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Filing date: **09/23/2015**

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

Proceeding	91215049
Party	Defendant Hammer Brand LLC dba Wolf Brand Scooters
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Attachments	Hammer Mo to Take Depo by Oral Exam.pdf(2507684 bytes)

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

ALLIANCE POWER SPORTS, INC.,)
) Opposition No. 91215049
)
) Opposer,)
)
) In the matter of :
)
) U.S. Application Serial No. 85608003
)
)
) Filing Date: August 14, 2013
)
)
) Applicant.)
)
) MARK: WOLF
)

APPLICANT’S MOTION TO TAKE DEPOSITION BY ORAL EXAMINATION

Pursuant to TBMP 703.02(a), Applicant Hammer Brand, LLC (“Applicant”) respectfully moves for an Order that the Testimony Deposition of Gene Chang be taken by oral examination.

The reasons for this Motion are set forth in the attached Memorandum in Support, which is hereby incorporated by reference.

Dated: September 23, 2015

Respectfully submitted,

/Shannon V. McCue/

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HAMMER BRAND, LLC.)
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**MEMORANDUM IN SUPPORT OF APPLICANT’S MOTION TO TAKE DEPOSITION
BY ORAL EXAMINATION**

On September 8, 2015, Opposer provided notice that it would take the Testimony Deposition of Gene Chang on written questions. On September 19, 2015, the Board ordered suspension of the proceedings pending the deposition of Gene Chang. Applicant requested a stipulation to conduct the deposition of Mr. Chang by oral examination or in the alternative to permit the cross-examination of Mr. Chang to be conducted by Applicant’s counsel on oral examination. The parties were unable to agree to a stipulation. Therefore, Applicant has filed the instant motion to obtain an order that Mr. Chang’s deposition be taken by oral examination. Good cause exists for this motion as detailed below.

In particular, as indicated in Opposer's Notice of Deposition for Gene Chang (Ex. A)¹, Mr. Chang's deposition will occur in the United States. 37 CFR 2.123(a)(1) provides that "If a party services notice of the taking of a deposition upon written questions of a witness who is, or will be at the time of the deposition, present within the United States..., any adverse party may, within fifteen days from the date of service of the notice, file a motion with the Trademark Trial and Appeal Board, for good cause, for an order that the deposition be taken by oral examination." Here, good cause exists in that Mr. Chang is the principle witness for Opposer and had previously been offered by Opposer as its corporate representative under FRCP 30(b)(6). The 30(b)(6) deposition of Mr. Chang demonstrated that his credibility and the accuracy of his testimony is at issue.

Excerpts from Mr. Chang's deposition transcript are attached as Exhibit B hereto; citations following are to that transcript. For example, Mr. Chang admitted at his deposition that the specimen submitted to the USPTO in connection with his Alliance's application for the Wolf mark was digitally altered. (70:13-71:3) He admitted to knowing that the specimen was false since no later than August 21, 2014, yet has taken zero corrective action with the office since then. (83:16-25; 84:3-7)

Mr. Chang also claimed - impossibly - that his scooters did actually bear the decals as indicated in the specimen, and had done so since the fall of 2011. (71:24-72:4) In point of fact, Hammer Brand has gathered an extensive collection of images from the marketplace for Alliance's scooters, and has also preserved many images of those scooters from Alliance's own company websites demonstrating that none of those scooters bore any markings with the word "Wolf" on them at any time prior to the filing of the USPTO application. (attached as Exhibit

¹ Applicant notes that the Notice of Deposition is defective in that it does not set a date for the examination of Mr. Chang nor does it provide for Mr. Chang's deposition by written questions to occur before court reporter or other person authorized to administer oaths.

C) When confronted with pictures of his actual scooters in the marketplace which bore no decals, Mr. Chang was evasive, claiming that the images were too "pixilated" for him to see that his scooters clearly bore no such markings. (73:2-22; 75:14-25)

When questioned further about the fact that there is no evidence that any scooter of his ever bore the markings indicated in the PTO application, Chang was even more evasive - claiming that he thought his scooters had those decals, but being unable to testify clearly on the subject despite being the CEO of his company and the person most capable of answering that question. (77:3-19) When asked, again, if he could substantiate his claim that his scooters bore the decals indicated in the specimen since fall 2011, he evasively blamed the factory for possibly not putting those decals on "some" of his scooters. (89:9-22; 90:13-91:11) When asked point-blank if he could testify that any of his scooters bore the word "Wolf" on it at any time prior to October 2013, he refused to answer yes or no - instead evading the question by saying, "they should [have]". (93:3-8) He did it again when asked where the decals bearing the "Wolf" mark were placed on his scooters prior to October 2013. (94:10-13)

In case there was any doubt that Chang was being deceptive and evasive concerning his false claim that his scooters bore decals as indicated in the specimen, he was unable to point to any picture, anywhere in the world, which showed his scooters with decals like those indicated in the specimen submitted to the PTO. (97:3-13) When confronted with the fact that there is no evidence in the record in this case - anywhere - except for his testimony that his scooters ever bore decals with the Wolf mark as indicated in the specimen, Chang claimed to need to "check his records" to see if that was in fact an accurate statement. (99:24-100:5) Citing every way and time that Chang was discredited as being dishonest and evasive at his deposition would be

cumulative, but the last example Hammer Brand cites here tells more or less the entire story when Chang was unable to answer "yes" in the following dialogue:

Q Sir, your scooters never had a Wolf decal on the side of them at any point, did they?

