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Filing date: **08/10/2011**

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

Proceeding	92052197
Party	Plaintiff Terri Yenko Gould, Executor
Correspondence Address	GEORGE E BULLWINKEL 425 WOODSIDE AVE HINSDALE, IL 60521 UNITED STATES geb@bullwinkel.com
Submission	Testimony For Plaintiff
Filer's Name	George E. Bullwinkel
Filer's e-mail	geb@bullwinkel.com
Signature	/George E. Bullwinkel/
Date	08/10/2011
Attachments	George Bullwinkel 7-10-2011.pdf (50 pages)(2045788 bytes)

OFFERED BY PLAINTIFF

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

TERRI YENKO GOULD, Executor,	)	
Petitioner,	)	
vs.	)	Cancellation 92052197
SUPERCAR COLLECTIBLES, LIMITED,	)	
Defendant.	)	ORIGINAL

The deposition of GEORGE E. BULLWINKEL, called by Petitioner for examination, taken pursuant to the Federal Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before DEBRA MUTH HASS, a Notary Public within and for the County of Cook, State of Illinois, and a Certified Shorthand Reporter of said state, taken at 3240 West Irving Park Road, Chicago, Illinois 60618, on Monday, July 18, 2011 at 10:50 AM CST.

1 APPEARANCES:

2

3 GEORGE E. BULLWINKEL
425 Woodside Avenue
4 Hinsdale,Illinois 60521
630-418-2273
5 630-214-3210, by:
MR. GEORGE E. BULLWINKEL
6 (geb@bullwinkel.com),

7 appeared on behalf of the Petitioner;

8

LESTER QUAM, ESQUIRE
9 9229 White Tail
Las Vegas, Nevada;
10

11

STOUT, UXA, BUYAN & MULLINS, LLP
12 4 Venture
Suite 300
13 Irvine, California 92618-7384
949-450-1750
14 949-450-1764, facsimile, by:
MR. ROBERT D. BUYAN,
15

appeared via telephone on behalf of the
16 Respondent.

17

18

REPORTED BY:
19 DEBRA MUTH HASS, CSR, RPR.
Illinois Certified Shorthand Reporter
20 License No. 84-1299
Registered Professional Reporter
21

22

23

I N D E X

WITNESS	EXAMINATION
GEORGE E. BULLWINKEL	
Direct Examination by Mr. Quam	4

E X H I B I T S

PETITIONER'S DEPOSITION EXHIBITS (Not attached hereto)	FIRST REFERRED TO
No. 26A	6
No. 27	6
No. 28	7
No. 29	7
No. 30	8
No. 31	8
No. 32	9
No. 33	9
No. 34	10
No. 36	10

1 MR. BULLWINKEL: Now, Rob, I have given
2 Les a list of about four questions for him to ask me so
3 I can go through and identify the documents that I said
4 I wanted to identify. So if we can start, Les.
5 (WHEREUPON, the witness was duly sworn.)
6 GEORGE E. BULLWINKEL,
7 called as a witness by the Petitioner herein, having
8 been first duly sworn, was examined and testified under
9 oath as follows:
10 DIRECT EXAMINATION
11 BY MR. QUAM:
12 Q. Mr. Bullwinkel, would you state your
13 name for the record and your occupation?
14 A. George Bullwinkel. I live in Hinsdale,
15 Illinois and I am an attorney.
16 Q. How long have you been an attorney?
17 A. Since 1964.
18 Q. Okay.
19 Can you briefly summarize your
10:53AM 20 experience as an attorney for us?
21 A. Well, I didn't start out as an attorney.
22 I started out with an engineering degree and worked out
23 in Canoga Park for what was then the Rocketdyne

1 Division of North American designing rocket engines for
2 the space program. And I went to law school and I have
3 been practicing intellectual property law ever since.
4 Q. Can you summarize you knowledge of
5 high-performance automobiles, if you have any?
6 A. I have been interested in cars and
7 followed them for a long time, and for a period in the
8 '70s, I was president of the ~~Alpha~~ Alfa Romeo Owner's Club.
9 I have rebuilt cars. Most recently I restored two
10:54AM 10 Lamborghinis, two Maseratis and a Citroen SN, so I do
11 follow the sport as an enthusiast.
12 Q. As an enthusiast at that time, were you
13 familiar with the name Yenko?
14 A. I was. I was familiar with Yenko
15 through his newspaper clippings and magazine articles
16 all the way from the 1960's until his death in --
17 before his death in 19~~0~~7 8.
18 Q. Do you have a relationship at all with
19 the Yenko family?
10:55AM 20 A. I was called on by Terri Yenko Gould to
21 represent her and the Estate in an effort to resolve
22 the problem that she had learned about from you, and
23 that is that Mr. Leonard and GMCI were about to produce

an automobile with the Yenko name.

Q. And do you have a relationship with the Yenko Sports Car Club operated by Tom Clary?

A. They asked me to file some registration applications to register SYC and Yenko Sports Car Club which, if I recall correctly, are now suspended pending the outcome of this cancellation proceeding.

Q. I have placed in front of you Petitioner's Exhibit Number 26A that's been marked for

10:55AM identification, do you recognize it?

A. 26 is a letter that I wrote on December 11th to the then registrant or the -- what I thought was the registrant of the Yenko trademark for toy automobiles.

Q. What about Petitioner's Exhibit Number 27.

A. 27 is a photograph of a Revell model that I found at the local Hobby Lobby in Downers Grove, Illinois that I saw that on the box it said that the

10:56AM Yenko name was used under license, which surprised me and that caused me to write another letter.

Q. Does that fairly and accurately depict the model that was in the shop when you took the photo

1 of it?
2 A. Yes.
3 Q. Directing your attention to Petitioner's
4 Exhibit Number 28, what is that, sir, and tell me if
5 you recognize it?
6 A. Well, after I determined that the model
7 came from Revell, I wrote a letter to Revell calling
8 their attention to the use of the trademark and other
9 trademarks saying that they were the property of the
10:57AM 10 Yenko Estate.
11 Q. What was the outcome of that interest
12 with that letter?
13 A. I received a very fulsome response from
14 an attorney with the Chicago office of Drinker, Biddle
15 and Reath explaining that they believed that they were
16 properly licensed by the owner of the trademark
17 registration which at that time was Supercar
18 Collectibles, Limited.
19 Q. Is that 29 that you just referred to?
10:57AM 20 A. Yes, and the enclosures are part of 29.
21 Q. Can you identify fully what the
22 enclosures are?
23 A. Well, the enclosures appear to be a

1 license from Supercar to Revell and a renewal of that
2 license.
3 Q. Does the exhibit as it sits today fairly
4 and accurately depict the documents when you first
5 received them?
6 A. Yes.
7 Q. Referring now to Petitioner's Exhibit
8 Number 30, do you recognize that?
9 A. Yes. That is a document I obtained from
10:58AM 10 the Trademark Office website showing that the trademark
11 registration in question was assigned by Supercar
12 Collectibles, Limited -- I think it actually should
13 have an S on it, but it was assigned to General
14 Marketing Capital, Inc., also called GMCI, in about
15 September of 2010.
16 Q. Does that exhibit thoroughly and
17 accurately depict the document when you received it?
18 A. It is the document that I received from
19 the Trademark Office.
10:58AM 20 Q. Referring to Petitioner's Exhibit
21 No. 31, could you identify that, please?
22 A. Yes, that is a summary compilation that
23 I personally prepared from the records of the Trademark

1 Office of all the trademark registrations and pending
2 applications to register that I could find that involve
3 the marks Yenko, SYC, and the Yenko Deuce, and it shows
4 that they were all presently owned by GMCI.
5 MR. BUYAN: We will object to Exhibit 31
6 on grounds of best evidence and on grounds that it does
7 not make the registrations themselves of record within
8 the applicable trademark rules.
9 MR. QUAM: We will note that for the
10:59AM 10 record.
11 BY MR. QUAM:
12 Q. Directing your attention to Petitioner's
13 Exhibit 32, do you recognize that?
14 A. It's an excerpt from the Atlanta
15 Trademark Act Section 14 that I downloaded again from
16 internet sources.
17 Q. Okay. Directing your attention to
18 Petitioner's Exhibit No. 33, do you recognize that?
19 A. Yes, that is an article again downloaded
10:59AM 20 from the internet which includes -- and that's the
21 point -- California Civil Code Section 3344 pertaining
22 to rights of publicity.
23 Q. Directing your attention to -- we are

