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

|                           |   |
|---------------------------|---|
| Proceeding                | 91205331  |
| Party                     | Defendant<br>Kerry Earnhardt, Inc.  |
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| Submission                | Testimony For Defendant   |
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| Date                      | 12/22/2014  |
| Attachments               | Notice of Filing Transcript and Exhibits_Amy L. Hallman.pdf(3744433 bytes )   |

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)                  |

**APPLICANT'S NOTICE OF FILING OF THE TRANSCRIPT  
AND NON-CONFIDENTIAL EXHIBITS OF THE TESTIMONY PERIOD  
DEPOSITION OF AMY L. HALLMAN**

PLEASE TAKE NOTICE that Kerry Earnhardt, Inc. ("Applicant") hereby files the transcript and Opposer's non-confidential Exhibit Nos. 26-30 of the October 24, 2014, testimony period deposition of Amy L. Hallman.

Opposer's confidential Exhibit No. 24 (also mentioned in this transcript) is being filed separately with *Applicant's Notice of Filing Confidential Exhibit of the Testimony Period Deposition of Amy L. Hallman*.

Respectfully submitted,



---

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Applicant's Notice of Filing of the Transcript and Exhibits of the Testimony Period Deposition of Amy L. Hallman" and the accompanying materials were duly served on Opposer by depositing copies of same in the United States mail, first-class postage prepaid, on the 22<sup>nd</sup> day of December, 2014 addressed to Opposer's attorneys of record as follows:

Larry C. Jones  
Bruce J. Rose  
Clara H. Clements  
Alston & Bird, LLP  
101 South Tryon Street, Suite 4000  
Charlotte, North Carolina 28280-4000



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Cary Baxter Davis

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

**ORIGINAL**

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)

TERESA H. EARNHARDT, )  
 )  
Opposer, )  
 )  
-vs- )  
 )  
KERRY EARNHARDT, INC., )  
 )  
Applicant. )  
 )  
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DEPOSITION OF AMY L. HALLMAN

(Taken by the Applicant)

101 North Tryon Street - Suite 1900  
Charlotte, North Carolina

Friday, October 24, 2014

REPORTED BY: Beverly J. Gramm, RPR  
Notary Public

APPEARANCES OF COUNSEL:

On Behalf of the Opposer:

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- and -  
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On Behalf of the Applicant:

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ALSO PRESENT:

Joe Hedrick

DEPOSITION of AMY L. HALLMAN, taken by the Applicant, at Robinson, Bradshaw & Hinson, P.A., 101 North Tryon Street, Suite 1900, Charlotte, North Carolina, on the 24th day of October, 2014, at 1:36 p.m., before Beverly J. Gramm, Registered Professional Reporter and Notary Public.

C O N T E N T S

THE WITNESS:

Amy L. Hallman

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By Mr. Rose 43

I N D E X T O E X H I B I T S

Opposer's Exhibit 26  
(Front and back view of  
picture of Earnhardt hooded  
jacket) 30

Opposer's Exhibit 27  
(Front and back view of  
picture of Earnhardt T-shirt) 31

Opposer's Exhibit 28  
(Front and side view picture  
of Earnhardt hat) 32

Opposer's Exhibit 29  
(Picture of Stock Car Racing  
Magazine featuring Dale Earnhardt,  
Sr. and picture of die-cast  
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I N D E X T O E X H I B I T S (cont'd)

Opposer's Exhibit 30

(Confidential Information and

Non-Disclosure Agreement)

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Exhibit referred to but previously marked

in a prior deposition

Opposer's Exhibit 24

(Copy of Dale Earnhardt

The Venues brochure)

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1                   AMY L. HALLMAN,  
2           having been duly sworn, was examined  
3           and testified on her oath as follows:

4                   DIRECT EXAMINATION

5   BY MR. SANDERS:

6           Q     Good afternoon, Miss Hallman.

7           A     Good afternoon.

8           Q     Would you please state your full name for  
9   the record?

10          A     Amy Lewis Hallman.

11          Q     Where do you live, Miss Hallman?

12          A     Cornelius, North Carolina.

13          Q     And where do you work?

14          A     Roush Yates Racing Engines.

15          Q     Where did you work before Roush Racing  
16   Engines?

17          A     Dale Earnhardt Incorporated.

18          Q     And if I said DEI, will you know what I'm  
19   talking about?

20          A     Yes. Yes.

21          Q     When did you start working at DEI?

22          A     August of '95.

23          Q     And when did you start working in  
24   licensing at DEI?

25          A     Approximately '97, full time, in

1 licensing.

2 Q When did you leave DEI?

3 A March of 2013.

4 Q Did you work in licensing from 1997 until  
5 March of 2013?

6 A Yes.

7 Q What were your initial responsibilities in  
8 licensing?

9 A Approvals.

10 Q And what does that mean?

11 A Previewing artwork, make sure trademarks  
12 are used properly, and communicating that with the  
13 licensee.

14 Q Did your responsibilities increase over  
15 time in licensing?

16 A Yes.

17 Q How so?

18 A Where I was working we're one-on-one with  
19 the licensee, whether it's with proposals,  
20 contracts, artwork. Just outside communication with  
21 the licensees.

22 Q In your later years working in licensing  
23 at DEI, who was responsible for the approval process  
24 and brand management of Dale Earnhardt's trademarks?

25 A Teresa Earnhardt.

1 Q And what was your role?

2 A Supporting the licensing program.

3 Q What was George Taulbee's role in your --  
4 at the time that you -- in March of 2013, while you  
5 were there?

6 A Legal counsel.

7 Q Would it be fair to say that he handled  
8 the legal issues and you handled the business issues  
9 regarding licensing?

10 A Yes.

11 MR. ROSE: Object to form.

12 BY MR. SANDERS:

13 Q You can go ahead and answer.

14 A Yes.

15 Q Who met with Teresa about approvals and  
16 brand management, was it Mr. Taulbee or you?

17 A Me.

18 Q What was the largest number of people that  
19 worked in the licensing area when you were at DEI?

20 A Six.

21 Q How many people worked in licensing at the  
22 time that you left in March of 2013?

23 A One.

24 Q And who was that?

25 A Myself.

1 Q Based on the 15 plus years you spent in  
2 licensing at DEI, did you become familiar with the  
3 goods that DEI licensed under the Dale Earnhardt  
4 marks?