.....

THE WITNESS: To my knowledge?

BY MR. BABBITT:

Q Yes.

A They should have a Wolf decal on it.

(111:12-20)

As demonstrated by these examples, Applicant's ability to depose Mr. Chang through oral examination is paramount. Given the inconsistencies in Mr. Chang's testimony and admissions that information previously provided in support of Alliance's application and this opposition were falsified, the Applicant submits that a written examination would result in only a prepared response by Mr. Chang's attorneys on direct, and would deprive Applicant of a real opportunity to meaningfully cross exam Mr. Chang. As the corporate representative for the Opposer, Mr. Chang's testimony is central to the opposition and involves more than mere formalities.

Good cause to take Mr. Chang's deposition orally also exists because written examination is unduly cumbersome in this instance. As mentioned, Mr. Chang is the primary witness for Opposer and much ground must be covered during direct and cross examination. Written examination requires each side write out their questions and objections to the testimony. Review of the questions submitted with the notice of deposition demonstrate that written

objections will be needed. See e.g. Question 6, “Do you know if the “Wolf Classic 150” is traditionally referenced as such in the marketplace? Calls for Speculation and is Leading; Question 41, “Has the mark “Wolf” been in continuous use since Alliance Powersports, Inc. began to sell the Wolf Classic 150.” Leading.

Most importantly, the process of obtaining testimony by written questions deprives Applicant of its ability to confront the witness and explore the credibility and accuracy of the responses through live cross-examination. TBMP 531, *See also, Century 21 Real Estate Corp. v. Century Life of America, 15 USPQ2d 1079, 1080 (TTAB 1990)*. Here, Mr .Chang as Alliance’s corporate representative is quite literally the “accuser” in this case. His earlier deposition demonstrates that Alliance has provided false documents to the Trademark office, whether through its attorneys or as provided by Mr. Chang or persons within his employ. Mr. Chang’s earlier deposition also demonstrates inconsistent testimony that can only best be confronted through live oral examination. As a result, good cause exists to order that Mr. Chang’s deposition be taken by oral examination or in the alternative that Applicant be permitted to take its cross examination by oral examination.

For the foregoing reasons, Applicant respectfully requests that the Board issue an Order that the Testimony Deposition of Gene Chang be taken by oral examination.

Dated: September 23, 2015

Respectfully submitted,

/Shannon V. McCue/

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EXHIBIT A

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

ALLIANCE POWER SPORTS, INC.,)	
Opposer,)	Opposition No. 91215049
v.)	Serial No. 85608003
HAMMER BRAND, LLC.)	Mark: WOLF
Applicant.)	

OPPOSER'S NOTICE OF DEPOSITION BY WRITTEN QUESTIONS

Pursuant to Trademark Rule 2.124 and in accordance with Rule 28 of the Federal Rules of Civil Procedure, Opposer Alliance Power Sports, Inc., by and through its attorneys, submits the following witness for testimonial deposition by written question in the above-captioned matter:

Mr. Gene Chang
CEO, Alliance Power Sports, Inc.
3788 Milliken Ave Unit D
Mira Loma , CA 91752

Testimony by Written Question will be taken before the following authorized party:

Park Avenue Deposition Service
740 North Garey Avenue
Pomona, CA 91767

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE OF DEPOSITION BY WRITTEN QUESTIONS and a copy of the proposed questions was served upon counsel for Applicant on this 8th day of September, 2015 by first class mail and e-mail to:

SHANNON MCCUE
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By Electronic Mail.

