licensee from changing any of the properties; is that correct?

A Yes.

Q And the properties are the marks, the Dale Earnhardt marks; is that correct?

A Yes.

Q And it says that the licensee cannot change, alter, add to, delete from, augment, or modify the properties; is that correct?

A Yes.

Q So that would prohibit the licensee from modifying the Dale Earnhardt trademarks on its products.

MR. JONES: Object to the form of the question.

THE WITNESS: No response.

BY MR. TILLEY:

Q Ms. Queen, you said that you understood what that paragraph meant and that it prohibited the licensee from modifying the properties, which you

understood to be the marks.

A It also says "on a case-by-case basis."

Q And what do you understand the case-by-case basis to mean?

A Excuse me?

Q What do you understand the phrase a "case-by-case basis" to mean.

A We read earlier where each one of them is submitted and approved on a case-by-case basis.

Q Is the phrase on a "case-by-case basis" included in paragraph F?

A No.

Q Ms. Queen, you said you were familiar with the Dale Earnhardt marks and its licensing program. Are you familiar with the registrations that include the name "Dale Earnhardt"?

A No.

Q Are you familiar with any trademark registrations that Teresa Earnhardt or DEI own?

A Familiar, yes.

Q Okay. Does Teresa Earnhardt own a registration for the name "Dale Earnhardt"?

A Yes.

Q Do you know what types of goods are covered by that registration?

A Not off the top of my head.

Q Is that the only registration Ms. Earnhardt owns?

A I don't know that.

Q Do you know -- so as far as you know, the only registration Ms. Earnhardt -- trademark registration Ms. Earnhardt owns is for the name "Dale Earnhardt."

A Yes.

Q And you don't know if Ms. Earnhardt has ever registered the name "Earnhardt" by itself as a trademark.

A I don't know that.

(Exhibit 4 Marked for Identification)

BY MR. TILLEY:

Q I'm going to hand you what's going to be marked as Exhibit 4. Ms. Queen, have you ever seen a trademark registration?

A Is this what this is?

Q Answer my question, first. Ms. Queen, have you ever seen a trademark registration?

A I've seen what it looks like.

Q Ms. Queen, I'll represent to you that this is a record of a trademark registration for the name "Dale Earnhardt." Do you see on the registration where it

(Off the Record 11:06 a.m. to 11:08 a.m.)

BY MR. TILLEY:

Q Ms. Queen, we were talking earlier about Dale Earnhardt licensed merchandise. Who are -- could you describe the customers for Dale Earnhardt licensed merchandise?

A They run from one end of the spectrum to the other, from your blue collar worker to your white collar worker.

Q Are they NASCAR fans?

A I would say some of them are, yes.

Q When you say "some of them are," who would the other customers for Dale Earnhardt licensed merchandise be?

A I have no idea but I can't tell you they're all NASCAR because I don't know that.

Q Are they mostly NASCAR fans?

A I would assume so but, again, I don't know that for certain.

Q Ms. Queen, as vice president of operations for Dale Earnhardt Incorporated, you're familiar with the products it sells and who it tries to sell them to; isn't that correct?

A I'm familiar with the products. I could care less who buys them.

Q Okay. Is determining who would buy Dale Earnhardt merchandise not part of marketing that merchandise?

A That's not part of my responsibility.

Q Generally do you know if Dale Earnhardt licensed merchandise is sold through retail or commercial channels?

A Both.

Q When you say "commercial channels," how is Dale Earnhardt licensed merchandise sold through commercial channels?

A I take that back. The only ones that I know of are retail. Sorry.

Q And generally is Dale Earnhardt licensed merchandise -- so Dale Earnhardt licensed merchandise is generally sold as retail merchandise.

A Yes.

Q Is it sold in stores?

A Yes.

Q Is it sold online?

A Yes.

Q Okay. Is it sold trackside at NASCAR events?

A Yes.