5 A Yes.

6 Q What types of goods did DEI license?

7 MR. ROSE: Object to form.

8 BY MR. SANDERS:

9 Q You can go ahead and answer.

10 A Apparel, die-cast, key chains. Just  
11 different novelty items.

12 Q During your time with DEI, did DEI ever do  
13 any business in custom homes?

14 A No.

15 Q Home building?

16 A No.

17 Q How about furniture?

18 A Was that a period -- I'm sorry. Repeat.

19 Q During the time you were at DEI, did DEI  
20 ever do any business in furniture?

21 A One licensee, I believe.

22 Q And who was that?

23 A Klaussner Home Furnishing.

24 Q And Klaussner, what did Klaussner make?  
25 What kind of products?

1 A Just, like, a recliner chair.

2 Q How long did that license last?

3 A Approximately a year or two years, max.

4 Q About when did that license end?

5 A 2002 or 3.

6 Q More than ten years ago, would that be  
7 fair?

8 A Yes. Yes.

9 Q How about describing for me your  
10 involvement in the license approval. What did you  
11 do?

12 A I reviewed the artwork that's submitted by  
13 the licensees, reviewed the licensing applications,  
14 contracts, meeting with Teresa Earnhardt on  
15 approvals, new business, meeting with our licensees.

16 Q Was Teresa involved in the license  
17 approval process?

18 A Yes.

19 Q Did she have a particular interest in  
20 certain types of products?

21 A Yes.

22 MR. ROSE: Object to form.

23 BY MR. SANDERS:

24 Q What types of products?

25 A Interior design.

1 Q Was she interested in furniture?

2 A Yes.

3 Q How did she respond to furniture  
4 submittals?

5 A She was always looking for something more  
6 high end.

7 Q And --

8 A Higher price points.

9 Q Did she ever reject lower end furniture  
10 submittals?

11 A Yes.

12 Q Was she or anybody else at DEI ever able  
13 to bring in the more high-end types of furniture?

14 A No.

15 Q Miss Hallman, was it ever part of DEI's  
16 licensing strategy to use Earnhardt by itself?

17 And by that I mean without Dale's first  
18 name or some other indication tying Earnhardt to him  
19 as an individual.

20 MR. ROSE: Object to form.

21 A No.

22 BY MR. SANDERS:

23 Q What was your --

24 A No.

25 Q Who had the final say over that branding

1 strategy?

2 A Teresa Earnhardt.

3 Q When Teresa participated in the approval  
4 process, how would she respond to submissions that  
5 used Earnhardt by itself?

6 A We would add the name Dale.

7 Q Could she be involved in adding the name  
8 Dale?

9 A Yes. Yes.

10 Q Did DEI ever partner with any third-party  
11 trademark owner, such as Richard Childress Racing,  
12 to co-license the Dale Earnhardt marks?

13 A Yes.

14 MR. ROSE: Objection to form.

15 BY MR. SANDERS:

16 Q What were, if you can name them, some of  
17 the third-party marks that were co-licensed with  
18 Dale Earnhardt marks?

19 A Goodwrench, General Mills, Carowinds.

20 Q How about the No. 3, his number on the  
21 car?

22 A Yes, there are. Yes, the RCR.

23 Q And who had the rights to that number?

24 A Richard Childress Racing.

25 Q What became of those co-licensing

1 arrangements?

2 A Now void.

3 MR. ROSE: Object to form.

4 A They terminated.

5 BY MR. SANDERS:

6 Q Were they over as of March of 2013, when  
7 you left DEI?

8 A Primarily, yes.

9 Q Which ones were still in place?

10 A There was still some co-branding with  
11 number -- with RCR for the 3.

12 Q What impact, if any, did the changes in  
13 these co-branding arrangements have on DEI's  
14 licensing program?

15 A A decline in overall number of licenses --  
16 licensees as well as sales.

17 Q All right. Based on your experience at  
18 DEI, would you say that Teresa Earnhardt supported  
19 the licensing program?

20 A No.

21 Q While you were working at DEI, how often  
22 did Teresa come to the office?

23 A It would vary. It could be every two  
24 weeks to every two to three months.

25 Q Was it a challenge to get her to respond

1 to requests for approval of licensing submissions?

2 A Yes.

3 Q And why was that?

4 A I just could not schedule time to meet  
5 with her. She wasn't available.

6 Q Did that hurt DEI's licensing program?

7 A Yes.

8 MR. ROSE: Object to form.

9 BY MR. SANDERS:

10 Q Are you generally familiar with the amount  
11 of the royalties that DEI received from the sale of  
12 its goods?

13 A Yes.

14 Q Did you ever look at the royalty reports?

15 A Occasionally.

16 Q Did the amount of royalties from licensing  
17 the Dale Earnhardt marks change over time?

18 A Yes.

19 Q How so?

20 A They declined.

21 Q Significant?

22 A Significantly declined.

23 Q During the time that you were with DEI,  
24 did Dale Earnhardt, Jr. ever drive for DEI?

25 A Yes.

1 Q Did DEI handle the licensing of his  
2 trademarks?

3 A Yes.

4 Q Did Kerry Earnhardt drive for DEI during  
5 the time that you were there?

6 A Yes.

7 Q Did DEI handle the licensing for Kerry's  
8 trademark?

9 A Yes.

10 Q Did Teresa ever object to DEI handling  
11 their trademarks?

12 A No.

13 Q You worked with Dale Earnhardt, Sr.; is  
14 that right?

15 A Yes.

16 Q While Dale Sr. was a alive, did he support  
17 DEI's licensing program?

18 A Yes.

19 MR. ROSE: Object to form.

20 BY MR. SANDERS:

21 Q Your answer was?

22 A Yes.

23 Q Was he effective in supporting it?

24 A Yes.

25 Q Did Dale Earnhardt, Sr. support the use of

1 Dale Jr.'s trademark?

2 A Yes.

3 MR. ROSE: Object to form.

4 BY MR. SANDERS:

5 Q How about Kerry's trademark?

6 A Yes.

7 Q Did Dale Earnhardt, Sr. ever assemble  
8 racing programs for Kerry or Dale Jr.?

9 A Yes.

10 Q Can you remember some of those?

11 A Late model stock, ARCA Racing Cup Series  
12 as well.

13 Q Did DEI handle the licensing for those  
14 programs?

15 A Yes.

16 Q And what types of products were licensed  
17 under them?

18 A Apparel, die-cast, novelty items.

19 Q Are those the same goods that were covered  
20 by Dale Earnhardt, Sr.'s marks, same types?

21 A Yes. Yes.

22 Q Based on your experience in licensing at  
23 DEI, are you familiar with the customers for Dale  
24 Earnhardt, Sr.'s licensed goods?

25 A Yes.

1 Q How would you describe those customers?

2 A Core race fans.

3 Q In your role with DEI in their licensing,  
4 were you concerned as a business matter about  
5 protecting the Dale Earnhardt trademark?