By Priority First Class Mail

Date: September 8, 2015

/ Erin C. Bray /
Erin C. Bray

OPPOSER'S QUESTIONS FOR WRITTEN TESTIMONY OF MR. GENE CHANG

1. Please state your full name and occupation for the record.
2. Mr. Chang, what, if any, is your relationship with Alliance Powersports, Inc.?
3. How long have you held your current position in Alliance Powersports, Inc.?
4. Where is Alliance Powersports, Inc. located?
5. Does Alliance Powersports, Inc. sell a scooter called the Wolf Classic 150?
6. Do you know if the "Wolf Classic 150" is traditionally referenced as such in the marketplace?
7. Is there a more common name for the Wolf Classic 150?
8. Is there any significance to the phrase "Classic 150"?
9. Does the number "150" as used there, have any meaning in the industry or with regard to the scooter itself?
10. When did Alliance Powersports, Inc. begin to sell the Wolf?
11. Did Alliance Powersports, Inc. announce the Wolf prior to beginning to sell it in the United States?
12. Did Alliance Powersports, Inc. advertise the Wolf prior to beginning to sell it in the United States?
13. In what ways did Alliance Powersports, Inc. advertise the Wolf prior to its release in the United States?
14. Please look at the document labeled Opposer's Exhibit 1. Are you familiar with this document?
15. Please identify the document.
16. Is this document something which you or your company created or maintain in the ordinary course of business?
17. Does this document provide information regarding your company's marketing and advertising expenses including marketing and advertising expenses for the Wolf?
18. What type of marketing and advertising expenditures does this document track?

19. Looking at this document how much did Alliance Powersports, Inc. spend on magazine advertisements?
20. Did these magazine advertisements include advertising for the Wolf?
21. Please look at the document labeled Opposer's Exhibit 2. Are you familiar with this document?
22. Please identify the document.
23. Is this document something which you or your company created or maintain in the ordinary course of business?
24. Does this document provide information regarding your company's advertising and promotion expenses specifically for the Wolf?
25. Looking at the document, can you please identify what the total amount you have spent on advertising including advertising and promotion of the Wolf from 2011 through June 2014?
26. Looking at this document can you identify how much Alliance has expended for Tradeshows?
27. Would the Wolf have been a component of Alliance's trade show booths or displays?
28. Mr. Chang, when did your company first begin to use the "Wolf" mark in commerce?
29. Please look at Opposer's Exhibit 3. Do you know what this document is?
30. Are you familiar with this document?
31. Please identify the document.
32. Is this document something created and maintained in the ordinary course of business?
33. Looking to the document, can you please identify and read the date of first sale of the 2012 Wolf Classic 150.
34. Please look at Opposer's Exhibit 4. Do you know what this document is?
35. Are you familiar with this document?
36. Please identify the document.
37. Is this document something created and maintained in the ordinary course of business?

38. Looking to the document, can you please identify and read the date of first sale of the 2013 Wolf Classic 150.
39. To your knowledge, is Alliance Powersports, Inc. the only distributor of the Wolf Classic 150 within the United States?
40. To which states within the United States does Alliance Powersports, Inc. currently sell and/or distribute the Wolf?
41. Has the mark "Wolf" been in continuous use since Alliance Powersports, Inc. began to sell the Wolf Classic 150?
42. Can you identify any period of time in which the Wolf was not sold in the United States?
43. During this period of time, was the Wolf offered and available for purchase in the United States?
44. What, if any, is your relationship with a company named SanYang Industry Co., LTD?
45. Are you aware of company named Hammer Brand, LLC?
46. How did you first become aware of Hammer Brand, LLC?
47. In your opinion, do you believe there is a likelihood of confusion between your "Wolf" mark, and Hammer Brand's "Wolf" mark that is the subject of the Trademark Application Serial No. 85608003?

EXHIBIT B

1 Q Okay. Have you submitted any declarations in
2 this opposition?

3 A I have to check my records.

4 Q I'll show you a couple of them. If I could
5 direct your attention to the last two pages of
6 Exhibit 4, please. They're the pictures.

7 Now, were these pictures of actual motor
8 scooters that you submitted to the PTO? Is that a
9 picture of an actual motor scooter -- actually, as
10 it existed in the real world when this picture was
11 taken?

12 A This does look like our motor scooter; yes.

13 Q Okay. It's impossible that you don't know
14 what I'm talking about, but I'll ask you again. Are
15 these two pictures, which are called specimens which
16 are referred to throughout Exhibit 4, which you
17 attested were accurate, real specimens, are these
18 pictures of real things that existed in reality in
19 their entirety at the time that you submitted
20 Exhibit 4 to the PTO?

21 A There are these motor bikes that was like
22 this, but these pictures that was submitted, I later
23 found out that when we applied for the specimen, I
24 directed our designer to submit the pictures, and
25 what he did was he took Photoshop. He Photoshopped

1 the mark on the specimen. But at the time of
2 application, we do have these motor scooters,
3 motorcycles, that looked just like this.

4 Q When is the first time you had a motorcycle
5 that looked just like that? I like that we're
6 calling it a motorcycle now.

7 A I don't remember the first one.

8 Q Let me ask you while you think about it, did
9 you have a motorcycle that looked just like that at
10 the time of your purported first use in this
11 application, which was as early as October 2011?

12 A I believe so.

13 Q Well, it's definitely not the case. I'll let
14 you think about that. We have -- I want you to be
15 able to answer truthfully. Did you have scooters
16 with the decals, indicated in the last two pages of
17 Exhibit 4, for sale anywhere in the world, prior to
18 August 2013?