Q Do you know if there's any prohibitions on licensees selling merchandise directly trackside?

A The sellers have to be approved by the track. I'm not familiar with that process, but they have to be approved in order to sell that merchandise.

Q So in order for a licensee to sell Dale Earnhardt licensed merchandise trackside, they have to be approved by the track.

A Yes.

Q But you don't know how that process works.

A I'm not familiar with that process.

Q Is Dale Earnhardt licensed merchandise ever sold through one-on-one agents to customers?

A Not that I'm aware.

Q Okay. Does DEI sell Dale Earnhardt licensed merchandise on eBay?

A No.

Q Okay. Do you know if any of DEI's licensees sell Dale Earnhardt licensed merchandise on eBay?

A No.

Q You don't know?

A I don't know, no. They should not. And our -- Alston & Bird track that and stop it if there is.

Q So you would expect that the license agreements with the licensees prohibit them from selling Dale Earnhardt licensed merchandise directly on

eBay.

A Yes.

Q And you would expect that your attorneys would intervene to stop a licensee from selling Dale Earnhardt licensed merchandise on eBay.

A Yes.

Q Okay. Does DEI maintain a page on eBay?

A Not to my knowledge, no.

Q Okay. Does Teresa Earnhardt keep a page on eBay?

A Not to my knowledge.

Q Okay. Do you have a -- you said you're familiar with Dale Earnhardt licensed merchandise. Are you familiar with the prices for which it's sold?

A No.

Q Do you have any sense of what the prices are for Dale Earnhardt licensed merchandise?

A No.

Q Does the price of Dale Earnhardt licensed merchandise affect the royalty payment DEI would receive?

A They receive a percentage of the total.

Q And so if a particular piece of Dale Earnhardt licensed merchandise were sold for, say, a hundred dollars and -- well, let me back that out.

Q But you're saying that you don't know the prices of DEI licensed merchandise.

A No.

Q Ms. Queen, will you turn to Exhibit 1. Will you list for me the goods that you see in Exhibit 1.

A Apparel.

Q What is the apparel?

A The hat.

Q Okay.

A It looks like a deck of cards. I'm not sure about that. I'm not sure what that box is. There's a glass. There's a car. There's a mug, a car tag.

Q Ms. Queen, these are items sold in DEI's store; is that correct?

A I assume so. If that's what we have listed on the Internet, I assume it would be sold in the store.

Q Do you know what the price of that hat is in DEI's store?

A I do not.

Q Do you know if it's under $50?

A I would say, yes, it's under $50.

Q There's a glass there. Do you know what the price of that glass would be?

A No.

Q Would it be under $50?

A I would assume so, yes.

Q And when you say you assume so, you're guessing based on your knowledge of what's in the store and the prices for which it's sold; is that correct?

A Yes.

Q There's a -- a diecast car there. Do you see that?

A Yes.

Q Do you know what the price of that car is?

A No.

Q Would it be under $50?

A It's according to the size of the car, and I'm not sure which size it is.

Q There's a license plate in the picture. Do you see that?

A Yes.

Q Would that license plate be -- have a price over $50?

A No.

Q Would you expect it to?

A No.

Q And there's a coffee mug. Would you expect the price of that coffee mug to be over $50?

A No.

Q Okay. Do you think they'd ask for information -- for specifications on how these goods were made?

A Again, I can't answer that.

Q Are any of these goods in -- on Exhibit 1 customizable?

A Prior to being made, yes.

Q When the customer comes in and sees one of these goods on the shelf, can he talk to the store clerk and ask him to change the product?

A No.

Q We talked about the registration for the name "Dale" -- the trademark registration for the name "Dale Earnhardt," and you said that you're not aware of any other registrations for Dale Earnhardt that are owned by either Teresa Earnhardt or DEI.

A I can't name those for you, no. I know there are others, but I can't name those for you off the top of my head.

Q Okay. Do you know if Teresa Earnhardt or DEI own any registrations for home building services?