6 A Yes.

7 Q Are you familiar with the designation  
8 Earnhardt Collection that KEI has?

9 A Yes.

10 Q And when I say KEI, I mean Kerry Earnhardt  
11 Incorporated, do you understand that?

12 A Yes, sir.

13 Q This designation Earnhardt Collection,  
14 what is that designation used with?

15 A Schumacher Homes & Home Decor.

16 Q For the sale of what?

17 A Sale of homes.

18 Q When you were with DEI, did anybody from  
19 the consuming public ever come to you and ask if the  
20 Earnhardt Collection was connected to Dale  
21 Earnhardt?

22 A No.

23 Q Did anybody ever contact you about buying  
24 an Earnhardt Collection home through DEI?

25 A No.

1 MR. ROSE: Object to form.

2 BY MR. SANDERS:

3 Q How about furniture?

4 A No.

5 Q In your role at DEI, did you ever have any  
6 business concern that KEI's use of Earnhardt  
7 Collection somehow lowered the value of Dale  
8 Earnhardt's marks?

9 A No.

10 Q Were you concerned about that it would  
11 have any effect on the Dale Earnhardt marks?

12 MR. ROSE: Object to form.

13 A No.

14 BY MR. SANDERS:

15 Q Why not?

16 A Because they were not -- it's a different  
17 category. They're attracting different consumers.

18 Q Miss Hallman, did you leave DEI  
19 voluntarily?

20 A Yes.

21 Q Why did you leave DEI?

22 A The decline in business and also this  
23 lawsuit.

24 Q What was it about the lawsuit?

25 A Not having an understanding. And then

1 just I didn't see the value in it, the reason for  
2 it.

3 MR. SANDERS: I don't have any other  
4 questions right now. Thank you.

5 MR. ROSE: We'll take a few minutes to  
6 confer and we'll have some questions.

7 MR. SANDERS: Sure. We can leave them  
8 here and let them confer.

9 (Off the record at 1:49 p.m.)

10 (On the record at 1:57 p.m.)

11 CROSS-EXAMINATION

12 BY MR. ROSE:

13 Q Welcome back, Miss Hallman.

14 A Thank you.

15 Q I have a few questions for you in  
16 follow-up. You're employed right now by Roush Yates  
17 Racing Engines; is that right?

18 A Yes.

19 Q And what is the business of Roush Yates  
20 Racing Engines?

21 A Building engines and leasing engines to  
22 NASCAR race teams.

23 Q Is that also part of the current business  
24 of Dale Earnhardt Incorporated, to your knowledge?

25 A No.

1 Q DEI is not involved in building any racing  
2 engines, to your knowledge?

3 A No.

4 Q Are you presently employed by Kerry  
5 Earnhardt Incorporated?

6 A No.

7 Q Are you a consultant in any way for Kerry  
8 Earnhardt Incorporated?

9 A No.

10 Q Are you being paid or have you been paid  
11 in any way by Kerry Earnhardt Incorporated?

12 A No.

13 Q What business is Kerry Earnhardt  
14 Incorporated in, to your knowledge?

15 A They partner with Schumacher Homes on  
16 custom home building.

17 Q And they license trademarks to Schumacher  
18 Homes?

19 A That's my understanding.

20 Q And so in that respect, is Kerry Earnhardt  
21 Incorporated a competitor of Dale Earnhardt  
22 Incorporated?

23 A No.

24 Q Does Dale Earnhardt Incorporated presently  
25 make parts for race teams?

1 A Yes.

2 Q Is Dale Earnhardt Incorporated then a  
3 competitor of Roush Yates Racing Engines?

4 A Well, no -- well, that's tough. Because  
5 we build engines. We're not manufacturing the  
6 parts, such as Earnhardt Racing Technology, so we're  
7 not selling the same.

8 Q When did you first learn that you were  
9 going to give testimony in this matter?

10 A A month ago, possibly -- or approximately  
11 four weeks back, I would say.

12 Q And how did you come to learn that you  
13 were going to give testimony?

14 A Received a phone call from Blaine.

15 Q So about a month ago Mr. Sanders gave you  
16 a call?

17 A Correct.

18 Q What did Mr. Sanders say?

19 A Just to ask if I would be willing to give  
20 a deposition.

21 Q Okay. Did he ask you what the subject or  
22 tell you what the subject matter would be?

23 A Yes.

24 Q What did he say the subject matter would  
25 be?

1 A The use of the Earnhardt name, trademark.

2 Q It was that broad?

3 A Well, within -- as it relates to the  
4 custom home building and Earnhardt Collection. Let  
5 me rephrase that.

6 Q Have you had conversations with anybody  
7 else other than Mr. Sanders leading up to this  
8 testimony?

9 A No.

10 Q Have you had any discussions with  
11 Mr. Hedrick about it?

12 A No.

13 Q How about with Kerry Earnhardt?

14 A No.

15 Q How about Rene Earnhardt?

16 A No.

17 Q How about with Kelley Earnhardt?

18 A No.

19 Q Okay. Did you speak with Dale Earnhardt,  
20 Jr. about it?

21 A No.

22 Q Did you speak with anybody else at  
23 Mr. Sanders' firm about it?

24 A No.

25 Q Okay. So you received a call from

1 Mr. Sanders about a month ago. What took place  
2 next?

3 A Well, I guess -- I guess, really, the  
4 first call would have been a few months ago,  
5 possibly. Just saying this might be a  
6 possibility --

7 Q Okay.

8 A -- down the road.

9 Q And then you received another call?

10 A Correct.

11 Q That was about a month ago; right?

12 A Yes.

13 Q And then what did he say in the second  
14 call as opposed to the first call?

15 MR. SANDERS: I think she's already  
16 answered that question.

17 BY MR. ROSE:

18 Q What did he say in the first call?

19 A Just about the use of the Earnhardt  
20 Collection. That's -- I don't recall exactly what  
21 was mentioned, just that -- I was aware of this  
22 prior to the initial phone call.