19 A Yes, we do.

20 Q Where?

21 A We have some depicted on the side. We have
22 some depicted on the manual, which is also attached
23 to the key on the bike. So yes, we do.

24 Q We'll talk about the manual because that's a
25 whole different issue. I'm asking you when your

1 company started putting this Wolf sticker on the
2 scooters that you sold, on the SYM Wolf Classic 150
3 scooters.

4 A Should be around fall of 2011.

5 Q 2011? Fall of 2011?

6 A Yes.

7 Q How many -- strike that.

8 How much time were you selling
9 SYM Wolf Classic 150 scooters without the decals?

10 A Without the decals? We've sold it -- we've
11 sold it with the decals.

12 Q The entire time you've owned Alliance, you've
13 only sold the SYM Wolf Classic 150 with the decals
14 shown on Exhibit 4?

15 A To my knowledge.

16 MR. BABBITT: We're handing you what we've
17 marked Exhibit 6, sir.

18 (Exhibit 6 was marked for identification
19 by the court reporter; attached hereto).

20 BY MR. BABBITT:

21 Q Let me tell you right off the bat, this is a
22 letter between lawyers. You may not have seen it.
23 I'm going to ask you if you have seen it, then I'll
24 ask a question about it.

25 Okay. Sir, have you seen Exhibit 6, before?

1 A Yes.

2 Q So just looking at a couple of items in
3 Exhibit 6, my colleague Shannon McCue and I, have
4 been counsel for Hammer Brand throughout here. It's
5 a letter that he drafted. But first, we clearly
6 anticipated that someone would claim that there were
7 Wolf, -- SYM Wolf Classic 150 motorcycles out there
8 that always had the decal. So the second page here,
9 these are documents that you produced. This is
10 Alliance production Exhibit D and Alliance
11 production Exhibit K of examples of your product
12 that you produced and your lawyers produced in this
13 matter indicating exemplars of the
14 SYM Wolf Classic 150cc motorcycle.

15 Do any of these contain the Wolf decal that
16 appears on the specimens of Exhibit 4?

17 A Yes, on this one (indicating).

18 Q The decal, sir. The decal. I'm not asking
19 about the manual. You're pointing to the manual,
20 which we'll talk about.

21 A I can't really see. The pictures are really
22 pixilated from this.

23 Q Well, they're not --

24 A I can't see anything from this.

25 Q Okay. If I can direct your attention to the

1 ever claim that we were wrong when we said, hey,
2 J.J. -- that's who this letter was to, J.J. Lee --
3 J.J., the product does not bear -- at any of your
4 earlier production -- it doesn't bear that Wolf
5 decal. Because this is what we're getting to, sir,
6 that Photoshopped-on Wolf decal. So as a
7 preliminary matter, I want to know if you said, wait
8 a minute J.J -- I don't want to know what you told
9 your lawyer -- but I want to know if you read this
10 letter and said wait a minute, those guys at Hahn
11 Loeser and that Ross Babbitt are wrong, these
12 exhibits do have the Wolf decal on it.

13 Did you ever make such an objection?

14 A I didn't object because, like I said, I saw
15 this picture and there is a Wolf mark on it.

16 Q There's the Wolf mark on what, sir?

17 A On this part right here (indicating).

18 Q On the manual; right?

19 A On the manual; yes.

20 Q Is there any mark on the product, itself?

21 A That is part of the product.

22 Q Other than the manual, is there any mark on
23 the product itself? There's only one answer to
24 that.

25 A From these pictures, I can't see. They're

1 I know you don't want to submit to anything I'm
2 telling you right now.

3 In other words, just to bring you current,
4 you've already testified that what you submitted in
5 Exhibit 4 were Photoshopped images, and -- the decal
6 placement Photoshopped images -- what we were
7 getting at, I'm trying to understand your testimony
8 that, to your knowledge, you always sold the
9 SYM Wolf Classic 150 motorcycle with decals on it.

10 I'm going to tell you, it's clearly not the
11 case, and we have this totally wrong if your
12 testimony is correct. That's the purpose of me
13 walking through this letter in detail. We're going
14 to look at a bunch of other pictures, as well. I'm
15 telling you this for context. I'm not expecting a
16 response.

17 A My response, to my knowledge, to my request
18 to factory, this is how I want it to be built. This
19 is how we should put the stickers and the placement.

20 Q When did you give that instruction?

21 A Since production, since 2011.

22 Q What evidence is there of that instruction?

23 A There's only verbal communications.

24 Q Who's your design company that did the
25 Photoshopping of the specimen you submitted to the

1 Q You've known, certainly at least since
2 August 21, that what you've got in Exhibit 4 are
3 Photoshopped images that are not images of
4 specimens; isn't that right, sir?