1 talking about Petitioner's Exhibit 34, correct?
2 A. 34 is the next in line and that is again
3 another summary of Pennsylvania statutes pertaining to
4 the rights of publicity and that's been marked as
5 Plaintiff's 34 and I have downloaded that from internet
6 sources.
7 Q. 33 was the California and 34 was the
8 Pennsylvania statute?
9 A. That's correct.
11:00AM 10 Q. Directing your attention to Petitioner's
11 Exhibit Number 36?
12 A. It has already been identified and that
13 is the declaration that you signed which is introduced
14 for the purposes of the photographs.
15 MR. BUYAN: That's objected to on
16 grounds that it has been stricken from the record by
17 the Board's order and there is no stipulation in place
18 for filing of affidavits.
19 MR. QUAM: That concludes my direct
11:01AM 20 examination at this point.
21 MR. BUYAN: We have no cross for
22 Mr. Bullwinkel.
23 MR. BULLWINKEL: Very well. We have no

1 redirect then, and we again thank all concerned for
2 their courtesy and consideration in allowing us to do
3 this in the remarkable period of less than one hour.
4 And I will order a copy of the
5 transcript and it will be sent to you, Rob, in due
6 course. And again, thanks to Mr. Leonard for making
7 himself available. That concludes the deposition.
8 Anything else, Rob?
9 MR. BUYAN: No.
11:01AM 10 MR. BULLWINKEL: All right.
11 FURTHER DEPONENT SAITH NOT.
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1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
2

TERRI YENKO GOULD, Executor,	)	
Petitioner,	)	
vs.	)	Cancellation 92052197
SUPERCAR COLLECTIBLES, LIMITED,	)	
Defendant.	)	

3 4 5 6 7 8

9 I hereby certify that I have read the foregoing
10 transcript of my deposition given at the time and place
11 aforesaid, consisting of Pages 1 to 11, inclusive, and
12 I do subscribe and make oath that the same is a true,
13 correct and complete transcript of my deposition so
14 given as aforesaid, and includes changes, if any, so
15 made by me.
16 1 Number of Errata Sheets Attached
17
18 _____ Aug 5, 2011
19 GEORGE E. BULLWINKEL Date
20 SUBSCRIBED AND SWORN TO
before me this 5th day
21 of August 2011.
22 Notary Public
23

OFFICIAL SEAL
PATRICIA ROETHLE
Notary Public - State of Illinois
My Commission Expires Apr 14, 2013

ERRATA SHEET

I hereby make the following changes to my deposition:

PAGE	LINE		
5	8	CHANGE:	Alpha to ALFA
		REASON:	misspelled
5	17	CHANGE:	1968 to 1978
		REASON:	Mis transcribed
		CHANGE:	
		REASON:	
		CHANGE:	
		REASON:	
		CHANGE:	
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		REASON:	
		CHANGE:	
		REASON:	
		CHANGE:	
		REASON:	

GEORGE BULLWINKEL — DATE: Aug 5, 2011

Correction Sheet Page 1 of 1

1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF COOK)
3
4 I, DEBRA MUTH HASS, a Notary Public
5 within and for the County of Cook, State of Illinois,
6 and a Certified Shorthand Reporter of said state, do
7 hereby certify:
8 That, previous to the commencement of
9 the examination of the witness, GEORGE E. BULLWINKEL,
10 he was first duly sworn to testify the truth, the whole
11 truth and nothing but the truth in the cause aforesaid
12 before the taking of the deposition;
13 That, the testimony was reduced to
14 writing in the presence of said witness by means of
15 machine shorthand and afterwards transcribed into
16 typewriting via computer-aided transcription under my
17 personal direction; and that the foregoing constitutes
18 a true and correct record of the testimony given and
19 the proceedings had;
20 That, the said deposition was taken
21 before me at the time and place specified;
22 That, I am not a relative or employee or
23 attorney or counsel, nor a relative or employee of such

1 attorney or counsel for any of the parties hereto; nor
2 interested directly or indirectly in the outcome of
3 this action.
4 I further certify that my certificate
5 annexed hereto applies to the original transcript and
6 copies thereof, signed and certified under my hand
7 only. I assume no responsibility for the accuracy of
8 any reproduced copies not made under my control or
9 direction.
10 IN WITNESS WHEREOF, I do hereunto set my
11 hand and affix my seal of office at Northbrook,
12 Illinois, this 29th day of July, 2011.
13
14
15 DEBRA MUTH HASS, CSR, RPR.
Notary Public, Cook County, IL
16 My commission expires 4/13/2014.
Illinois Certified Shorthand Reporter
17 License No. 84-1299
Registered Professional Reporter
18
19
20 OFFICIAL SEAL
DEBRA M HASS
21 NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES 04/13/14
22
23

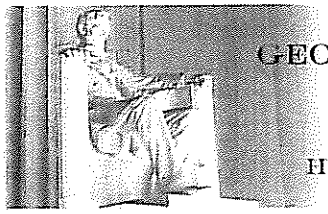
1 DEBRA HASS & ASSOCIATES
Certified Court & Deposition Reporters
2 4121 Rutgers Lane
Northbrook, Illinois 60062-2911
3 (847) 564-5575 Phone ~ (847) 564-5666 Facsimile

4
July 30, 2011
5
Mr. George E. Bullwinkel
6 425 Woodside Avenue
Hinsdale, IL 60521
7
Dear Mr. Bullwinkel:
8
Re: Yenko v. Supercar Your deposition taken 7/18
9
It is our understanding that you will arrange for the
10 review of the above-entitled transcript by the witness.
Accordingly, we are enclosing errata sheets and the
11 original signature page with your copy of the
deposition transcript.
12
Please note that Amended Rule 207(a) of the Illinois
13 Supreme Court provides that depositions may be used
fully as if signed should they remain unsigned for more
14 than 28 days after having been made available to the
deponent. We, therefore, would appreciate your
15 handling this matter within the 28-day limit.

16 Please return the executed signature page and errata
sheets, if any, to the above address.
17
Sincerely,
18
DEBRA HASS & ASSOCIATES
19

20
Debra M. Hass
21
enclosures: Transcript, signature page, errata
22 sheet(s)
ccs: Attorneys of Record
23

P-26 A



GEORGE E. BULLWINKEL
ATTORNEY AT LAW
425 WOODSIDE AVENUE
HINSDALE, ILLINOIS 60521

BY CERTIFED MAIL

December 11, 2009

Jim Sullivan
Supercar Collectibles Ltd.
11760 Justen Circle, Unit E
Maple Grove, MN 55369

Re: YENKO Trademarks

Dear Mr. Sullivan:

First, let me introduce myself. I represent the Estate of Donald Frank Yenko, who as you well know is the man who put Canonsburg, Pennsylvania on the sports car map in the 1960s and 1970's with some of the most awesome supercars ever produced in America.

Today, Don's Estate is represented by his daughter and executor, Terri Yenko Gould. Terri, for the Estate, has recently become concerned about the increasing activity of certain companies with respect to commercial use of the name and trademark YENKO without the approval and permission of the Estate. As you may be aware, in all the years since Don's untimely death in 1987, only the long-established Yenko Sportscar Club of Alton, Missouri has had permission to use the YENKO name.

It has come to our attention that your company has for some time advertised and sold high-quality scale models of some of the legendary automobiles which bore the Yenko name. From what I know so far, your products are well made, fairly marketed, and do proper credit to the Don's name and reputation. Still, in order to preserve his legacy in the future, it is necessary for the Estate to reassert its control over the use of the name and trademark YENKO.

Telephone 630 418 2273
eFax 630 214 3210 eMail geb@bullwinkel.com

I have determined that on April 1, 1997 you were issued U.S. Trademark Registration No. 2,049,857 for "toy cars". You assigned your registration, and the business to which it pertained, to Supercar Collectibles Ltd. That company renewed the registration on October 13, 2006.