A I do not know that.

Q Do you know if Teresa Earnhardt or DEI are engaged in home building services?

A I don't know that either.

Q Okay. Do you know if DEI is engaged in home building services?

A No, not to my knowledge.

Q DEI is not involved in home building services.

A (Shakes head side to side.)

Q Is DEI involved in the manufacture, production, or sale of furniture?

A Not to my knowledge.

Q Does DEI license any of the Dale Earnhardt marks for furniture?

A We have in the past.

Q When was that?

A Several years ago. I'm not sure.

Q How long -- approximately how long ago?

A Again, I'm not certain. And, again, it would be -- it would -- your definition of furniture. What's it made out of? Are we talking about blow-up furniture? Are we talking about wooden furniture? We have furniture with Dale Earnhardt's name on it.

Q When you say you have "furniture with Dale Earnhardt's name on it," what type of furniture are you referring to?

A We're talking about children's beds, chairs.

Q What kind of chairs?

A Blow-up chairs, blow-up sofa.

Q By "blow-up sofa," you mean an inflatable sofa?

A Yes.

Q Are those currently -- are those products currently being produced?

A I don't know.

Q So you don't know if the inflatable chair and the inflatable sofa are currently being produced.

A I don't know that. I know we have samples. But I don't know if they're currently being produced.

Q Do you know if the children's bed is currently being produced?

A I don't know that either.

Q Do you know if DEI currently has a license agreement with any furniture manufacturer?

A I don't know that.

Q And do you know if DEI has any license agreement currently with a contractor or a construction contractor?

A No.

Q Okay. Does Teresa or DEI have a registration for the mark "Earnhardt Collectables"?

A I don't know that.

Q Does Teresa or DEI have a registration for

the mark "Earnhardt Collection"?

A I don't know that either.

Q Do you know if DEI has ever used the term "Earnhardt Collectables" as a trademark?

A Not as a trademark. We refer -- all of the memorabilia has been called "Earnhardt Collectables," but I don't think it was trademarked. I don't know that for certain.

Q Who has called it that?

A Inside and outside contacts.

Q But when that merchandise has been referred to as "Earnhardt Collectables," "Earnhardt Collectables" wasn't being used as a trademark?

A Again, I don't know that for certain.

Q Has DEI ever used the term "Earnhardt Collection" as a trademark?

A I don't know that for certain.

Q Since you have been vice president of operations, has DEI ever used "Earnhardt Collection" as a trademark?

A Not that I'm aware of.

Q Okay. We mentioned home builders, and you said that DEI has -- well, let me ask you this: Has DEI ever licensed any of the Dale Earnhardt marks to a home builder?

A Not to my knowledge.

Q Has it done so since you've been vice president of operations?

A Not to my knowledge.

Q And so DEI is not currently licensing any of the Dale Earnhardt marks to a home builder.

A Not to my knowledge.

Q Have you ever met Sajjan Dhaliwal or anyone from JAS-AM, Inc.?

A No.

Q When I say "JAS-AM, Inc.," do you know of that company?

A No.

Q Okay. When I say "Sajjan Dhaliwal," do you know Sajjan Dhaliwal?

A Yes.

Q Who is Sajjan Dhaliwal?

A I know him as -- I don't know if this is current knowledge.

MR. JONES: Go ahead. We'll mark it later.

THE WITNESS: Mrs. Earnhardt has purchased some property from him.

BY MR. TILLEY:

Q What property has Ms. Earnhardt purchased from him?

works at DEI.

Q To your knowledge, has DEI ever received a phone call asking if they're sponsoring the Earnhardt Collection?

A Not to my knowledge.

Q Has anyone come to you and been confused about whether or not DEI or Teresa are sponsoring the Earnhardt Collection?

A I don't think so.

Q There are a number of famous racers in the Earnhardt family, aren't there, Ms. Queen?

A Two that I can bring to mind.