5 A I'm not certain of the dates, but it would be
6 around that time frame.

7 Q Well, actually, you need to be certain of the
8 dates, because this is your signed declaration.
9 Your signed declaration says, "At no time prior to
10 August 21, 2014 was I aware that the photos
11 submitted were not original photos of the
12 Wolf Classic 150." That's a specific date, sir. So
13 at any time since August 21, have you done anything
14 to correct or amend Exhibit 4 so it didn't contain
15 Photoshopped images of your scooter?

16 A I don't know that. I would leave that to my
17 trademark attorney.

18 Q I'm not asking about what your attorney did
19 or did not do. I'm asking about what you did or
20 what you instructed because you're the one that
21 swore in this declaration, Exhibit 7, that you knew
22 for a fact your specimens were Photoshopped.

23 What did you do to correct it?

24 A I didn't get any instructions on what do
25 afterwards.

1 Q Is the answer "nothing"?

2 A I consulted my attorney.

3 Q To your knowledge, have you or anyone acting
4 on your behalf, amended Exhibit 4 to reflect an
5 actual specimen that was actually in use as of
6 November 27, 2013, the date of the application?

7 A Not that I'm aware of.

8 Q You've mentioned -- you've made reference
9 several times to the fact that the Wolf, the
10 calligraphy script Wolf that appears on the specimen
11 appears on your owner manual; is that right? It
12 appears on your owner's manual?

13 A Correct.

14 Q When did it first appear on your owner's
15 manual?

16 A It has appeared with the bike since day one,
17 since the first bike import.

18 Q Who made that owner's manual with that Wolf
19 script image on it?

20 A The factory.

21 Q How is the manual shipped to the customer?
22 How does the customer see that manual?

23 A They get it along with the bike. It's
24 attached to the key, attached onto the bike.

25 Q So it's on a twist tie, isn't it, on a twist

1 A 2014, around that time, I requested factory
2 to move the decal, the Wolf decal, to the top of the
3 tank, the gas tank.

4 Q Where had it been before that?

5 A It should have been on the side.

6 Q Why did you request that it be moved?

7 A Just to change things up. Like I said, this
8 bike has not been changed since 2011.

9 Q And so I'm crystal clear, it is your sworn
10 testimony today that the SYM Wolf Classic 150
11 motorcycle always had the Wolf decal on it as
12 depicted in Exhibit 4?

13 A To my best knowledge, to what I know, factory
14 was instructed to produce the Wolf motorcycle with
15 the decal, with the Wolf decal on the side, and
16 hence, we have this picture which we used to
17 illustrate for the factory how to affix this decal.
18 Whether or not we have a shipment or two, that there
19 was a mistake or an omission or misplacement, it's
20 possible. Because like I said, I've bought
21 automobiles that was missing a decal. So they could
22 have been missing or wrong parts, it's possible.

23 Q Sir, who's the CEO of your company?

24 A I am.

25 Q How many employees does your company have?

1 A When?

2 Q At this point in time.

3 A Twelve.

4 Q How many employees have been with the company
5 from its beginning until today? You said there were
6 two, your brother-in-law or ex-brother-in-law to
7 start, and now there's 12, and your brother-in-law
8 is gone?

9 A There's -- since the start of my company?

10 Q Yes. Are you the only person that's been an
11 employee there from the beginning?

12 A No.

13 Q Okay. Let's get back to your answer, because
14 I asked you as the CEO of this company, whether --
15 and to be crystal clear, that the Photoshopped image
16 that you have in front of you on Exhibit 4, the
17 decal on it, was always on your
18 SYM Wolf Classic 150, and your response was, to my
19 knowledge, the factory was instructed, et cetera, et
20 cetera.

21 And I'm wondering, as the CEO of this company
22 and 30b6 deponent who's required to be able to
23 answer these questions, is able to answer it more
24 clearly than to my knowledge the factory was
25 instructed?

1 A That's the truth. To my knowledge, the
2 factory was instructed.

3 Q To your knowledge, was your company selling
4 the SYM Wolf Classic 150 with no Wolf decal on it,
5 at all, until this litigation?

6 A Repeat the question.

7 Q To your knowledge, as the CEO of the company,
8 isn't it true that you were selling the
9 SYM Wolf Classic 150 motorcycle with no decal on it,
10 at all, until this lawsuit?

11 A Not to my knowledge.

12 MR. BABBITT: All right. Sir, I'm going to
13 hand you what we've marked as Exhibit 9. These are
14 your responses to the second set of interrogatories
15 that we propounded in this lawsuit.

16 (Exhibit 9 was marked for identification
17 by the court reporter; attached hereto)

18 BY MR. BABBITT:

19 Q And first I'm going to direct your
20 attention -- first, I'm going to ask you, take a
21 look. Let me know if you've seen these before. It
22 might help you if you look at the second to last
23 page. There's a verification dated October 13, 2014
24 with maybe your name or signature on it.

25 A Okay.

1 further off the record.