While that registration is now theoretically "incontestable" with respect to a challenger claiming prior use, it is nevertheless subject to cancelation because it falsely suggests a connection to, and/or misrepresents the approval by, the rightful estate and heirs of Don Yenko, all contrary to Sections 2(a) and 14 of the Lanham Trademark Act.

The Estate has therefore requested that I contact each unauthorized user of the Yenko name, of which your company is one, and to propose a reasonable business solution which benefits all parties. What we are asking is that your company assign all its right, title and interest to U.S. Trademark Registration 2,049,857 to the Estate, or to a Trust which is to be established for the protection and preservation of Don Yenko's memory, reputation and heritage.

In return, your company would receive an exclusive license, on reasonable terms, to continue merchandising goods in substantially the same way as it has been doing. In the absence of material breach which is not cured within 30 days, the license would be annually self-renewing. Other details, including royalty rate, reporting requirements, assignability and similar matters would of course be negotiated to each party's satisfaction.

I look forward to your response. Feel free to contact me by mail, telephone, telefax or email, as you choose. If you have legal counsel for your trademark matters, I would be pleased to talk to them also.

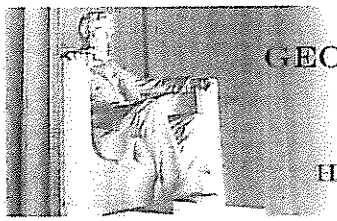
Sincerely,

GEB/gb

Cancellation No. 92052197 Offered by: Plaintiff
Terri Yenko Gould, Executor v. SuperCar Collectibles Ltd.

P-27

P-28



GEORGE E. BULLWINKEL
ATTORNEY AT LAW
425 WOODSIDE AVENUE
HINSDALE, ILLINOIS 60521

February 12, 2010

Kathleen A. Chyna, Registered Agent
Revell, Inc.
191 N. Wacker Drive, Ste 3700
Chicago, Illinois 60606

Re: YENKO Trademark

Dear Director:

I represent the estate and heirs of Donald Frank Yenko, who passed away on March 5, 1987. You are undoubtedly aware of his reputation and fame as a constructor of unique high-performance YENKO brand automobiles.

I has come to my attention that your company makes and sells at least two 1:25 scale "YENKO" plastic model automobile kits, one of which (SKU No. 85-4237). On the face of the box, and on each end panel, is the following legend: '**69 Chevy® Nova™ "Yenko™"**. On one side panel is the statement: "**Yenko™ used under license to Revell Inc.**"

My clients are unaware of any license or permission given to Revell, or to any other maker of replicas or models of YENKO brand automobiles, Don to use the name and mark YENKO. Please contact me at your earliest convenience to discuss this matter.

Sincerely,

GEB/gb

cc: Revell, Inc.
1850 Howard Street, Unit A
Elk Grove Village, IL 60007

Revell-Monogram, Inc.
8601 Waukegan Road
Morton Grove, Illinois 60053

Telephone 630 418 2273
eFax 630 214 3210 eMail geb@bullwinkel.com

P-29

DrinkerBiddle&Reath LLP

Melissa S. Dillenbeck
312-569-1459 Direct
312-569-3459 Fax
melissa.dillenbeck@dbr.com

Law Offices
191 North Wacker Drive
Suite 3700
Chicago, IL
60606-1698
312-569-1000 phone
312-569-3000 fax
www.drinkerbiddle.com

March 9, 2010

Via Email and U.S. Mail

Mr. George E. Bullwinkel
Attorney at Law
425 Woodside Avenue
Hinsdale, IL 60521

Re: Revell, Inc. - YENKO trademark

Dear Mr. Bullwinkel:

We represent Revell, Inc. in intellectual property matters. Your February 12, 2010 letter to Kathleen Chyna regarding Revell's use of the YENKO trademark was forwarded to my attention.

You inquired as to whether Revell had a valid license to use the YENKO trademark. We note that Supercar Collectibles, Ltd. is listed as the current owner of the YENKO trademark registration (Reg. No. 2,049,857) with the U.S. Patent and Trademark Office. Revell entered into a license agreement on April 19, 2004, with Supercar Collectibles, Ltd. to sell products under the YENKO trademark. This agreement has since been renewed several times, and the most recent renewal, dated October 10, 2008, extends the term of the license agreement through December 31, 2010. Copies of the original agreement and the 2008 renewal are enclosed for your reference.

Please contact me with any further questions.

Sincerely,

Melissa S. Dillenbeck

Melissa S. Dillenbeck

Enclosures
cc: Ms. Christina Chacon
Edwin A. Getz, Esq.
25465197v1

REVELL-MONOGRAM, LLC
725 Landwehr Rd.
Northbrook IL 60062
Phone: (847) 770-6100
Fax: (847) 562-0326

April 19, 2004

Supercar Collectibles, Ltd
11760 Justen Circle – Unit E
Maple Grove, MN 55369

This contract, when signed by Supercar Collectibles, Ltd, 11760 Justen Circle – Unit E, Maple Grove, MN 55369 ("Licensor"); and Revell-Monogram, LLC, 725 Landwehr Rd, Northbrook, IL 60062 (together with its affiliated, associated, and subsidiary companies is collectively referred to as "Licensee"), shall constitute an agreement to permit the manufacture and sale of property as defined below.

1.) **GRANT OF RIGHTS:** Subject to the terms and conditions hereof, Licensor grants to Licensee the right to use the Property, as defined below, in connection with the manufacture, sale, advertising and distribution of the Licensed Product during the term.

2.) **DEFINITIONS:**

a.) For the purposes of this agreement, the term "Property" shall mean the Yenko Camaro, specifically approved by Licensor during the term of the Agreement.

b.) For the purposes of this agreement, the term "Licensed Products" shall mean all unassembled model hobby kits.

3.) **TERM:**

For the purpose of this agreement, the term shall commence on the date January 1, 2004 and shall continue without interruption through December 31, 2005. Thereafter, the Agreement may be renewed for additional periods of one (1) year if agreed to in writing by both parties no later than September 30th of the year of expiration on the same terms and conditions as contained herein, unless either party notifies the other party in writing prior to the September 30th date indicated above.

4.) **TERRITORY:** The territory for this agreement is worldwide.

6.) **TRADEMARK; COPYRIGHT; PATENT:**

a.) Licensor confirms that this contract constitutes a non-exclusive agreement to reproduce the actual referenced car in scale model form, and grants to the Licensee the right to use all marks depicted on the actual vehicle during the Term. Licensee has the right to depict the actual reference car in connection with the manufacture, sale, advertising and distribution of the Licensed Products during the Term.

7.) **TRADEMARK AND COPYRIGHT NOTICES:**

The Licensee shall be required to place appropriate trademark and copyright notices on the Licensed Products. Licensee shall be permitted to place the name REVELL-MONOGRAM ® and/or the designation " © 2004 REVELL-MONOGRAM All rights reserved" on the box in which the licensed products are contained. Items (such as box art) submitted for approval to Licensor shall be deemed approved if no response is received within thirty (30) days. Licensor legal notice will be as follows:

8.) **PAYMENTS AND STATEMENTS:**

All royalty payments due the Licensor, hereunder, shall be submitted to the Licensor on a quarterly basis at the following address:

Supercar Collectibles, Ltd
11760 Justen Circle -- Unit E
Maple Grove, MN 55369

EIN# 41 - 1846539

Licensee shall submit a quarterly reporting for each three-month period after the end of the applicable period. All payments shall be accompanied by a statement in reasonable detail demonstrating the computations and amounts used in computing the royalty payments remitted with the statement. It should be understood that until the amounts covered by the royalty advance are exceeded, the statements will not be accompanied by a corresponding payment.

9.) **TECHNICAL ASSISTANCE:**

The Licensor agrees to provide the Licensee with access to the vehicles (if available) indicated in this contract for the purposes of authentic product research.

10.) **APPROVALS:**

Licensee agrees to submit copies of the decal art and box art to Licensor for approval prior to the first production run of this item.

11.) **ENTIRE AGREEMENT:**

This agreement contains the full and complete understanding between the parties hereto and supersedes all prior understanding, whether written or oral, pertaining to the subject matter hereof and cannot be modified except by written agreement signed by the parties hereto.

