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Filing date: **02/02/2015**

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

Proceeding	91205331
Party	Plaintiff Ms. Teresa H. Earnhardt
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Date	02/02/2015
Attachments	Opposer_s M_Strike 91205331_1.PDF(65704 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)

**OPPOSER'S OBJECTIONS AND MOTION TO STRIKE APPLICANT'S  
SECOND AND THIRD NOTICES OF RELIANCE**

Opposer, Teresa H. Earnhardt, hereby objects to, and moves to strike, *Applicant's Second Notice of Reliance*, *Applicant's Third Notice of Reliance*, and the materials submitted therewith. In support of her objections and motion, Opposer would show unto the Board the following:

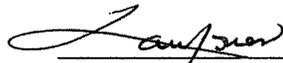
On June 2, 2014, Applicant took the discovery deposition of Judy Queen. Ms. Queen is, and was at that time, the Vice President of Operations of Dale Earnhardt Incorporated ("DEI"). (*Applicant's Second Notice of Reliance*, Exh. A, p. 5, ll. 7-13) Neither Ms. Queen nor her employer, DEI, is a party in this proceeding.

Via *Applicant's Second Notice of Reliance*, Applicant has submitted certain non-confidential excerpts of the transcript and two exhibits from the discovery deposition of Ms. Queen. Similarly, via *Applicant's Third Notice of Reliance*, Applicant has submitted certain confidential excerpts of the transcript and five confidential exhibits from the discovery deposition of Ms. Queen.

Pursuant to 37 C.F.R. § 2.120(j)(2) and TBMP § 704.09, the discovery deposition of a witness, whether or not a party, shall not be offered in evidence, except under limited circumstances, none of which is applicable to this situation.

Accordingly, Opposer respectfully requests that the Board enter an order sustaining her objections and striking from the record *Applicant's Second Notice of Reliance, Applicant's Third Notice of Reliance*, and the materials submitted therewith.

Respectfully submitted,



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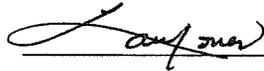
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Attorneys for Opposer,  
Teresa H. Earnhardt

CERTIFICATE OF SERVICE

I hereby certify that the foregoing “Opposer’s Objections and Motion to Strike Applicant’s Second and Third Notices of Reliance” is being served on Applicant by depositing a copy of same in the United States mail, first-class postage prepaid, on the 2nd day of February, 2015 addressed to Applicant’s attorneys of record as follows:

D. Blaine Sanders  
Cary B. Davis  
Matthew F. Tilley  
Robinson Bradshaw & Hinson, P.A.  
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