Q Who are the two that you bring to mind?

A Dale Earnhardt and Dale Earnhardt Jr.

Q You said you believe the designation "Earnhardt Collection" would be viewed by the public as pointing unmistakably to Dale Earnhardt, and by that you meant senior.

A Yes.

Q Why not Dale Earnhardt Jr.?

A If they're going to refer to Dale Earnhardt Jr., they refer to him as Dale Jr.

Q You never heard anyone refer to Dale Earnhardt Jr. as anything other than Dale Jr.?

A I'm not saying I've never heard that, but the

A I can't say that I do.

Q Were you involved in providing answers to questions as part of discovery in this case?

A No.

Q Okay. Will you turn to -- I'll represent to you, then, that this is a set of responses from Ms. Earnhardt to discovery -- interrogatories served by Kerry Earnhardt, Inc. Will you turn to page 4, please. Do you see where it says Interrogatory Number 3?

A Yes.

Q Can you read what it says for Interrogatory Number 3?

A "Identify the person or entity associated with Opposer who is most knowledgeable about the annual sales of merchandise licensed under the marks "Dale Earnhardt," "Earnhardt" alone, i.e., not with "Dale" or "Earnhardt Collectables."

Q And do you see there where it says response to Interrogatory Number 3?

A Yes.

Q And it says it is -- there's an objection and, then, the next paragraph is "As presently informed Opposer understands that Amy Hallman, licensing coordinator for Dale Earnhardt Incorporated, is likely the most knowledgeable person regarding such matters."

A Yes.

Q Do you agree with that? Is Amy Hallman the most knowledgable person with respect to annual sales of merchandise licensed under Dale Earnhardt marks?

A She no longer is an employee of Dale Earnhardt Inc.

Q When did she leave DEI?

A 2013, not quite sure about that.

Q Sometime last year?

A I think it was sometime last year or early this year.

Q Did she quit or was she fired?

A She quit.

Q Do you know why she quit?

A No. I don't think her resignation said.

Q Do you know where she works now?

A She works for another racing team.

Q Prior to her departure in 2013 would Ms. Hallman have been the most knowledgeable person at DEI regarding the merchandise licensed under the Dale Earnhardt marks?

A Yes.

Q Will you look at Interrogatory Number 4, please. Will you read Interrogatory Number 4, please?

A "Opposer incorporates by reference all of the

foregoing objection."

Q Actually, that's the response. Next one up.

A Excuse me. "Identify each person or entity with knowledge of any confusion concerning Applicant's use of the 'Earnhardt Collection' mark and Opposer's products or services and for each such person summarize the nature and extent of that knowledge."

Q Do you understand what that request is asking?

A I think so.

Q What do you understand that request to be asking?

A They're asking the identity of each person or entity with knowledge of any confusion concerning Applicant's use of the Earnhardt Collection mark and Opposer's products or services.

Q And will you look at the response to Interrogatory Number 4. There's an objection and then in the next paragraph it says, "As presently informed, Opposer believes there is no such person or entity."

Do you see that?

A Yes.

Q Is that answer correct, to the best of your knowledge?

A Yes.

the discovery requests a little more than a month ago, you don't recall any other discussions about them.

A No.

Q Okay. And you didn't have any other discussions about them.

A No.

Q Okay. Ms. Queen, are you the only person within DEI who reports directly to Ms. Earnhardt?

A Yes. Yeah.

Q You're her only direct report?

A Yes.

Q And so everyone else within DEI ultimately reports to you, and then you report to Ms. Earnhardt.

A Yes.

Q Okay. Is Ms. Earnhardt still involved in DEI's business on a day-to-day basis?

A Yes.

Q She is involved --

A Yes.

Q -- on a day-to-day basis?

A Yes.

Q Does she come into the office?

A She works from home and works from the office.

Q How often does she work from home?