12.) **INDEMNIFICATION:**

a.) Licensor agrees to indemnify and save harmless Revell-Monogram, LLC from and against claims, demands, damages, costs and attorney's fees involving any breach of the representations and warranties contained herein and from any claim alleging that the Licensed Property infringes the rights of a third party. If any third person brings a lawsuit or makes a claim alleging that Revell-Monogram's use of the Licensed Property constitutes an infringement of the rights of such third party, Revell-Monogram shall give the Licensor notice of such claim or lawsuit. Licensor shall defend any such lawsuit or claim, and any and all expenses thereof and all liabilities resulting therefrom shall be borne solely by Licensor. After notice has been received by Revell-Monogram, Revell-Monogram shall be entitled to escrow all royalties accrued thereafter to defray costs incurred and damages assessed until such time that the infringement charge is settled or otherwise disposed of. Any excess in such escrow account shall be paid to the Licensor. Such indemnity shall be in addition to any other remedy available to Revell-Monogram.

b.) Revell-Monogram agrees to indemnify and save harmless Licensor and undertakes to defend itself and Licensor against and hold Licensor harmless from any claim, suites, loss and damage, including Licensor's reasonable and necessary attorneys' fees arising out of any allegedly unauthorized use of any patent, preocess, idea, method or

device by Revell-Monogram in connection with the Licensed Products or arising out of any other alleged action by Revell-Monogram including any claim, suit, loss and/or damage arising out of alleged defects in the Licensed Products.

c.) Any disputes to be mitigated by arbitration, will be conducted through American Arbitration Association, in Cook County Illinois.

13.) **INSURANCE:**

Licensee will obtain and maintain at its own cost Commercial General Liability Insurance, including but not limited to products, completed operations and contractual liability, in amounts not less than One Million Dollars ($1,000,000.00) per occurrence.

14.) **FINISHED PRODUCT:**

24 pieces of the finished item will be provided for personal promotion use. Licensor can purchase additional quantities at the listed "A" price.

15.) **SELL-OFF PERIOD:**

Upon termination or expiration of this agreement, Licensee shall have a period of one hundred eighty (180) days within which to dispose of any existing inventory and thereafter Licensee shall discontinue the use of the trademarks on such licensed products.

We look forward to working with you during the terms of this agreement.

Sincerely,

REVELL-MONOGRAM, LLC

FOR REVELL-MONOGRAM, LLC

4/27/04

DATE

Scott Dallberg - President

Supercar Collectibles, Ltd

4/24/04

DATE

REVELL INC
1850 Howard, Unit A
Elk Grove Village, IL 60007
Phone: (847) 758-3200
Fax: (847) 758-3204

RENEWAL OF LICENSE AGREEMENT

THIS AGREEMENT is dated this 10th day of October, 2008 and is by and between Supercar Collectibles, Ltd ("Licensor") and Revell Inc, 1850 Howard Unit A, Elk Grove Village, IL 60007 ("Licensee").

WITNESSETH:

WHEREAS, on or about April 19, 2004, Licensor and Licensee entered into an agreement (the "Agreement") under which Licensee was granted the non-exclusive, worldwide right to use the Yenko name, logos and designs as they relate to the licensed product property owned by the Licensor, to describe unassembled model hobby kits of any specific scale manufactured and sold by Licensee; and

WHEREAS, the parties desire to extend the terms of the agreement through December 31, 2008, as provided in the Renewal of License Agreement dated January 28, 2008.

NOW, THEREFORE, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **EXTENSION OF TERM.** The term of the Agreement is hereby extended through December 31, 2010.

2. **DEFINITION OF PROPERTY.** The term "Property", as set forth in the Agreement, shall mean the Yenko Camaro manufactured by the Licensee, and specifically approved by Licensor during the term of the Agreement. The agreement is hereby amended to specifically add **"Yenko Nova"** owned by the Licensor and manufacture by Licensee. (#41257)

4. **SELL-OFF PERIOD.** Upon termination or expiration of this agreement, Licensee shall have a period of one hundred eighty (180) days within which to dispose of any existing inventory and thereafter Licensee shall discontinue the use of the trademarks on such licensed products

Other than as specifically set forth in this Renewal agreement dated October 10, 2008, the Agreement remains unchanged and of full force and effect; any conflict between the Agreement and this Renewal shall be controlled by this Renewal License Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Renewal Agreement to be signed on the day and year first above written.

By: _____
George T. Foster, President
Revell Inc

By: _____
Scott Dahlberg, President
Supercar Collectibles, Ltd

EXHIBIT A

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TRADEMARK ASSIGNMENT

WHEREAS, Supercar Collectable Limited, a corporation having an address of 11760 Justen Circle, Unit E, Maple Grove, Minnesota 55369 ("Supercar") has adopted, used, and is using the trademark YENKO in connection with toy cars and is the owner of common law rights in such trademark as well as United States Patent and Trademark Registration No. 2,049,857 for the mark YENKO for "toy cars" (hereinafter collectively referred to as the "Trademark Rights");

WHEREAS, General Marketing Capital, Inc., a corporation having an address of 18460 Gothard Street, Huntington Beach, CA 92648 ("GMCI"), is desirous of acquiring ownership of all right, title and interest in and to the Trademark Rights, including United States Trademark Registration 2,049,857, together with the goodwill of the business symbolized thereby and all rights associated therewith, including all rights of priority stemming therefrom and any and all rights and causes of action that exist in relation thereto, including any and all rights to sue for and collect damages for past infringement thereof.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Supercar has assigned and does hereby assign to GMCI, all right, title and interest in and to the Trademark Rights, including United States Trademark Registration 2,049,857, together with the goodwill of the business symbolized thereby and all rights associated therewith, including all rights of priority stemming therefrom and any and all rights and causes of action that exist in relation thereto, including any and all rights to sue for and collect damages for past infringement thereof.

IN TESTIMONY WHEREOF, Supercar hereunto sets its hand and seals this 9 day of September, 2010.

Scott Dahlberg, President

State of Minnesota)
) ss.:
County of Hennepin)

On this 9th day of September, 2010, before me, Haris Isic, a Notary Public in and for the State and County aforesaid, personally appeared Scott Dahlberg, personally known to me, or proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument and acknowledged the same to be his/her/their free act and deed.

SEAL:

HARIS ISIC
NOTARY PUBLIC - MINNESOTA
MY COMMISSION EXPIRES 01/31/15

Notary Public

GMCI REGISTRATIONS AND APPLICATIONS

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GENERAL MARKETING Updated 04/19/11
All pending and issued federal trademark registrations

Mark	Ser. No	Pub. Date	Reg. No.	Reg. Date	Original Applicant	Present Owner	Goods
YENKO	**75639497**	**11/09/99**	**2314585**	**02/01/00**	Classic Camaro Inc	GMCI	Mail order catalogue services featuring parts and accessories for the restoration of classic automobiles, wholesale distributorships featuring parts and accessories for the restoration of classic automobiles
SYC	**78592604**	**10/18/05**	**3083835**	**04/18/06**	Cunneen, Edward J	GMCI	Vinyl decals
SYC	78568922	10/03/06	Abandoned 1-25-2010		GMCI	GMCI	Automobiles and Automotive parts and accessories, namely quarter panels, door panels, center consoles and metal emblems
SYC	**78980923**	**10/03/06**	**3607796**	**04/14/09**	GMCI	GMCI	Automobile parts and accessories, namely, seat upholstery
YENKO	**78569618**	**08/08/06**	**3161668**	**10/24/06**	Classic Camaro Inc	GMCI	Clothing and headwear assessories [sic], namely shirts, jackets and caps
YENKO	**78569598**	**03/07/06**	**3097652**	**05/30/06**	Classic Camaro Inc	GMCI	Automobiles and Automotive parts and accessories, namely, wheel caps, spoilers and emblems
YENKO	**77978267**	**12/16/08**	**3812169**	**06/29/10**	GMCI	GMCI	Motor vehicle accessories, namely, automobile body emblems and license plate frames (Sec 2(f))
YENKO	77149025	12/16/08	4th SOU ext to 9/12/11		GMCI	GMCI	Motor land vehicles; motors for land vehicles, motor vehicle accessories, namely, license plates, hood ornaments and shifter knobs, namely, gear lever knobs
YENKO DEUCE	77149030	11/25/08	4th SOU ext to 8/17/11		GMCI	GMCI	Motor land vehicles; motors for land vehicles, motor vehicle accessories, namely, automobile body emblems, license plates frames, hood ornaments and shifter knobs, namely, gear lever knobs
YENKO and Design (012)	**77386059**	**12/23/08**	**3585627**	**03/10/09**	GMCI	GMCI	Metal parts for motor vehicles,namely, decorative metal emblems
YENKO and Design (016)	**77386059**	**12/23/08**	**3585627**	**03/10/09**	GMCI	GMCI	Decals
YENKO and Design (021)	**77386059**	**12/23/08**	**3585627**	**03/10/09**	GMCI	GMCI	Glass mugs
YENKO and Design (025)	**77386059**	**12/23/08**	**3585627**	**03/10/09**	GMCI	GMCI	Clothing, namely, t-shirts and caps
YENKO (ten classes)	77457560	02/17/09	Abandoned 2/22/10		GMCI	GMCI	(Multiple goods in ten classes)
SYC	**77598490**	**09/22/09**	**3842228**	**08/31/10**	GMCI	GMCI	Wearable garments and clothing, namely, shirts
YENKO	**77978779**	**02/17/09**	**3779462**	**04/20/10**	GMCI	GMCI	Auto parts, etc (012)(12/20/91), (Drinking glasses and mugs (021) (11/08/07) Clothing, namely, shirts and hats (025)(08/27/96)
YENKO	**74706331**	**03/05/96**	**2049857**	**04/01/97**	James R Sullivan	GMCI	Toy Cars