23 Q You say you were aware of this; you were  
24 aware of this proceeding?

25 A Of this case. The proceeding, correct.

1 Q And so several months ago you received a  
2 call from Mr. Sanders looking for information?

3 A Asking questions, basically, just what he  
4 asked a few minutes ago.

5 Q About the goings-on at DEI?

6 A Or the use of the mark, correct.

7 Q The discussion earlier today was more than  
8 just the use of the mark, wasn't it?

9 A Yes.

10 Q So it was about goings-on at DEI?

11 A Yes.

12 Q About approvals, about whether the  
13 business was increasing, decreasing, that kind of  
14 information?

15 A I don't recall if he asked that specific  
16 question.

17 Q And then the second call, that was about a  
18 month ago, that was more about scheduling the  
19 deposition?

20 A Correct.

21 Q Okay. When was the next time you had a  
22 conversation with Mr. Sanders or anybody at his  
23 firm?

24 A Last week.

25 Q Okay. When was that last week?

1 A Thursday.

2 Q Okay. And was that in person or was that  
3 over the phone?

4 A In person.

5 Q Okay. So you met with Mr. Sanders, was it  
6 here in his office?

7 A No, sir.

8 Q Okay. Where did you meet with  
9 Mr. Sanders?

10 A At Roush Yates.

11 Q Okay. How long did that meeting take?

12 A Approximately an hour, hour and a half. I  
13 don't know exact.

14 Q Okay. And what did you discuss with  
15 Mr. Sanders at that meeting?

16 A Questions -- similar questions as to what  
17 we had today.

18 Q Okay. Does Mr. Sanders represent you? Is  
19 he your lawyer?

20 A No, sir.

21 Q So a week ago Thursday you had an  
22 in-person meeting with Mr. Sanders, about an hour to  
23 an hour and a half, and you went over the things  
24 that you talked about today?

25 A Correct.

1 Q Okay. Did Mr. Sanders tell you the  
2 questions that he was going to ask you today?

3 A Primarily.

4 Q Okay. And then you guys figured out what  
5 the answers would be?

6 A Didn't figure out. I just answered the  
7 questions truthfully.

8 Q Okay. And then did you meet with  
9 Mr. Sanders again after that?

10 A No.

11 Q Did you meet with him at all today to get  
12 ready for your deposition?

13 A Just a few minutes prior to.

14 Q And did you at any of those other times  
15 since the second phone call -- so in the last four  
16 weeks, have you discussed the testimony you gave  
17 today with Mr. Hedrick or any of the other people we  
18 listed?

19 A No.

20 Q You knew Dale Earnhardt from about the  
21 time that you left -- you joined DEI in '95 until  
22 his passing; right?

23 A Correct.

24 Q And you knew him to be an avid  
25 outdoorsman?

1 A Yes.

2 Q That was no secret, was it?

3 A It was not.

4 Q In fact, he frequently hunted all across  
5 the country with folks like Richard Childress or  
6 Bill Jordan of Realtree?

7 A Yes.

8 Q You were aware that he appeared many times  
9 on hunting and fishing shows?

10 A Yes.

11 Q You were aware that he was sponsored by  
12 Remington Rifles?

13 A Yes.

14 Q And by Realtree?

15 A Yes.

16 Q What is Realtree?

17 A Camouflage patterns and products.

18 Q Materials used in hunting gear?

19 A Correct.

20 Q He was also sponsored by Bass Pro Shops;  
21 correct?

22 A Yes.

23 Q Was he sponsored by any other outdoor  
24 products companies?

25 A Not that I recall at this moment.

1 Q And DEI also licensed Remington for the  
2 use of the Dale Earnhardt marks with rifles;  
3 correct?

4 A Yes.

5 Q Was there also a licensing that licensed  
6 the Dale Earnhardt marks for use with boats?

7 A Yes.

8 Q So when you testified earlier today that  
9 the Dale Earnhardt marks were licensed with racing  
10 memorabilia and souvenirs, that's really not all it  
11 was limited to, was it?

12 A Well, that's -- I -- that was so long ago,  
13 so I did not even think about the boat. I wasn't  
14 involved in that. That's prior to my involvement in  
15 licensing.

16 Q But you wouldn't consider rifles and boats  
17 to be racing memorabilia or souvenirs, would you?

18 A No. No.

19 Q Wasn't Dale's image on the Realtree  
20 merchandise trailer at races every year?

21 A Every year, no, sir.

22 Q Most years?

23 A Up until the last few years, yes.

24 Q You've done --

25 A Can I elaborate on that?

1 Q Sure.

2 A The reason why it's no longer used is  
3 because Teresa Earnhardt would not allow it.

4 Q You're familiar with the Dale Earnhardt  
5 Foundation?

6 A Yes.

7 Q Are you familiar with the goals of the  
8 Dale Earnhardt Foundation?

9 A Somewhat.

10 Q You're familiar with the fact that one of  
11 the goals of that foundation is to continue Dale's  
12 legacy through a commitment to wildlife  
13 preservation?

14 A Yes.

15 Q Yes?

16 A Yes.

17 Q Why do you think that is?

18 A Dale's passion for wildlife, outdoors.

19 Q Are you aware of some of the things that  
20 the foundation's been responsible for accomplishing?

21 A Not really.

22 Q Are you familiar with the fact that they  
23 were responsible for planting over 2,000 trees  
24 through the American Forest Organization?

25 A Yes.

1 Q You're aware of the foundation's  
2 partnership with Rocky Mountain Elk Foundation for  
3 conservation projects?

4 A Yes.

5 Q You're familiar with the fact that the  
6 foundation made a \$2 million commitment to build a  
7 25-acre lake and establish a Dale Earnhardt  
8 Environmental Learning Campus in Iredell County?

9 A That I'm not familiar with.

10 Q Are you familiar with the fact that the  
11 foundation donated \$50,000 for tree plantings in  
12 City Green Training in schools?

13 A I'm not aware of that.

14 Q Are you aware of the foundation receiving  
15 the Employee Choice Award from the NC Bass  
16 Federation?

17 A I'm not.

18 Q You don't have a photographic memory, do  
19 you?

20 A Unfortunately not.

21 Q So you don't remember everything that was  
22 licensed by DEI during your time there?

23 A A good percentage of it, but not  
24 everything.

25 Q Okay. Products have been licensed by DEI

1 and approved for use with the Earnhardt mark by  
2 itself without Dale or his image or the No. 3,  
3 haven't they?

4 A If so, I would say it might be a few  
5 percent of all that's ever been license -- or that's  
6 been licensed, that I'm aware of.

7 Q So it's not your testimony today that  
8 that's just never done?

9 A Well, everything that I've worked on we  
10 always added the Dale name. It was on a hang tag if  
11 it was on the product, it was -- Dale's name was  
12 always...

13 (Opposer's Exhibit 26, front and back view  
14 of picture of Earnhardt hooded jacket, was marked  
15 for identification.)

16 BY MR. ROSE:

17 Q I'm going to hand you a document that's  
18 been marked for identification as Opposer's  
19 Exhibit 26, which was produced in this matter as  
20 OPP002531.

21 Is that a product that you're familiar  
22 with being approved?

23 A Yes.

24 Q And that one on the back of the jacket  
25 shows Earnhardt by itself, doesn't it?

1 A Correct.

2 Q So somebody seeing a person wearing that  
3 shirt or jacket from behind would see Earnhardt but  
4 would not see Dale or his image or No. 3; correct?