A 90 percent of the time.
Q Okay. How often do you speak with Ms. Earnhardt?
A On a daily base.
Q On a daily basis?
A (Nods head up and down.)
Q Multiple times a day.
A Some days, yes.
Q Is that mostly over the telephone?
A Yes.
Q Do you normally work from DEI's offices?
A I do. I work from home as well.
Q Your own home?
A Yes, and her home.
Q You work from Ms. Earnhardt's home?
A Uh-huh.
Q How often do you work from Ms. Earnhardt's home?
A A couple times a month.
Q Couple times a month. Do you ever travel with Ms. Earnhardt?
A Yes.
Q When you travel with Ms. Earnhardt, is it related to DEI's business?
A Yes.

Q Have you ever traveled with her not related to DEI's business?

A Yes.

Q Would those personal -- was it a personal trip?

A Her personal business.

Q Her personal business. Have you ever accompanied her on vacations?

A Working vacations.

Q Okay. And by "working vacations," what do you mean?

A We worked most of the time.

Q Okay. Do you handle Ms. Earnhardt's schedule?

A No.

Q Okay. Does someone within DEI handle Ms. Earnhardt's schedule?

A No. I relay the information to her, and she sets her own schedule.

Q Okay. Does anyone with DEI or you make Ms. Earnhardt's travel arrangements?

A I have made them. I make limited ones now. She makes her own and then she has other people making hers.

Q Those other people, are those employees of

DEI?

A I think Pat Legare makes some of those arrangements for her, and her pilot does as well.

Q Do you coordinate the maintenance and work on her personal homes?

A It depends on the locations.

Q What locations do you handle the maintenance for?

A I don't actually handle the maintenance. They coordinate the maintenance through me. Several of her condos and a few of her residences.

Q Okay. You said you were Ms. Earnhardt's personal assistant.

A Mm-hmm.

Q When did you stop being Ms. Earnhardt's personal assistant?

A Again, I'm not real sure but I gave the years earlier. Whatever those years are.

Q Okay. Sometime before 2000?

A Yes, yes.

Q Okay. And you were also Dale Earnhardt's personal assistant --

A Yes.

Q -- at that time. Were you in your role as Dale Earnhardt's personal assistant familiar with his

a little more time to get there.

BY MR. TILLEY:

Q Prior to Dale Earnhardt Senior's death, Dale Jr. and Kerry were both in racing; is that correct?

A Dale Jr., was, yes, and I think Kerry was on a very limited basis. I'm not real sure about Kerry.

Q And you said you were familiar with Kerry Earnhardt's relationship with Dale Earnhardt Senior in the context of their business.

A Vaguely. I meant --

Q And what is that understanding?

A If Kerry visited the office, I may or may not have seen them there together.

Q Do you have any sense of whether Dale Earnhardt -- well, prior to Dale Earnhardt Senior's death in 2001, Dale Jr. and Kerry Earnhardt were both involved in DEI; is that correct? They were racing for DEI.

A Dale Jr. raced for DEI. Kerry may have run some limited races with DEI. Yeah.

Q Did Dale Earnhardt Senior ever appear with Dale Earnhardt Jr. or Kerry Earnhardt, make public appearances with either one of them?

A Probably.

Q Did DEI ever work to promote or publicize the

careers of Dale Earnhardt Jr. or Kerry Earnhardt?

A As long as -- if they were working for us, I'm sure they did, yes.

Q And they were working for DEI before Dale Earnhardt Senior's death?

A Again, Dale Jr. was and I'm not sure about Kerry. I think he ran some races on a limited basis for DEI.

Q During the time prior to Dale Earnhardt Senior's death when Dale Jr. and Kerry Earnhardt were racing, do you think the public viewed the name "Earnhardt" as referring only to Dale Earnhardt Senior?

A Yes.

Q Even though DEI was trying to promote Dale Earnhardt Jr. and Kerry Earnhardt?

A Yes. They differentiated that by their names, Dale Jr. and Kerry Earnhardt.