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TRADEMARK ACT § 14 (15 U.S.C. § 1064). Cancellation

A petition to cancel a registration of a mark, stating the grounds relied upon, may, upon payment of the prescribed fee, be filed as follows by any person who believes that he is or will be damaged, including as a result of a likelihood of dilution by blurring or dilution by tarnishment under section 1125(c) of this title, by the registration of a mark on the principal register established by this chapter, or under the Act of March 3, 1881, or the Act of February 20, 1905:

(1) Within five years from the date of the registration of the mark under this chapter.

(2) Within five years from the date of publication under section 1062(c) of this title of a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905.

(3) At any time if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered, or is functional, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 1054 of this title or of subsection (a), (b), or (c) of section 1052 of this title for a registration under this chapter, or contrary to similar prohibitory provisions of such said prior Acts for a registration under such Acts, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. If the registered mark becomes the generic name for less than all of the goods or services for which it is registered, a petition to cancel the registration for only those goods or services may be filed. A registered mark shall not be deemed to be the generic name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the generic name of goods or services on or in connection with which it has been used.

(4) At any time if the mark is registered under the Act of March 3, 1881, or the Act of February 20, 1905, and has not been published under the provisions of subsection (c) of section 1062 of this title.

(5) At any time in the case of a certification mark on the ground that the registrant (A) does not control, or is not able legitimately to exercise control over, the use of such mark, or (B) engages in the production or marketing of any goods or services to which the certification mark is applied, or (C) permits the use of the certification mark for purposes other than to certify, or (D) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies:

Provided, That the Federal Trade Commission may apply to cancel on the grounds specified in paragraphs (3) and (5) of this section any mark registered on the principal register established by this chapter, and the prescribed fee shall not be required. Nothing in paragraph (5) shall be deemed to prohibit the registrant from using its certification mark in advertising or promoting recognition of the certification program or of the goods or services meeting the certification standards of the registrant. Such uses of the certification mark shall not be grounds for cancellation under paragraph (5), so long as the registrant does not itself produce, manufacture, or sell any of the certified goods or services to which its identical certification mark is applied.

(Amended Oct. 9, 1962, 76 Stat. 771; Aug. 27, 1982, 96 Stat. 320; Nov. 8, 1984, 98 Stat. 3335; Nov. 16, 1988, 102 Stat. 3940; Oct. 30, 1998, 112 Stat. 3069; Aug. 5, 1999, 113 Stat. 218; Oct. 6, 2006, 120 Stat. 1730.)

Practitioner's Guide to California Right of Publicity Law

By *Amy D. Hogue* of Pillsbury Winthrop Shaw Pittman LLP

I. LEGISLATION

A. Right of Publicity

California's right of publicity statute, Civil Code Section 3344, was first enacted in 1971 and provides as follows.

California Civil Code Section 3344:

'3344. Use of Another's Name, Voice, Signature, Photograph, or Likeness in Advertising or Soliciting Without Prior Consent.

(a) Any person who knowingly uses another's name, voice, signature, photograph, or likeness, in any manner on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of products, merchandise, goods or services, without such person's prior consent, or, in the case of a minor, the prior consent of his parent or legal guardian, shall be liable for any damages sustained by the person or persons injured as a result thereof. In addition, in any action brought under this section, the person who violated the section shall be liable to the injured party or parties in an amount equal to the greater of seven hundred fifty dollars ($750) or the actual damages suffered by him or her as a result of the unauthorized use, and any profits from the unauthorized use that are attributable to the use and are not taken into account in computing the actual damages. In establishing such profits, the injured party or parties are required to prove his or her deductible expenses. Punitive damages may also be awarded to the injured party or parties. The prevailing party in any action under this section shall also be entitled to attorney's fees and costs.

(b) As used in this section, "photograph" means any photograph or photographic reproduction, still or moving, or any videotape or live television transmission, of any person, such that the person is readily identifiable.

(1) A person shall be deemed to be readily identifiable from a photograph when one who views the photograph with the naked eye can reasonably determine that the person depicted in the photograph is the same person who is complaining of its unauthorized use.

(2) If the photograph includes more than one person so identifiable, then the person or persons complaining of the use shall be represented as individuals, rather than solely as

members of a definable group represented in the photograph. A definable group includes, but is not limited to, the following examples: a crowd at any sporting event, a crowd in any street or public building, the audience at any theatrical or stage production, a glee club, or a baseball team.

(3) A person or persons shall be considered to be represented as members of a definable group if they are represented in the photograph solely as a result of being present at the time the photograph was taken and have not been singled out as individuals in any manner.

(c) Where a photograph or likeness of an employee of the person using the photograph or likeness appearing in the advertisement or other publication prepared by or in behalf of the user is only incidental, and not essential, to the purpose of the publication in which it appears, there shall arise a rebuttable presumption affecting the burden of producing evidence that the failure to obtain the consent of the employee was not a knowing use of the employee's photograph or likeness.

(d) For purposes of this section, a use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign, shall not constitute a use for which consent is required under subdivision (a).

(e) The use of a name, voice, signature, photograph, or likeness in a commercial medium shall not constitute a use for which consent is required under subdivision (a) solely because the material containing such use is commercially sponsored or contains paid advertising. Rather it shall be a question of fact whether or not the use of the person's name, voice, signature, photograph, or likeness was so directly connected with the commercial sponsorship or with the paid advertising as to create a use for which consent is required under subdivision (a).

(f) Nothing in this section shall apply to the owners or employees of any medium used for advertising, including, but not limited to, newspapers, magazines, radio and television networks and stations, cable television systems, billboards, and transit ads, by whom any advertisement or solicitation in violation of this section is published or disseminated, unless it is established that such owners or employees had knowledge of the unauthorized use of the person's name, voice, signature, photograph, or likeness as prohibited by this section.

(g) The remedies provided for in this section are cumulative and shall be in addition to any others provided for by law.

(Legislative History: 1971 chapter 1595, 1984 chapter 1704).

B. Descendibility

California's descendibility statute for rights of publicity, Civil Code Section 990, was enacted in 1988 and provides as follows.

California Civil Code Section 990

'990. Deceased Personality's Name, Voice, Signature, Photograph, or Likeness in Advertising or Soliciting.