5 A Correct.

6 (Opposer's Exhibit 27, front and back view  
7 of picture of Earnhardt T-shirt, was marked for  
8 identification.)

9 BY MR. ROSE:

10 Q I've handed you what's marked for  
11 identification as Opposer's Exhibit 27, which was  
12 produced as OPP002533. That's another shirt or  
13 another product that was approved --

14 A Um-hum.

15 Q -- for licensing with the Earnhardt mark?

16 A Yes.

17 Q And the front of that shirt just has the  
18 name Earnhardt without the Dale, without the No. 3  
19 and without his image; correct?

20 A Um-hum.

21 Q I need a yes or no.

22 A Yes. But the hang tag has Dale Earnhardt.

23 Q But somebody seeing that shirt would see  
24 only Earnhardt?

25 A If you look down here, it has Dale

1 Earnhardt on the web-in label.

2 Q Okay. That's the side -- on the back of  
3 the shirt. I was using the front. Sorry.

4 On the back of the shirt it just says  
5 Earnhardt; correct?

6 A Correct. And can I go back and rephrase  
7 what I -- what I meant? We -- it's like, yes, we  
8 always added Earnhardt. But Earnhardt could be used  
9 like on a coffee mug.

10 It might have just Earnhardt, but  
11 somewhere on that product it -- we would add Dale or  
12 the 3 or something. So it was primarily something  
13 like this where you did have Dale on there as well.

14 MR. ROSE: Okay. I'll move to strike.

15 (Opposer's Exhibit 28, front and side view  
16 picture of Earnhardt hat, was marked for  
17 identification.)

18 BY MR. ROSE:

19 Q Handing you what's been marked for  
20 identification as Opposer's Exhibit 28, which was  
21 produced as OPP002534, that's another product that  
22 was approved by DEI for licensing with the Earnhardt  
23 mark?

24 A Yes.

25 Q And somebody wearing that cap, if somebody

1 saw them they would just see Earnhardt, they  
2 wouldn't see Dale or No. 3 or his image on it, would  
3 they?

4 A Not that I see on the artwork.

5 (Opposer's Exhibit 29, picture of Stock  
6 Car Racing Magazine featuring Dale Earnhardt, Sr.  
7 and picture of die-cast Earnhardt model car, was  
8 marked for identification.)

9 BY MR. ROSE:

10 Q I've handed you what's marked for  
11 identification as Opposer's Exhibit 29, which was  
12 produced as OPP002546.

13 And with reference to the die-cast car on  
14 Exhibit 29, that's another product that was approved  
15 by DEI?

16 A Correct.

17 Q And that's got the name Earnhardt without  
18 Dale, without his image, or without the No. 3,  
19 doesn't it?

20 A Yes. Can I just note that you're not  
21 allowed to add -- we did not add Earnhardt on this  
22 because this was the actual race car. So it wasn't  
23 your --

24 MR. ROSE: Okay. I'll move to strike  
25 that.

1 THE WITNESS: Okay.

2 (Opposer's Exhibit 24, copy of Dale  
3 Earnhardt The Venues brochure, was previously marked  
4 for identification.)

5 BY MR. ROSE:

6 Q So would you agree then that the Earnhardt  
7 mark has been used under license from DEI on  
8 products without the use of the word Dale?

9 A Yes.

10 Q I'm handing you a document that was marked  
11 at a prior deposition as Opposer's Exhibit 24. A  
12 question, are you familiar with the use of the Dale  
13 Earnhardt mark in connection with The Venues?

14 A I am not.

15 Q Okay. If you would take a moment to look  
16 through that brochure and tell me if you've seen  
17 that before.

18 A I have not.

19 Q And that's the use of the mark by Dale  
20 Earnhardt Incorporated; right?

21 MR. SANDERS: Object to the form.

22 BY MR. ROSE:

23 Q You don't know, okay. So if it were used  
24 by Dale Earnhardt Incorporated, it wouldn't have  
25 come across your desk because it wouldn't have been

1 licensing to the third party, would it?

2 MR. SANDERS: Objection. You can go  
3 ahead.

4 A The Venue was not in existence while I was  
5 there.

6 BY MR. ROSE:

7 Q Are you familiar with DEI leasing or  
8 renting out the Trophy Room while you were there?

9 A Yes.

10 Q And The Showroom?

11 A Yes.

12 Q And Condominiums?

13 A No.

14 Q How about Log Cabin?

15 A No.

16 Q You gave some testimony earlier regarding  
17 whether people were confused about the Earnhardt  
18 Collection, use of that term, with the Dale  
19 Earnhardt marks?

20 A Yes.

21 Q You're not an expert in consumer opinions,  
22 are you?

23 A No.

24 Q Okay. You don't conduct surveys, consumer  
25 surveys, do you?

1 A No.

2 Q Okay. And you last gave some testimony  
3 earlier today regarding the effect of the use or  
4 registration of Earnhardt Collection on the value of  
5 the Dale Earnhardt trademarks, do you recall that?

6 A On the value --

7 Q Yes. I believe Mr. Sanders had asked you  
8 whether you had concern about that Earnhardt  
9 Collection would lower the value of DEI's marks.

10 Do you recall giving that testimony?

11 A Yes.

12 Q Okay. You're not an expert in trademark  
13 valuation, are you?

14 A No. No.

15 Q Have you done any -- had any experience in  
16 trademark valuations?

17 A No.

18 Q So that's just your own personal opinion?

19 A Correct. Or based on my experience at --  
20 just on the licensing side.

21 Q Okay. So does that mean you have  
22 evaluated or done some work to value the Dale  
23 Earnhardt trademarks?

24 A Just based on royalties and what we've  
25 heard from outside -- past numbers that has come

1 across the desk.

2 Q Have you done anything to determine the  
3 value, as of 2010 as compared to 2014, of the Dale  
4 Earnhardt marks?

5 A No.

6 Q Since joining Dale Earnhardt Incorporated,  
7 you've heard fans yell Dale Earnhardt's name as just  
8 Earnhardt; correct?

9 A Yes.

10 Q You've seen journalists refer to him as  
11 just Earnhardt; correct?

12 A Yes.

13 Q Dale Earnhardt himself occasionally  
14 referred to himself as Earnhardt, didn't he?

15 A I mean --

16 Q You ever hear him answer the phone and say  
17 Earnhardt?

18 A Yes.

19 Q You never heard him refer to himself as  
20 Earnhardt Sr., did you?

21 A No.

22 Q Okay. You never heard him refer to  
23 himself as Dale Sr. or Dale Earnhardt, Sr.?

24 A No.

25 Q Did anybody at DEI refer to him as Dale

1 Earnhardt, Sr. or Earnhardt Sr.?

2 A No.

3 Q He was just always referred to as either  
4 Dale Earnhardt, Dale, or Earnhardt; correct?

5 A Yes.

6 Q And have you ever heard the term Earnhardt  
7 being used to refer to anything other than a person  
8 having the last name Earnhardt?