Q So they used their first names.

A That's not what I said.

Q Okay. What did you say?

A I said they differentiated those two by their names, Dale Jr. and Kerry.

Q And so there were three members of the Earnhardt family being promoted as racers.

A Not by -- well, yes.

Q By DEI?

A Yes, by DEI, by the licensing of the products. Dale raced for another race team.

Q And we mentioned this, but for a time Kerry used to work for DEI; isn't that correct?

A Kerry worked for DEI after Dale's death. And for the limited races, you could say he worked for DEI, yes.

Q When did Kerry stop working for DEI?

A I think approximately 2012.

Q Do you know if Kerry Earnhardt owns a trademark in his own name?

A I don't know that for certain.

Q You said he worked at DEI until sometime 2012. Is that what you said?

A Yes.

Q Did he quit or was he terminated?

A He was terminated.

Q Who made the decision to terminate Kerry Earnhardt from DEI?

A It was Teresa's final determination.

Q You said "it was Teresa's final determination." Did someone make the determination on a preliminary basis for Teresa made the final decision?

A There were discussions, yes.

EXHIBIT B

CONTACT DEI FOUNDATION

Read More

DEI SHOWROOM & RETAIL STORE MAY 2014 HOURS

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
				1 11AM-2PM	2 11AM-2PM	3 11AM-2PM
4 TALLADEGA	5 11AM-2PM	6	7	8	9	10 KANSAS
11 HAPPY MOTHERS DAY	12	13	14	15 10AM-4PM	16 CMS - TRUCKS 10AM-4PM	17 CMS - ALL-STAR 10AM-4PM
18	19 10AM-4PM	20 10AM-4PM	21 10AM-4PM	22 CMS POLE DAY 10AM-4PM	23 WOO DIRT TRACK 10AM-4PM	24 CMS - NNS 10AM-4PM
25 CHARLOTTE 600	26 10AM-4PM	27	28	29 11AM-2PM	30 11AM-2PM	31 11AM-2PM

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

Teresa H. Earnhardt,	§	Consolidated Opposition Nos.
	§	91205331 (parent) and 91205338
Opposer,	§	
	§	In the matter of:
vs.	§	
	§	Application Serial No. 85/383,910
Kerry Earnhardt, Inc.,	§	Mark: EARNHARDT COLLECTION
	§	(Intl. Class 20)
Applicant.	§	
	§	Application Serial No. 85/391,456
		Mark: EARNHARDT COLLECTION
		(Intl. Class 37)

OPPOSER'S RESPONSES TO APPLICANT'S
FIRST SET OF INTERROGATORIES

Pursuant to 37 C.F.R. § 2.120 and Rules 26 and 33 of the Federal Rules of Civil Procedure, Opposer, Teresa H. Earnhardt, hereby provides the following responses to *Applicant's First Set of Interrogatories*.

GENERAL OBJECTIONS

1. Opposer objects to each and every interrogatory to the extent that it seeks information protected from discovery by the attorney-client communications privilege or the attorney work product immunity doctrine.

2. Opposer objects to each and every definition, instruction and interrogatory to the extent that it purports to require Opposer to search for information not within Opposer's possession, custody or control. To do so would place an undue added burden upon Opposer.

3. Opposer objects to each and every definition, instruction and interrogatory to the extent it purports to require Opposer to provide discovery or information and

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materials not otherwise required under 37 C.F.R. § 2.120 and the applicable Federal Rules of Civil Procedure.

4. Opposer objects to any requirement that she identify or provide a list of any documents withheld from discovery pursuant to either the attorney-client communications privilege and/or the attorney work product immunity doctrine and which documents were created on or after May 16, 2012, the date on which each Notice of Opposition was filed in this proceeding. Such a requirement would be unduly burdensome and would interfere with this proceeding by deterring the creation of such documents.