(a) Any Person who uses a deceased personality's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods, or services, without prior consent from the person or persons specified in subdivision (c), shall be liable for any damages sustained by the person or persons injured as a result thereof. In addition, in any action brought under this section, the person who violated the section shall be liable to the injured party or parties in an amount equal to the greater of seven hundred fifty dollars ($750) or the actual damages suffered by the injured party or parties, as a result of the unauthorized use, and any profits from the unauthorized use that are attributable to the use and are not taken into account in computing the actual damages. In establishing these profits, the injured party or parties shall be required to present proof only of the gross revenue attributable to the use and the person who violated the section is required to prove his or her deductible expenses. Punitive damages may also be awarded to the injured party or parties. The prevailing party or parties in any action under this section shall also be entitled to attorneys fees and costs.

(b) The rights recognized under this section are property rights, freely transferable, in whole or in part, by contract or by means of trust or testamentary documents, whether the transfer occurs before the death of the deceased personality, by the deceased personality or his or her transferees, or, after the death of the deceased personality, by the person or persons in whom the rights vest under this section or the transferees of that person or persons.

(c) The consent required by this section shall be exercisable by the person or persons to whom the right of consent (or portion thereof) has been transferred in accordance with subdivision (b), or if no such transfer has occurred, then by the person or persons to whom the right of consent (or portion thereof) has passed in accordance with subdivision (d).

(d) Subject to subdivisions (b) and (c), after the death of any person, the rights under this section shall belong to the following person or persons and may be exercised on behalf of and for the benefit of all of those persons, by those persons who, in the aggregate, are entitled to more than a one-half interest in the rights.

(1) The entire interest in those rights belong to the surviving spouse of the deceased personality unless there are any surviving children or grandchildren of the deceased personality, in which case one-half of the entire interest in those rights belong to the surviving spouse.

(2) The entire interest in those rights belong to the surviving children of the deceased personality and to the surviving children of any dead child of the deceased personality unless the deceased personality has a surviving spouse, in which case the ownership of a one-half interest in rights is divided among the surviving children and grandchildren.

(3) If there is no surviving spouse, and no surviving children or grandchildren, then the entire interest in those rights belong to the surviving parent or parents of the deceased personality.

(4) The rights of the deceased personality's children and grandchildren are in all cases divided among them and exercisable in the manner provided in Section 240 of the Probate Code according to the number of the deceased personality's children represented; the share of the children of a dead child of a deceased personality can be exercised only by the action of a majority of them.

(e) If any deceased personality does not transfer his or her rights under this section by contract, or by means of a trust or testamentary document, and there are no surviving persons as described in subdivision

(d), then the rights set forth in subdivision (a) shall terminate.

(f) (1) A successor-in-interest to the rights of a deceased personality under this section or a licensee thereof may not recover damages for a use prohibited by this section that occurs before the successor-in-interest or licensee registers a claim of the rights under paragraph (2).

(2) Any person claiming to be a successor-in-interest to the rights of a deceased personality under this section or a licensee thereof may register that claim with the Secretary of State on a form prescribed by the Secretary of State and upon payment of a fee of ten dollars ($10). The form shall be verified and shall include the name and date of death of the deceased personality, the name and address of the claimant, the basis of the claim, and the rights claimed.

(3) Upon receipt and after filing of any document under this section, the Secretary of State may microfilm or reproduce by other techniques any of the filings or documents and destroy the

original filing or document. The microfilm or other reproduction of any document under the provision of this section shall be admissible in any court of law. The microfilm or other reproduction of any document may be destroyed by the Secretary of State 50 years after the death of the personality named therein.

(4) Claims registered under this subdivision shall be public records.

(g) No action shall be brought under this section by reason of any use of a deceased personality's name, voice, signature, photograph, or likeness occurring after the expiration of 50 years from the death of the deceased personality.

(h) As used in this section, "deceased personality" means any natural person whose name, voice, signature, photograph, or likeness has commercial value at the time of his or her death, whether or not during the lifetime of that natural person the person used his or her name, voice, signature, photograph, or likeness on or in products, merchandise or goods, or for purposes of advertising or selling, or solicitation of purchase of, products, merchandise, goods or service. A "deceased personality" shall include, without limitation, any such natural person who has died within 50 years prior to January 1, 1985.

(i) As used in this section, "photograph" means any photograph or photographic reproduction, still or moving, or any video tape of live television transmission, of any person such that the deceased personality is readily identifiable. A deceased personality shall be deemed to be readily identifiable from a photograph when one who views the photograph with the naked eye can reasonably determine who the person depicted in the photograph is.

(j) For purposes of this section, a use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign, shall not constitute a use for which consent is required under subdivision (a).

(k) The use of a name, voice, signature, photograph, or likeness in a commercial medium shall not constitute a use for which consent is required under subdivision (a) solely because the material containing the use is commercially sponsored or contains paid advertising. Rather it shall be a question of fact whether or not the use of the deceased personality's name, voice, signature, photograph, or likeness was so directly connected with the commercial sponsorship or with the paid advertising as to constitute a use for which consent is required under subdivision (a).

(l) Nothing in this section shall apply to the owners or employees of any

medium used for advertising, including, but not limited to, newspapers, magazines, radio and television networks and stations, cable television systems, billboards, and transit ads, by whom any advertisement or solicitation in violation of this section is published or disseminated, unless it is established that the owners or employees had knowledge of the unauthorized use of the deceased personality's name, voice, signature, photograph, or likeness as prohibited by this section.

(m) The remedies provided for in this section are cumulative and shall be in addition to any others provided for by law.

(n) This section shall not apply to the use of a deceased personality's name, voice, signature, photograph, or likeness, in any of the following instances:

(1) A play, book, magazine, newspaper, musical composition, film, radio or television program, other than an advertisement or commercial announcement not exempt under paragraph (4).

(2) Material that is of political or newsworthy value.

(3) Single and original works of fine art.

(4) An advertisement or commercial announcement for a use permitted by paragraph (1), (2), or (3).

(Legislative History 1984 chapter 1704, 1988 chapter 113).

II. CASE LAW

Substantive decisions on California's statutory and common law rights of publicity are summarized below in reverse chronological order.

***Astaire v. Best Film & Video Corp.*, 1997 WL 336110 (9th Cir. (Cal.), June 20, 1997).**

In June 1997, the Ninth Circuit held that a promotional segment in an instructional dance video incorporating footage of Fred Astaire was exempt from liability under Section 990(n)(1).

Fred Astaire's widow, Robyn Astaire, sued Best Film & Video Corporation ("Best"), a New York corporation that manufactures, markets, and distributes pre-recorded videotapes. Mrs. Astaire alleged that Best's use of her late husband's image in a series of dance instructional videotapes violated her statutory right to control the use of her husband's name and likeness under California Civil Code Section 990. Each of Best's videotapes opened with about 90 seconds of footage of Fred Astaire from two of his motion pictures.

The United States District Court, Central District of California, Judge David V. Kenyon, granted summary judgment to Astaire's widow, holding that Best's use of the Astaire film clips violated the "'on or in products, merchandise, or goods'" prong

of Section 990(a).

The Ninth Circuit reversed and remanded, holding that Best's use of the Astaire clips was exempt from liability under Section 990(n)(1). Although by its terms, that provision only exempts film and television programs, the court reasoned that pre-recorded videotapes were encompassed in the "film" exemption. The Court concluded that the exemption applied even if Best's use of the Fred Astaire film clips was an advertisement or commercial announcement.

***Kareem Abdul-Jabbar v. General Motors Corp.*, 85 F.3d 407 (9th Cir. 1996).**

The Ninth Circuit held, in *Kareem Abdul-Jabbar,* that abandonment is not a viable defense to a right of publicity claim.

Kareem Abdul-Jabbar sued General Motors and its advertising agency for violations of the Lanham Act and his statutory and common law rights of privacy based on an Oldsmobile television commercial that aired during the NCAA basketball tournament. As an NCAA corporate sponsor, Oldsmobile referred, in the format of a trivia quiz, to an NCAA record: Lew Alcindor's selection as Most Outstanding Player in three NCAA tournaments. The United States District Court for the Central District of California, Judge Irving Hill, granted summary judgment to General Motors on the grounds that Abdul-Jabbar had abandoned his rights to the name Lew Alcindor by legally changing his name and refraining from all commercial or other use his birth name. The Ninth Circuit reversed,[1] holding that a legal name change is not a defense to Lanham Act ' 43(a) false endorsement or a right of publicity claim:

> "We hold that Abdul-Jabbar has alleged sufficient facts to state a claim under both California common law and section 3344. The statute's reference to 'name or likeness' is not limited to present or current use. To the extent GMC's use of the plaintiff's birth name attracted television viewers' attention, GMC gained a commercial advantage." *Abdul-Jabbar,* 85 F.3d at 415.