2 BY MR. BABBITT:

3 Q So I want to be very clear, sir, because this
4 will be the subject of further action by us in this
5 matter. Is it your testimony that before late
6 October 2013, your SYM Wolf scooters contained
7 the -- had the Wolf decal affixed to them?

8 A They should.

9 Q And your response in Exhibit --

10 A Like I said with my example earlier, with my
11 BMW that I purchased, should it have a decal of them
12 on it, too? It should, but if you go ask the
13 president or CEO of BMW, U.S.A. --

14 Q Sir, I'm not your lawyer. I'd advise you to
15 seek their counsel on the next break.

16 Interrogatory 55, though, describe for me
17 what the nature of your contact with the
18 manufacturer was to have the Wolf decal sticker
19 placed on the top of the fuel tank.

20 A What was the nature?

21 Q Why did you do it? How did you do it? To
22 whom did you do it?

23 A We thought, aesthetically, it would look
24 nicer on the top of the fuel tank.

25 Q And whereas before, where had it been?

1 A It should have been on the side.

2 Q So let's look back at Exhibit 4, then.
3 Exhibit 4 was actually -- we're in even deeper. If
4 you could put Exhibit 4 in front of you, please,
5 sir. Exhibit 4 was submitted November 27, 2013,
6 after you testified that the bike didn't even look
7 like it does in Exhibit 4 anymore.

8 It's this one (indicating).

9 A What was the question?

10 Q In November of 2013, where was the Wolf decal
11 on the SYM Wolf Classic 150 motorcycle?

12 A They should be placed on the side of the
13 motorcycle like this, as illustrated (indicating).

14 Q Sir -- okay. Let's look back at Exhibit 9
15 that we just looked at, it's interrogatory 55. You
16 just confirmed your testimony that in October, a
17 month before this, you had moved the decal to the
18 top of the fuel tank.

19 MS. DENT: I would object. That's a
20 mischaracterization of what he said.

21 MR. BABBITT: You're going to have ample
22 opportunity to defend your conduct in this. That's
23 a promise.

24 BY MR. BABBITT:

25 Q So looking at November of 2013, sir --

1 communication with manufacturer to request a
2 different placement of the sticker.

3 Q Can you give me a picture of any symbols that
4 were ever made where it had decals as indicated on
5 Exhibit 4? Do you have such a picture, sir?

6 A On Exhibit 4?

7 Q Right, in your left hand.

8 A I have to check my records.

9 Q Do you have a single picture?

10 A Not on me.

11 Q Did any scooter ever exist that ever had
12 those decals on the side?

13 A I have to check my records.

14 MR. BABBITT: Sir, I'm handing you what we've
15 marked as Exhibit 10.

16 (Exhibit 10 was marked for identification
17 by the court reporter; attached hereto).

18 BY MR. BABBITT:

19 Q Take a look at that, please. Have you
20 reviewed Exhibit 10, sir?

21 A Yes.

22 Q What are the images in Exhibit 10 of?

23 A They seem like it's our Wolf Classic
24 motorcycle.

25 Q Do you have any reason to deny that it's the

1 factory will forget something or misplace something.

2 Q Sir, did your website, until 2013, contain
3 dozens of images of the SYM Wolf Classic 150 without
4 a single decal on it?

5 A There could be, where we took pictures of
6 batches where they omitted stickers or misaffixed
7 it.

8 Q So it's entirely plausible that you could
9 have any number of these scooters with no Wolf
10 marking on the actual scooter; right?

11 A It's possible.

12 Q Okay. It's plausible, actually, from what
13 you've said; right? You've observed it; right?

14 A Right here in this picture.

15 Q I don't have -- I'm so shocked by your
16 testimony right now. I'm so shocked that I didn't
17 anticipate that this would have been your testimony
18 or I would have brought you images from your own
19 website of literally dozens of images of your
20 SYM Wolf Classic 150, which are identical to the
21 images that we harvested in Exhibit 10.

22 MR. HAMMER: What about his Facebook?

23 BY MR. BABBITT:

24 Q Do you -- as you sit here now, are you
25 shocked to learn that you didn't have a single

1 image, or do you deny, that you didn't have a single
2 image on your website showing the Wolf decal until
3 October 2013?

4 A I have to check my records, but like I said,
5 it's not -- it's not plausible.

6 Q Who's in charge of your website?

7 A Design Only.

8 Q Do you ever review Design Only's work?

9 A I try to, as much as possible.

10 Q Whose responsibility is it to put pictures of
11 your products onto your website?

12 A Design Only gets instructed to maintain our
13 website.

14 Q Who provides the pictures to Design Only for
15 use on your website?

16 A He helps acquire the pictures.

17 Q Who's "he"?

18 A Design Only.

19 Q Alex Chen?

20 A Right.

21 Q Other than Alex Chen, where do the photos of
22 your products come from?

23 A From -- from Design Only.

24 Q So does he literally go to your facilities
25 and take images and then put them up himself?

1 definition of "good"? It might be different from my
2 definition.