5. These responses are made without waiver of and with preservation of:

(a) all questions as to competency, relevancy, materiality, privilege and admissibility of the responses and the subject matter thereof as evidence for any purpose and in any further proceeding in this action and in any other action;

(b) the right to object to the use of any such responses or the subject matter thereof, on any ground in any further proceeding in this action and any other action;

(c) the right to object on any ground at any time to a demand or request for further response to these or any other interrogatories or other discovery requests involved or related to the subject matter of the discovery to which these responses are provided; and

(d) the right at any time to review, correct, add to, supplement or clarify any of the responses contained herein.

6. The following responses are based upon information and documents presently available to and located by Opposer and her attorneys. Opposer has not completed her investigation of the facts relating to this proceeding, has not completed

her discovery in this proceeding, and has not completed her preparation of her testimony. The responses given herein to the discovery requests are without prejudice to Opposer's right to produce evidence of any additional facts or materials.

These general objections apply to all of Opposer's interrogatories. To the extent that the specific General Objections are cited herein in response to specific discovery requests, those specific citations are provided because they are believed to be particularly applicable to the requests and are not to be construed a waiver of any other General Objections applicable to information or materials falling within the scope of the requests.

RESPONSES TO INTERROGATORY NOS 1-11

Interrogatory No 1:

Identify each person or entity with knowledge of Opposer's use of the marks EARNHARDT (alone, *i.e.*, not with "DALE") or EARNHARDT COLLECTABLES and for each such person, summarize the nature and extent of that knowledge.

Response to Interrogatory No. 1:

Opposer incorporates by reference all of the foregoing objections.

As presently informed, the persons most knowledgeable about such use are Opposer's licensees, and the identification of those licensees will be reflected in the copies of the license agreements produced by Opposer.

Interrogatory No 2:

Identify the person or entity associated with Opposer who is principally responsible for marketing, promotion, manufacture or sales of goods or services under the marks EARNHARDT (alone, *i.e.*, not with "DALE") or EARNHARDT COLLECTABLES.

Response to Interrogatory No. 2:

Opposer incorporates by reference all of the foregoing objections.

As presently informed, the persons so associated with Opposer are Opposer's licensees, and the identification of those licensees will be reflected in the copies of the license agreements produced by Opposer.

Interrogatory No 3:

Identify the person or entity associated with Opposer who is most knowledgeable about the annual sales of merchandise licensed under the marks DALE EARNHARDT, EARNHARDT (alone, *i.e.*, not with "DALE") or EARNHARDT COLLECTABLES.

Response to Interrogatory No. 3:

Opposer incorporates by reference all of the foregoing objections.

As presently informed, Opposer understands that Amy Hallman (Licensing Coordinator of Dale Earnhardt, Inc.) is likely the most knowledgeable person regarding such matters.

Interrogatory No 4:

Identify each person or entity with knowledge of any confusion concerning Applicant's use of the EARNHARDT COLLECTION mark and Opposer's products or services and for each such person, summarize the nature and extent of that knowledge.

Response to Interrogatory No. 4:

Opposer incorporates by reference all of the foregoing objections.

As presently informed, Opposer believes there is no such person or entity.

Interrogatory No 5:

Identify each person or entity that Opposer has licensed to use the marks EARNHARDT (alone, *i e.*, not with "DALE") or EARNHARDT COLLECTABLES.

Response to Interrogatory No. 5:

Opposer incorporates by reference all of the foregoing objections.

As presently informed, the license agreements regarding the usage of the mark DALE EARNHARDT were understood by the parties to those license agreements to include the right to

use EARNHARDT alone and/or with other generic or descriptive terms, and in fact some, if not all, of the licensees made and/or sold merchandise reflecting that understanding.

Interrogatory No 6:

Identify each person who participated in the decision to cause, or attempt to cause, "the commercial rights in Dale Earnhardt's name and persona [to pass] to his widow, Teresa H. Earnhardt," as alleged in Paragraph 4 of the Notice of Opposition.