9 MR. SANDERS: Objection to the form.

10 BY MR. ROSE:

11 Q Do you understand the question?

12 A Um-hum. Yes. There's Earnhardt Chevrolet  
13 I believe in Phoenix, Arizona. So yes, there are  
14 other businesses and whatnot with the Earnhardt  
15 name.

16 Q Right. And is that named after someone  
17 named Earnhardt?

18 A Yes.

19 Q So it's still referring to a person's last  
20 name?

21 A Correct.

22 Q We've had testimony in this proceeding  
23 that in the housing industry the term collection is  
24 often used to identify a portfolio or a group of  
25 homes.

1 Do you have any reason to contradict that  
2 testimony?

3 MR. SANDERS: Objection to the  
4 characterization on the record. You can go  
5 ahead and answer.

6 A No.

7 BY MR. ROSE:

8 Q And you've shopped for furniture before;  
9 right?

10 A Yes.

11 Q You've seen ads for furniture?

12 A Yes.

13 Q Haven't you heard the term furniture  
14 collection to be used to describe a group of pieces  
15 of furniture?

16 A Yes.

17 Q Or, for example, a bedroom collection to  
18 be a group of bedroom furniture?

19 A Um-hum. Yes.

20 Q You testified earlier about the fact that  
21 Dale Earnhardt didn't object to Dale Jr. or Kerry  
22 Earnhardt using their trademarks; right?

23 A Correct.

24 Q You were referring to their use of the  
25 marks Dale Earnhardt, Jr. or Kerry Earnhardt;

1 correct?

2 A Correct.

3 Q You weren't referring to him authorizing  
4 them to use the mark Earnhardt by itself, were you?

5 A Well, I mean, that's their last name, so  
6 he would allow them to use their name.

7 Q On goods?

8 A I can't answer that because he isn't here.  
9 We're using the full name on -- on general --

10 Q I'm just asking for what you were  
11 testifying about in response to Mr. Sanders'  
12 questions.

13 You were referring to the marks Kerry  
14 Earnhardt and Dale Earnhardt, Jr.; correct?

15 A Yes.

16 Q Would you consider the information  
17 regarding the licensing and the revenues and the  
18 various activities inside DEI that you testified  
19 about today to be confidential?

20 A Primarily, yes.

21 Q That's not the type of information that  
22 Dale Earnhardt or Teresa Earnhardt would want DEI's  
23 employees sharing outside of the company; isn't that  
24 right?

25 A That's correct.

1 Q And during your time at DEI, do you recall  
2 that you entered into a confidentiality agreement --

3 A Yes.

4 Q -- that requires you not to share  
5 information, confidential information, of DEI with  
6 people outside DEI, even after you leave the  
7 company?

8 A I don't have it in front of me and...

9 (Opposer's Exhibit 30, Confidential  
10 Information and Non-Disclosure Agreement, was marked  
11 for identification.)

12 BY MR. ROSE:

13 Q I've handed you what's been marked for  
14 identification as Opposer's Exhibit 30. Do you  
15 recall that as being the confidentiality agreement  
16 that you entered into while you were at DEI?

17 A I don't remember this. I mean, I  
18 remember. Like, what it states, I don't recall.

19 Q That's your signature on the second page  
20 of Exhibit 30; right?

21 A Yes.

22 Q And it says witnessed by. Whose signature  
23 is that witnessed by?

24 A Joe Hedrick.

25 MR. ROSE: I have nothing further.

1 THE WITNESS: That's ten years ago.

2 MR. SANDERS: I want to ask you a couple  
3 of questions based on the cross-examination.

4 REDIRECT EXAMINATION

5 BY MR. SANDERS:

6 Q Referring to Opposer's Exhibit Number 29,  
7 you were trying to say something about the die-cast  
8 car that has Earnhardt and No. 14 on it, and I think  
9 you were trying to explain about why other marks or  
10 designations couldn't be added to the car; is that  
11 right?

12 A Correct.

13 Q Would you go ahead and say what you were  
14 trying to say?

15 A Basically, we were not allowed to alter  
16 the actual paint scheme that's used on the die-cast.  
17 Before the Dale Earnhardt was not added.

18 Q Right. So the name Earnhardt is on it,  
19 but you weren't allowed Dale; is that what you're  
20 saying?

21 A Correct.

22 Q All right. And then Opposer's Exhibit  
23 Number 26, just to be clear, the rear of that  
24 article of clothing, or the back of it, has  
25 Earnhardt on it, it looks to be by itself, and then

1 on the front of it, it has the stylized 3; is that  
2 right?

3 A Yes.

4 Q And would that be sort of typical of the  
5 marketing, the strategy, to add something to the  
6 Earnhardt to tie it to Dale Earnhardt?

7 MR. ROSE: Object to the form.

8 A Yes. Yes.

9 BY MR. SANDERS:

10 Q You were talking about furniture  
11 collections. Have you ever heard a collection used  
12 with jewelry?

13 A Yes.

14 Q Have you ever heard collection used with  
15 stamps?

16 A Yes.

17 MR. SANDERS: I don't have any other  
18 questions.

19 MR. ROSE: Okay. Just a second.

20 RE-CROSS-EXAMINATION

21 BY MR. ROSE:

22 Q With regard to Exhibit 29, the die-cast  
23 car you were just talking about, the name Dale could  
24 have been put on the packaging, couldn't it have?

25 A And it's possible it's on there. I cannot

1 see the packaging. Or it would at least be in the  
2 legal lines. And it might actually be on the  
3 certificate.

4 Q You can't see it there, can you?

5 A I cannot.

6 MR. ROSE: We have nothing further.

7 MR. SANDERS: Nothing further from us.

8 THE COURT REPORTER: Will the witness read  
9 and sign?

10 MR. SANDERS: Yes, please.

11 (Deposition concluded at 2:26 p.m.)

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1 STATE OF NORTH CAROLINA

2 COUNTY OF MECKLENBURG

3

4 CERTIFICATE OF TRANSCRIPT

5

6 I, Beverly J. Gramm, Registered

7 Professional Reporter and Notary Public in and for

8 the aforesaid county and state, do hereby certify

9 that the foregoing deposition of AMY L. HALLMAN, was

10 taken by me and reduced to typewriting under my

11 direction; and the transcript is a true record of

12 the testimony given by the witness.

13 I further certify that I am neither

14 attorney or counsel for, nor related to or employed

15 by any attorney or counsel employed by the parties

16 hereto or financially interested in the action.