After remand, the case settled out of court.

***Montana v. San Jose Mercury News, Inc.*, 34 Cal.App.4th 790, 40 Cal.Rptr.2d 639 (Ct.App. 1995).**

In *Montana,* the California Court of Appeal affirmed summary judgment against football star Joe Montana's claim that a newspaper's poster reproducing its Super Bowl cover story violated his Section 3344 and common law rights of publicity. Noting that Section 3344(d) does not require consent for use of a "name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign," the court held that 1) the posters represented newsworthy events, and 2) a newspaper has a constitutional right to promote itself by reproducing its new stories.

***Newton v. Thomason*, 22 F.3d 1455 (9th Cir. 1994).**

In *Newton,* the Ninth Circuit held that naming a dramatic character after a celebrity was not an actionable violation of his right of publicity.

Country music performer and songwriter "Wood Newton" sued television producers

Harry Thomason and Linda Bloodworth-Thomason, Burt Reynolds, and Mozark Productions, Inc. alleging damages based on their use of his name for a character in a television series, "Evening Shade." The United States District Court for the Central District of California, Judge James Ideman, granted summary judgment in favor of defendants.

The Ninth Circuit (Circuit Judges Pregerson, O'Scannlain, and Fernandez) affirmed, holding that there was no evidence that Newton's name was used for a commercial purpose, as required for violation of his right of publicity.

***Dora v. Frontline Video, Inc.*, 15 Cal.App.4th 536, 18 Cal.Rptr.2d 790 (Ct.App. 1993).**

In this action, the California Court of Appeals affirmed Superior Court Judge David Horowitz' grant of summary judgment against surfer Mickey Dora, who complained that a videotape documentary misappropriated his right of publicity.

In 1987, Frontline Video, Inc. ("Frontline") produced a video documentary, "The Legends of Malibu," a documentary that chronicled the early days of surfing, showing contemporaneous footage of famous surfers, including Mickey Dora.

Arguing that he was never interviewed nor photographed by Frontline and did not consent to any use of his name, photograph, likeness, or voice, Dora sued Frontline for common law and statutory misappropriation of his name and likeness. Superior Court Judge David Horowitz granted summary judgment to Frontline and Dora appealed.

Writing for the California Court of Appeal (Second District), Judge Nott held that Frontline was not required to obtain Dora's consent and affirmed the summary judgment because the documentary contained matters of public interest and "public affairs" exempted from liability under Section 3344(d): "[Surfing] has created a lifestyle that influences speech, behavior, dress, and entertainment, among other things. . . . It would be difficult to conclude that a surfing documentary does not fall within the category of public affairs." *Id.* at 546.

***Waits v. Frito-Lay, Inc.*, 978 F.2d 1093 (9th Cir. 1992), cert. denied, 506 U.S. 1080 (1993).**

In *Waits,* the Ninth Circuit affirmed a $2.5 million verdict against Frito-Lay and its advertising agency on a voice imitation claim.

Singer Tom Waits sued Frito-Lay claiming false endorsement under the Lanham Act and misappropriation of his voice in a Frito-Lay radio commercial. After trial before Judge James Ideman in the United States District Court (Central District of California), the jury returned a $2.5 million verdict in Waits' favor comprised of $375,000 in compensatory damages, $2 million in punitive damages, and the remainder in attorneys' fees.

The Ninth Circuit affirmed, citing its holding in *Midler v. Ford Motor Co.,* 849 F.2d 460, 463 (9th Cir. 1988): "when a distinctive voice of a professional singer is widely known and is deliberately imitated in order to sell a product, the sellers have appropriated what is not theirs and have committed a tort in California."

The court also affirmed the $2 million punitive damages award finding that

defendants consciously disregarded Waits' right to control his identity. *Waits,* 978 F.2d at 1105. In affirming the compensatory damage award, the court referred to clear evidence of Waits' outspoken public stance against doing commercial endorsements, his embarrassment when the commercial aired, and the injury to his good will and future publicity value. *Id.* at 1103-1104.

***White v. Samsung,* 971 F.2d 1395 (9th Cir. 1992), cert. denied, 113 S.Ct. 2443 (1993).**

In *White,* the Ninth Circuit found triable issues of fact regarding whether game show hostess Vanna White's likeness was misappropriated in Samsung's print advertisement depicting a futuristic robot game show hostess.

White claimed that the robot advertisement, which was one in a series of humorous depictions of life in the future, violated her rights under the California Civil Code, the common law right of publicity, and the Lanham Act. The print advertising campaign hypothesized "outrageous future outcomes" for various aspects of popular culture such as a future depiction of raw steak as "health food" and a future game show featuring robot hostesses rather than human beings. The advertisement showed a feminine robot -dressed in a wig, gown, and jewelry - beside a "Wheel of Fortune"-like game show set with the caption, "Longest-running game show, 2012 A.D." The United States District Court for the Central District of California, Judge Ronald S.W. Lew, granted a summary judgment in favor of Samsung on each claim.

The Ninth Circuit (Circuit Judges Goodwin, Pregerson and Alarcon) reversed, holding that White's common law right of publicity was not limited to appropriation of her "name or likeness," and included any method of invoking an individual's "identity". After remand, the jury awarded damages of $403,000 in response to White's claim of $6 million in compensatory damages. The matter settled without further proceedings.

***New Kids on the Block v. News America Publishing, Inc.,* 971 F.2d 302 (9th Cir. 1992).**

In this decision, the Ninth Circuit found that an opinion survey and a "900" number asking readers to identify the sexiest member of a rock and roll band were not actionable violations of any right of publicity.

New Kids on the Block sued News America Publishing, Inc. (then publisher of "Star") and Gannett Satellite Information Network, Inc. (publisher of "USA Today"), alleging trademark infringement and misappropriation of rights of publicity based on defendants' pay-per-call public opinion polls asking which member of the group was the sexiest or most popular.

On cross motions for summary judgment, the United States District Court, Judge William J. Rea, held that the First Amendment protected the publishers against Lanham Act and right of publicity claims because the polls were related to news-gathering and dissemination of information.

The Ninth Circuit affirmed, holding that the New Kids' right of publicity claims were not actionable because they fell within the exemption under Section 3344(d) for use "in connection with any news, public affairs, or sports broadcast or account."

***Joplin Enterprises v. Allen*, 795 F. Supp. 349 (W.D. Wash. 1992).**

In *Joplin,* the District Court applied California's Section 990 to hold that a two-act biographical play about deceased vocalist Janis Joplin was not actionable.

Janis Joplin's devisees alleged that the drama was a copyright infringement and misappropriation of Joplin's rights of privacy and publicity. The District Court, Judge Coughenour, concluded that Joplin's estate could not maintain a viable right of publicity claim under California Civil Code '990 because, by its terms, that section applies to "merchandise, advertisements, and endorsements" and exempts any "play," "book," or "musical composition" from liability.

***Midler v. Ford Motor Co.*, 849 F.2d 460 (9th Cir. 1988), cert. denied sub nom *Young Rubican, Inc. v. Midler*.**

In this 1988 decision, the Ninth Circuit "recognized," a California common law right of publicity proscribing imitations of a professional singer's voice for commercial purposes.

Singer Bette Midler sued Ford Motor Company and its advertising agency based on a television commercial employing a "sound alike" vocalist performing one of Midler's well known hit songs, "Do You Want to Dance." The United States District Court for the Central District of California, Judge Ferdinand F. Fernandez, entered summary judgment in favor of defendants, following a then established line of cases holding voice imitation was not actionable.

The Ninth Circuit (Circuit Judges Hug, Tang, and Noonan) reversed, holding that although Midler could not state a claim for violation of Section 3344 because her actual voice was not used in the commercial, she could nevertheless state a viable claim for violation of her common law right of publicity. Noting that Ford sought "an attribute of Midler's identity" and that "[i]ts value was what the market would have paid for Midler to have sung the commercial in person" *Midler,* 849 F.2d at 463, the court held as follows:

> "We hold only that when a distinctive voice of a professional singer is widely known and is deliberately imitated in order to sell a product, the sellers have appropriated what is not theirs and have committed a tort in California. Midler has made a showing, sufficient to defeat summary judgment, that the defendants here for their own profit in selling their product did appropriate part of her identity." *Id.* at 463-464.