3 Q What's the chance in your experience with SYM
4 that they manufactured 100 percent of the SYM
5 Wolf 150 -- Classic 150 motorcycles without the Wolf
6 decal on the side, as indicated in Exhibit 4?

7 A Restate the question.

8 Q What's the chance that they missed it every
9 single time?

10 A I don't know. There's no record of that, so
11 I can't give you a detailed response.

12 Q Sir, your scooters never had a Wolf decal on
13 the side of them at any point, did they?

14 MS. DENT: Asked and answered.

15 MR. BABBITT: No, that has not been asked and
16 answered.

17 THE WITNESS: To my knowledge?

18 BY MR. BABBITT:

19 Q Yes.

20 A They should have a Wolf decal on it.

21 Q What parts were missing from the shipments
22 that you said were missing parts from SYM?

23 A Sometimes a foot pedal, sometimes a blinker
24 lens.

25 Q And what did you do? How did you learn that

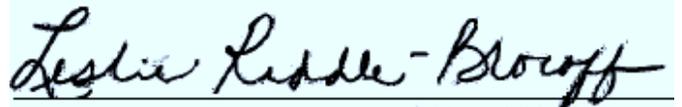
1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were placed under oath; that a
8 verbatim record of the proceedings was made by me
9 using machine shorthand which was thereafter
10 transcribed under my direction; further, that the
11 foregoing is an accurate transcription thereof.

12 I further certify that I am neither
13 financially interested in the action nor a relative
14 or employee of any attorney of any of the parties.