17 This the 5th day of November, 2014.

18

*Beverly J. Gramm*

19

20 BEVERLY J. GRAMM

21 Registered Professional Reporter

22 My Commission Expires: April 23, 2018

23

24

25

1 ERRATA SHEET

2 To assist you in making any  
3 corrections, please use the form below. If  
4 supplemental or additional pages are necessary,  
5 please furnish same and attach them to this errata  
6 sheet.

7 - - -

8 I, the undersigned, AMY L. HALLMAN, do  
9 hereby certify that I have read the foregoing  
10 deposition and that to the best of my knowledge said  
11 deposition is true and accurate (with the exception  
12 of the following corrections listed below).

13 ERRATA SHEET

14 Case: TERESA EARNHARDT vs. KERRY EARNHARDT, INC.

15 Witness: AMY L. HALLMAN

16 *Move "Let me*  
*rephrase that." to*  
17 Page 21 Line 4-5 Correction beginning of Line 6.  
18 Reason for Change: I didn't say those words; Mr. Rose did.

19 Page \_\_\_\_\_ Line \_\_\_\_\_ Correction \_\_\_\_\_

20 Reason for Change: \_\_\_\_\_

21 Page \_\_\_\_\_ Line \_\_\_\_\_ Correction \_\_\_\_\_

22 Reason for Change: \_\_\_\_\_

23 Page \_\_\_\_\_ Line \_\_\_\_\_ Correction \_\_\_\_\_

24 Reason for Change: \_\_\_\_\_

25 Page \_\_\_\_\_ Line \_\_\_\_\_ Correction \_\_\_\_\_

|    |                    |           |                 |
|----|--------------------|-----------|-----------------|
| 1  | Reason for Change: | _____     |                 |
| 2  | Page_____          | Line_____ | Correction_____ |
| 3  | Reason for Change: | _____     |                 |
| 4  | Page_____          | Line_____ | Correction_____ |
| 5  | Reason for Change: | _____     |                 |
| 6  | Page_____          | Line_____ | Correction_____ |
| 7  | Reason for Change: | _____     |                 |
| 8  | Page_____          | Line_____ | Correction_____ |
| 9  | Reason for Change: | _____     |                 |
| 10 | Page_____          | Line_____ | Correction_____ |
| 11 | Reason for Change: | _____     |                 |
| 12 | Page_____          | Line_____ | Correction_____ |
| 13 | Reason for Change: | _____     |                 |
| 14 | Page_____          | Line_____ | Correction_____ |
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| 16 | Page_____          | Line_____ | Correction_____ |
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| 19 | Reason for Change: | _____     |                 |
| 20 | Page_____          | Line_____ | Correction_____ |
| 21 | Reason for Change: | _____     |                 |
| 22 | Page_____          | Line_____ | Correction_____ |
| 23 | Reason for Change: | _____     |                 |
| 24 | Page_____          | Line_____ | Correction_____ |
| 25 | Reason for Change: | _____     |                 |

1 Case: TERESA EARNHARDT vs. KERRY EARNHARDT, INC.

2 Witness: AMY L. HALLMAN

3

4

5

Amy L. Hallman

6 Signature of Witness

7

8

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9

10 STATE OF North Carolina

11 COUNTY OF Iredell

12

13 Subscribed and sworn to before me this 8

14 day of December, 2014

15

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17

Kristi Jones  
Notary Public

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19

20 My Commission Expires: 5/15/2016

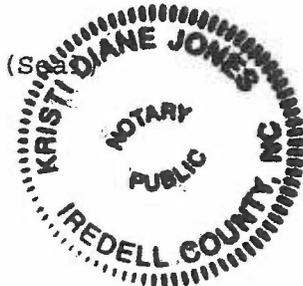
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**EXHIBIT**