Response to Interrogatory No. 6:

Opposer incorporates by reference all of the foregoing objections.

Opposer also objects to this interrogatory on the grounds that the requested information is neither relevant to any issue to be determined in this proceeding nor reasonably likely to lead to the discovery of admissible evidence relevant to any issue to be determined in this proceeding.

Interrogatory No 7:

Identify each person Opposer may call as a witness at the trial of this matter or upon whose sworn statement or testimony Opposer may rely at trial or at any other proceeding in this action.

Response to Interrogatory No. 7:

Opposer incorporates by reference all of the foregoing objections.

Opposer also objects to this interrogatory on the grounds that it is premature to require Opposer to provide her pretrial disclosures, and the interrogatory exceeds the scope of discovery permitted under the controlling precedents and rules of the TTAB.

Interrogatory No 8:

Identify each person Opposer may call as an expert witness at the trial of this matter, and with respect to each such person identify:

(a) a complete statement of all opinions the witness will express and the basis and reasons for them;

(b) the facts or data considered by the witness in forming them;

(c) any exhibits that will be used to summarize or support them;

(d) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(e) a list of all other case in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and

(f) a statement of the compensation to be paid for the study and testimony in the case.

Response to Interrogatory No. 8:

Opposer incorporates by reference all of the foregoing objections.

Opposer has not yet determined whether she may use at trial any expert witness(es).

Interrogatory No 9:

Identify all persons having knowledge of facts relating to the subject matter of this action and, as to each such person, set forth a summary of the important facts known or observed by such person and state whether any written or recorded statement was taken from such person concerning any of the subject matter of this action.

Response to Interrogatory No. 9:

Opposer incorporates by reference all of the foregoing objections.

Opposer also objects to this interrogatory on the grounds that it is vague and ambiguous and, to the extent understood, overly broad, unduly burdensome, and beyond the bounds of discovery permitted under the controlling precedents and rules of the TTAB.

Interrogatory No 10:

If any document identified herein was, but is no longer, in Opposer's possession, custody or control, state whether it: (i) is missing or lost; (ii) has been destroyed; (iii) has been transferred, voluntarily or involuntarily, to another; or (iv) has otherwise been disposed of, and in each instance explain the attendant circumstances of such disposition, including the date and place thereof.

Response to Interrogatory No. 10:

Opposer incorporates by reference all of the foregoing objections.

As presently informed, Opposer has no information responsive to this interrogatory.

Interrogatory No 11:

If any information requested by an interrogatory was, but is no longer available to Opposer because of the absence, resignation, or termination of any employee, officer, or other agent, describe such information as completely as possible and identify any person who has or had more complete knowledge concerning such information.

Response to Interrogatory No. 11:

Opposer incorporates by reference all of the foregoing objections.

As presently informed, Opposer has no information responsive to this interrogatory.

Dated: January 24, 2013

Respectfully submitted,

Larry C. Jones
Carla H. Clements
Alston & Bird, LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, North Carolina 28280-4000
Telephone: (704) 444-1000

Attorneys for Opposer,
Teresa H. Earnhardt

VERIFICATION

I, Teresa H. Earnhardt, have read the foregoing *Opposer's Responses to Applicant's First Set of Interrogatories*, and I believe the same to be true and correct based either upon my personal knowledge or upon information supplied to me by others which I believe to be true and correct.

This ____ day of _____, 2013

_____
Teresa H. Earnhardt

CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Opposer's Responses to Applicant's First Set of Interrogatories" was duly served on Applicant by depositing a copy of same in the United States mail, first-class postage prepaid, on the 24th day of January, 2013 addressed to Applicant's attorneys of record as follows:

D. Blaine Sanders
Matthew F. Tilley
Robinson Bradshaw & Hinson, P.A.
101 N. Tryon Street, Suite 1900
Charlotte, NC 28246-0106

Carla H. Clements