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

Proceeding	92052197
Party	Plaintiff Terri Yenko Gould, Executor
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Submission	Testimony For Plaintiff
Filer's Name	George E. Bullwinkel
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Date	04/22/2011
Attachments	Declaration of Bullwinkel 2.pdf (4 pages)(66366 bytes)

DECLARATION OF GEORGE E. BULLWINKEL

My name is George E. Bullwinkel, and am the attorney of record for the Estate of Donald Frank Yenke, and Terri Yenke Gould as Executor (collectively, the "Estate"), in this Cancellation 92052197. I am personally familiar with the facts set forth in this Declaration.

In about November of 2009 I was retained by the Estate and by the Yenke Sports Car Club to investigate and take appropriate action to abate what appeared to be the misappropriation and misuse of the name and reputation of Donald Frank Yenke, a well-known high-performance automobile constructor during the 1960s and 1970s, whose achievements are still widely recognized today among automobile enthusiasts.

In particular, I was informed that an individual named Jeff Leonard had announced to the automotive press that he and one of his companies was about to introduce a "reborn" YENKO Camaro at the 2009 Specialty Equipment Manufacturers' Association (SEMA) show in Las Vegas, Nevada. My investigation also revealed that Mr Leonard had, through one or more of his companies, applied for and obtained trademark registrations of the names and marks YENKO and sYc for various automotive aftermarket products, and that he had also filed an intent-to-use application for complete automobiles which was then pending.

I also became aware of other unauthorized uses of the YENKO name and mark for scale models of historic Yenke automobiles, one of which was by a company called Supercar Collectibles Limited of Minneapolis, Minnesota which had acquired a 1997 trademark registration (No. 2049857, which is the subject of the present cancellation proceeding) for "toy cars" from the original applicant, one James R. Sullivan. I then contacted the registrant by mail

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(Ex. 26¹), and then by telephone, but was unable to obtain a satisfactory resolution to the problem. The present petition to cancel that registration was then filed on March 11, 2010.

My further investigation revealed that detailed scale model kits of at least two famous historic YENKO automobiles were also being marketed by Revell, Inc. (Ex. 27, 28) in packaging stating that the Yenko name and associated marks were being used “under license”. Since the Estate had never licensed anyone to use the Yenko name and marks, I sent that company a letter of inquiry (Ex. 29). In response, Revell claimed to be operating under “license” from Supercar Collectibles, presumably under the trademark registration at issue in this case (Ex. 30). Shortly thereafter, during pre-hearing discovery, I learned that the registration in question had been acquired on September 9, 2010 by the Respondent, General Marketing Capital Inc. (Ex. 31), which I am informed and therefore believe is owned and controlled by Mr. Jeff Leonard.

My investigation has also revealed that Mr. Leonard, through his business interests, has recently acquired no fewer than thirteen other U.S. trademark registrations for YENKO, sYc and other Yenko-related marks, as well as two other pending intent-to-use applications for such marks (Ex. 32), all without the knowledge or permission of the Yenko Estate.

I have reviewed the Declarations of Terri Yenko Gould, Les Quam and Tom Clary filed herewith, as well as the exhibits referred to in those Declarations. Based on those facts, and on the U.S. Trademark Act, §14 (15 U.S.C. § 1064) (Ex. 33), it may be concluded that the registered mark at issue in this cancellation proceeding is being used by the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used, whereby such registration can and should be cancelled.

¹ A summary of the Exhibits referred to herein is found at the end of this Declaration.

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Further, based upon those facts and the Right-Of-Publicity statutes of both the states of California (Ex. 34) and Pennsylvania (Ex. 35), it may also be concluded that the misappropriation of Don Yenke's name and reputation by Mr. Leonard and his companies is in violation of those statutes because it conveys to the public the false impression that his activities and products are somehow endorsed or approved by the Estate, when in fact they are not.

The following exhibits are true and correct copies of the several documents referred to in this Declaration:

26. Cease-and-desist letter to Supercar Collectibles (respondent's predecessor in interest) (12/11/2009) (Initial Disclosure Ex. 16; Discovery Production No. 18)
27. Photo: Revell "69 Camaro Yenke/SC 427 Coupe" model car (Discovery Production No. 13)
28. Letter, attorney Bullwinkel to Revell, Inc., February 12, 2010 (Initial Disclosure Ex. 15)
29. Revell attorney's letter claiming its scale model cars are licensed under YENKO mark, 3/9/2010 (Discovery Production No. 14)
30. Assignment of Reg 2049857 by Supercar Collectible [sic] to General Marketing Capital, Inc. (9/9/2010) (Discovery Production No. 21)
31. Summary of YENKO and sYc trademark registrations and applications, 12/9/2009, updated to 4/19/2011 (Discovery Production No. 39, updated)
32. U.S. Trademark Act, §14 (15 U.S.C. §1064, highlighted) (Discovery Production No. 17)
33. California Civil Code §3344, §990 (Right of Publicity) (Initial Disclosure Ex. 18, Discovery Production No. 15)
34. Pennsylvania statute, Ch. 83, § 8316 (Right of Publicity) (Initial Disclosure Ex. 17, Discovery Production No. 16)

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DECLARATION: The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both under 18 U.S.C. 1001, declares that all statements of his own knowledge hereinabove are true, and all statements made on information and belief are believed to be true.

Signed: /George E. Bullwinkel/
George E. Bullwinkel

Date: April 21, 2011