15 IN WITNESS WHEREOF, I have this date
16 subscribed my name.

17
18 Dated: June 22nd, 2015

19 
20

21 _____
22 LESLIE RIDDLE-BROCOFF

23 CSR No. 7309
24
25

EXHIBIT C



HAM 000196



HAM 000197



HAM 000198



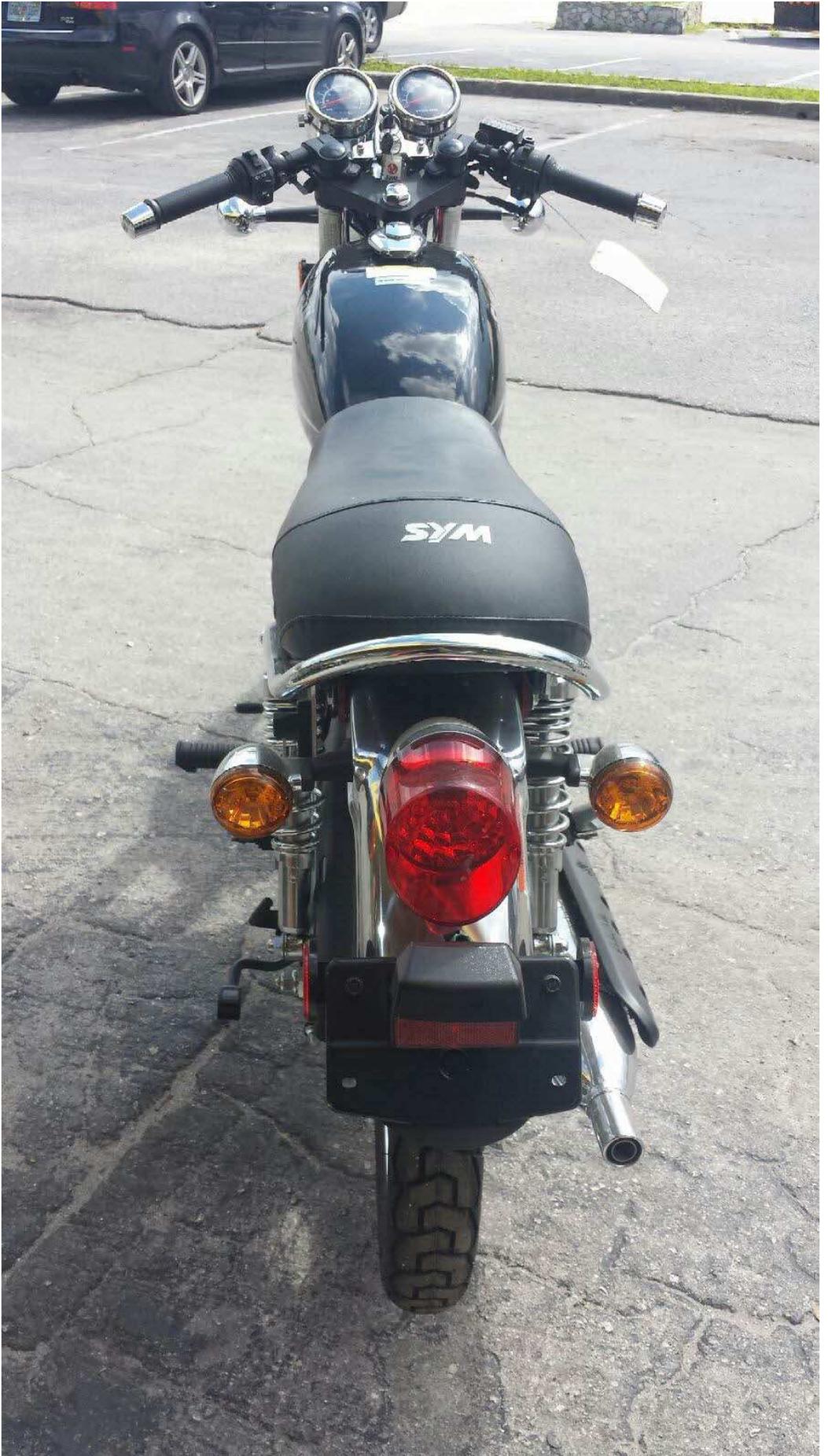
HAM 000199



HAM 000200



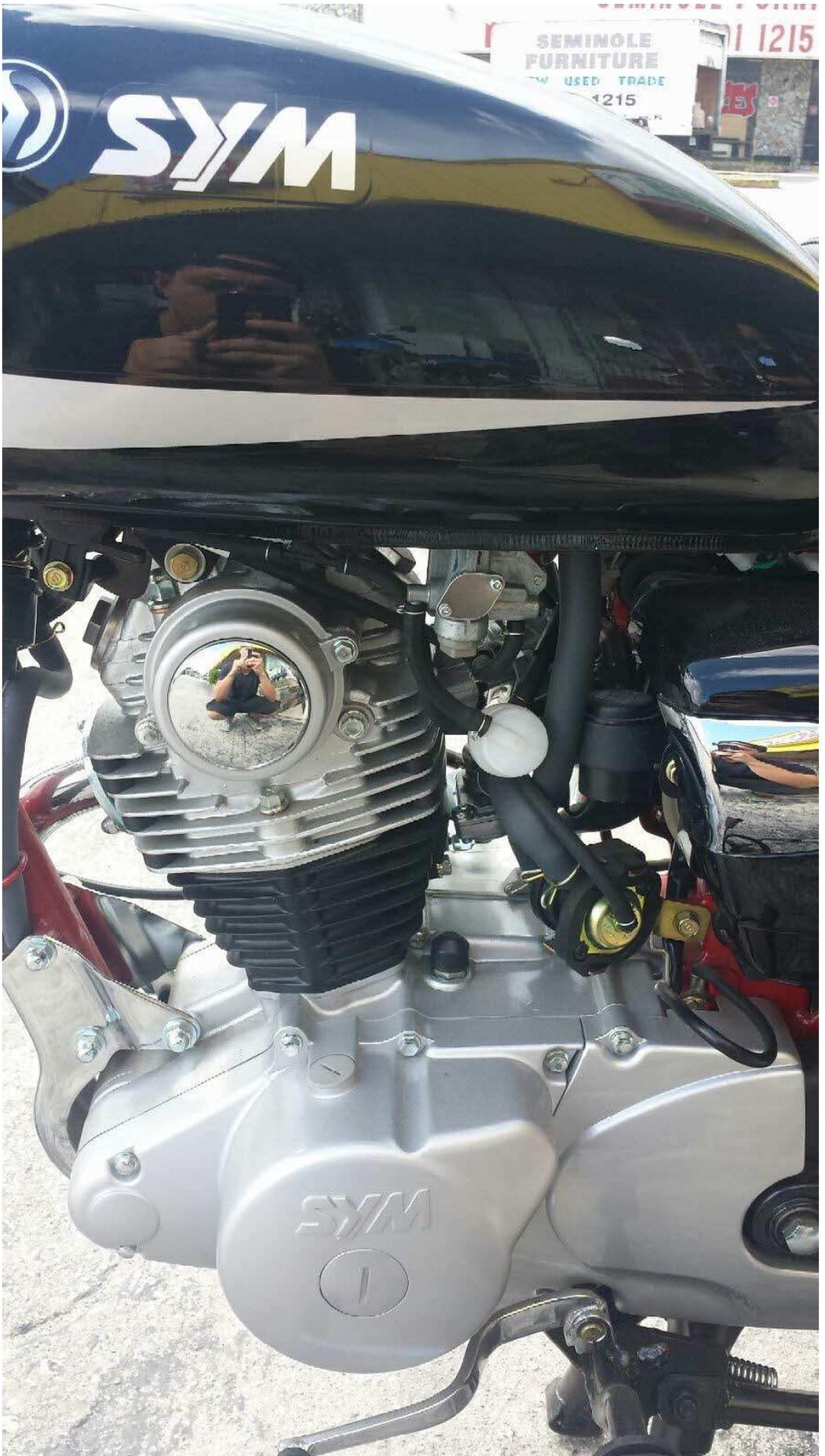
HAM 000201



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