**Opposer's Exh. No. 24  
Opposition No. 91205331**



**EXHIBIT**

**Opposer's Exhibit No. 26  
Opposition No. 91205331**



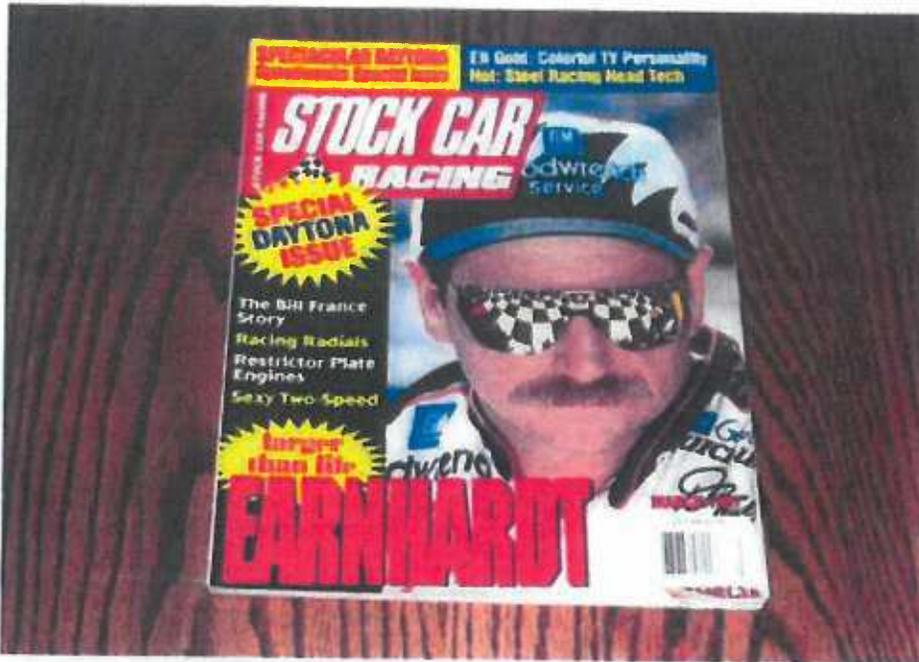
**EXHIBIT**

**Opposer's Exhibit No. 27  
Opposition No. 91205331**

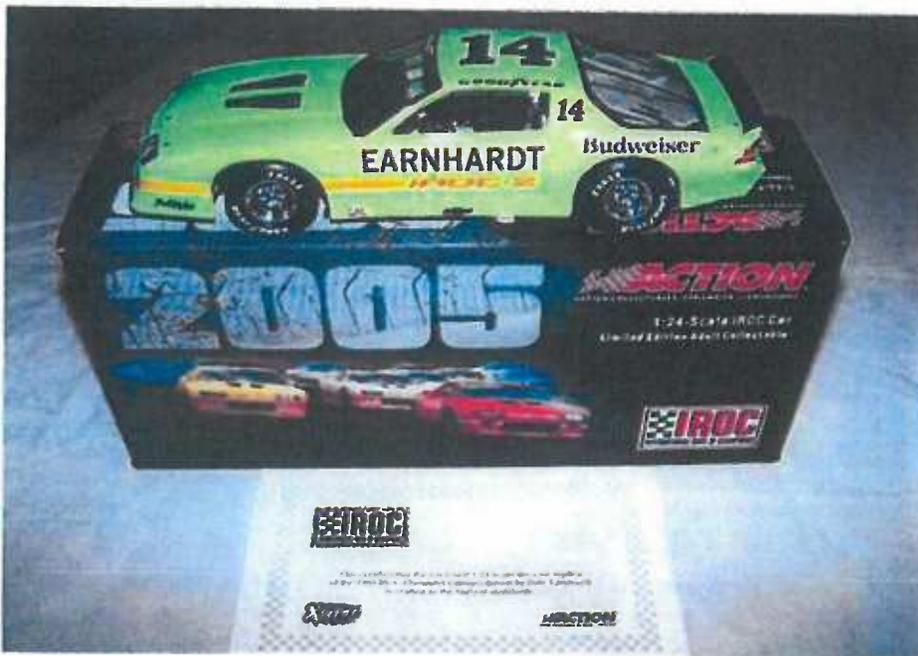


**EXHIBIT**

**Opposer's Exhibit No. 28  
Opposition No. 91205331**



Publication – magazine cover



Die-cast

EXHIBIT

Opposer's Exhibit No. 29  
Opposition No. 91205331

## CONFIDENTIAL INFORMATION AND NON-DISCLOSURE AGREEMENT

This Confidential Information and Non-Disclosure Agreement ("Agreement") is entered into as of the date signed by the undersigned individual employed or to be employed by DEI, as designated on the signature page hereto (the "Employee").

WHEREAS, DEI has the unique trait of being a company associated with several of the sporting world's most popular and famous figures, and possesses special competence in its various fields of endeavor. As such, DEI's employees may come into contact with information of a non-public nature, that DEI intends to use its best efforts to keep private and confidential.

WHEREAS, DEI's success, and the opportunities and security available to its employees, depend to a significant degree on DEI's possession and protection of its proprietary and confidential information.

WHEREFORE, in consideration of the employment opportunity provided to Employee by DEI, and in recognition that Employee's execution of and compliance with this Agreement is a material factor in DEI's employment of Employee, the parties agree as follows:

1. Nondisclosure. Except as necessary to perform Employee's duties for DEI, during Employee's employment by DEI and at all times thereafter, Employee agrees not to, directly or indirectly, transmit or disclose any Confidential Information to any person or entity, or make use of any Confidential Information for Employee or any other person or entity, without the express written consent of DEI. Employee warrants that, except as necessary to perform his or her duties for DEI, Employee has not used or disclosed any Confidential Information prior to the execution of this Agreement. As used herein, "Confidential Information" means all information relating to DEI and/or any of its affiliates, or any of their respective officers, directors, employees, owners, agents, drivers, racing teams, products, services, sponsors, customers, affiliates, businesses, activities, technologies and/or methods of operation that is not generally known to persons not employed by DEI, is not generally disclosed by DEI to persons not employed by DEI, and is the subject of reasonable efforts to keep it confidential. Without limiting the foregoing, Confidential Information includes, without limitation, any and all personal and/or non-public matters relating to Dale Earnhardt, Dale Earnhardt, Jr., or their families, experiences or circumstances, and any and all information or knowledge relating thereto. Confidential Information does not include information that has become generally available to the public by the act of one who has the right to disclose such information without violating any right or privilege of DEI.

3. Literary or Artistic Endeavors. Employee hereby agrees not to, at any time, whether during the term of Employee's employment with DEI or thereafter, write, create, publish or provide input to or authorize another to write, create, or publish a book, short story, article, screenplay or other literary or artistic work relating to DEI, Dale Earnhardt, Dale Earnhardt, Jr., or their families, officers, directors, employees, owners, agents, drivers, racing teams, products, services, sponsors, customers, or affiliates, unless expressly authorized by DEI in writing, such authorization to be entirely in DEI's sole and absolute discretion. Employee further agrees not to participate in any interview, whether via telephone or in person, for written publication, radio, television or otherwise, relating in any way to DEI, Dale Earnhardt, Dale Earnhardt, Jr., or their families, officers, directors, employees, owners, agents, drivers, racing teams, products, services, sponsors, customers, or affiliates, unless expressly authorized by DEI in writing, such authorization to be entirely in DEI's sole and absolute discretion.

### EXHIBIT

Opposer's Exhibit No. 30  
Opposition No. 91205331

4. Rights to Materials. All records, files, software, hardware, equipment, software code, schematics, manuals, training materials, price or customer lists, drawings, plans, documents, pictures, and other tangible things (and all copies thereof) relating to DEI, that are provided or made available to Employee by DEI or that are discovered or obtained by Employee as a result of Employee's employment or engagement by DEI, will, as between DEI and Employee, remain the sole property of DEI. Upon Employee's termination for any reason, or upon a demand by DEI, Employee will return all such materials and things, including all reproductions, to DEI immediately.

5. Reasonableness and Relief. Employee agrees that the covenants contained herein are reasonable and necessary means to protect DEI's interests in its Confidential Information and intellectual property and that they will not unreasonably interfere with Employee's ability to earn a living should Employee's employment or engagement be terminated. Employee agrees that any breach by Employee of these covenants will cause irreparable harm and injury to DEI, will leave DEI with no adequate remedy at law, will entitle DEI to injunctive relief in any court of competent jurisdiction without the necessity of posting a bond and that such injunctive relief will be in addition to any damages that may be recoverable by DEI as a result of Employee's breach.

6. Waiver. The waiver by DEI of a breach of any of the provisions of this Agreement will not operate or be construed as a waiver of any other or subsequent breach.

7. Governing Law. This Agreement shall be governed by the laws of the State of North Carolina without regard to conflict of law principles.

8. Entire Agreement. Except as otherwise set forth herein, this Agreement is the final and complete expression of the parties' agreement with respect to its subject matter, notwithstanding any prior representations or agreements to the contrary. This Agreement supersedes any former agreements governing the same subject matter and may be modified only by a written instrument signed by Employee and DEI.

IN WITNESS WHEREOF, Employee has executed this Agreement as of this 15 day of January, 2004.

**EMPLOYEE:**

Signature: [Handwritten Signature]  
Printed Name: David L. Hollman  
Address: 8405-Z STEVENAGE DR.  
HUNTSVILLE, ROC 25078

Witnessed By: [Handwritten Signature]