At trial, Midler was awarded $400,000 in compensatory damages. The judgment was affirmed on appeal.

***Eastwood v. Superior Court*, 149 Cal.App. 409, 198 Cal.Rptr. 342 (Ct.App. 1983).**

This California appellate decision allowed actor Clint Eastwood to state a right of publicity cause of action against *The National Enquirer* magazine based on a cover story showing Eastwood's photograph above the headline, "Clint Eastwood in Love Triangle with Tanya Tucker." *Eastwood,* 198 Cal.Rptr. at 344-345.

Eastwood sued *The National Enquirer* for false light invasion of privacy and for

commercial appropriation of name, photograph and likeness under California common law and Civil Code Section 3344. In its April 13, 1982 edition, the *Enquirer* published a 600-word article about Eastwood's romantic involvement with two other celebrities, singer Tanya Tucker and actress Sondra Locke, featuring Eastwood on the magazine's cover page.

Reversing a demurrer sustained without leave to amend, the Court of Appeal held that Eastwood had stated a viable claim. Without explicit reliance on the Ninth Circuit's decision in *Midler v. Ford Motor Company,* the court implicitly adopted it by broadly articulating the elements of California's common law right of publicity as follows:

"A common law cause of action for appropriation of name or likeness may be pleaded by alleging (1) the defendant's use of the plaintiff's identity; (2) the appropriation of plaintiff's name or likeness to defendant's advantage, commercially or otherwise; (3) the lack of consent; and (4) resulting injury." *Id.* at. 347.

***Groucho Marx Productions, Inc. v. Day and Night Company, Inc.*, 689 F.2d 317 (2d Cir. 1982).**

In this decision preceding the Legislature's 1988 enactment of Civil Code Section 990, the Second Circuit concluded that rights of publicity were not descendible under California common law.

Defendant Day and Night Company produced a Broadway musical "A Day in Hollywood/A Night in the Ukraine." The play, "described by its authors as a 'satiric comment' on Hollywood in the 1930s" included a fanciful depiction of how the Marx Brothers would have dramatized Chekhov's novel *The Bear.* Although the Marx Brothers were not depicted by name, the script called for three principal performers to reproduce the appearance and comedy style made memorable by Groucho, Chico, and Harpo." *Id.* at 318-319.

The Marx Brothers' assignees sued for interference with their publicity rights. The United States District Court for the Southern District of New York, Judge William Conner, applied New York law to grant summary judgment to the Marx Brothers' assignees, holding that the right of publicity was descendible. The Second Circuit (Circuit Judges Newman, Pierce and Cannella (sitting by designation)) held that "the descendibility of the Marx Brothers' rights of publicity [was] governed by California law and that . . . such rights either [did] not survive death or at least [did] not entitle the plaintiffs to relief in this case." *Id.* at 318.[2]

***Cher v. Forum Int'l Ltd.*, 692 F.2d 634 (9th Cir. 1982), cert. denied, 462 U.S. 1120 (1983).**

Actress/celebrity "Cher" sued a tabloid magazine and freelance writer, Fred Robbins, based on a published article billed as an "exclusive" interview with Cher. Cher had given Robbins an interview for a story to be published in *Us* magazine. At Cher's request, *Us* declined to publish the article. Robbins eventually sold the interview to Forum International and *Star.* Based upon the headlines, cover page promotions, and related advertising, Cher alleged breach of contract, unfair competition, misappropriation of name and likeness, misappropriation of her right of publicity, and violations of the Lanham Act.

The United States District Court for the Central District of California, Judge Manuel L. Real, entered judgment in favor of Cher, and the Ninth Circuit affirmed, in part. The Ninth Circuit held, among other things, that Cher was not damaged by *Star*'s allegedly exaggerated "exclusivity" claims and that the First Amendment protected the magazines from Cher's right of publicity claims so long as the publications not published with actual malice.

However, the Ninth Circuit went on to hold that *Forum* misappropriated Cher's right of publicity by falsely indicating that she had revealed facts to *Forum* that she would not reveal to a rival magazine, and by falsely indicating that she endorsed the magazine. The Ninth Circuit affirmed an award of $100,000 in special damages, $69,000 in general damages, and $100,000 in punitive damages. *Cher*, 692 F.2d at 640.

***Clark v. Celeb Publishing, Inc.*, 530 F. Supp. 979 (S.D.N.Y. 1981).**

In this action applying California law, the District Court awarded $25,000 in emotional distress damages based on an unauthorized publication of Linda Clark's photographs in *Celeb Magazine*. Clark, a self-employed professional model and actress, sued Celeb Publishing, Inc. for invasion of privacy and unauthorized use of her photographs that appeared "in a broad range of advertisements, as well as in *Forum* and *Penthouse Magazine* . . . ."

Noting that Clark resided in California and suffered her alleged injuries in California, District Judge Motley of the United States District Court for the Southern District of New York applied California law, rather than New York law. Judge Motley awarded $25,000 in damages for mental anguish resulting from the unauthorized publication of photographs in what was characterized as a low quality and very explicit pornographic magazine. He also awarded $6,750 in lost compensation, and a $7,000 license fee for the unauthorized use of her photographs.

***Lugosi v. Universal Pictures*, 603 P.2d 425 (Cal. 1979).**

In this decision preceding (and precipitating) the Legislature's enactment of Section 990, the California Supreme Court held that rights of publicity were not descendible in California.

Bela Lugosi's heirs, Hope Linninger Lugosi and Bela George Lugosi, sued to enjoin and recover profits from Universal Pictures for licensing Lugosi's name and image on merchandise reprising Lugosi's title role in the 1930 film, "Dracula."

The California Supreme Court faced the question whether Bela Lugosi's film contracts with Universal included a grant of merchandising rights in his portrayal of Count Dracula, and the descendibility of any such rights. Adopting the opinion of Justice Roth for the Court of Appeal, Second Appellate District, the court held that the right to exploit one's name and likeness is personal to the artist and must be exercised, if at all, by him during his lifetime. *Lugosi*, 603 P.2d at 431.

***Guglielmi v. Spelling-Goldberg Productions*, 25 Cal.3d 860, 160 Cal.Rptr. 352, 603 P.2d 454 (Cal. 1979).**

In this companion decision to *Lugosi*, the California Supreme Court concluded that rights of publicity were not descendible under California law. The plaintiff, Rudolph

Valentino's nephew and legal heir, filed suit seeking damages and injunctive relief claiming that defendant Spelling-Goldberg Productions misappropriated Valentino's right of publicity by producing a biographical film.

Superior Court Judge AugustJ. Goebel dismissed Guglielmi's complaint. The Court of Appeal (Second District) affirmed, noting that because Valentino had not exploited his name and likeness during his lifetime, his name and likeness could be used by others without liability to his heirs for such use irrespective of the nature of the use. *Guglielmi v. Spelling,* 73 Cal.App.3d 436, 140 Cal.Rptr. 775 (Ct.App. 1977). Citing its decision in *Lugosiv. Universal Pictures,* 603 P.2d 425, 431 (Cal. 1979) (holding that rights of publicity expired upon death), the California Supreme Court affirmed the dismissal.

***Motschenbacher v. R.J. Reynolds Tobacco Co.*, 498 F.2d 821 (9th Cir. 1974).**

In *Motschenbacher,* the Ninth Circuit held that a photograph depicting distinctive aspects of a race car driver's car was an actionable misappropriation of the driver's identity under California law.

Lothar Motschenbacher, a professional race car driver, sued R.J. Reynolds Tobacco Co. and the William Esty Company for injunctive relief and damages, alleging misappropriation of his name, likeness, and personality in a television commercial. The commercial "utilized a 'stock' color photograph depicting several racing cars on a racetrack. Plaintiff's car appear[ed] in the foreground, and although Plaintiff is the driver, his facial features [were] not visible." *Motschenbacher,* 498 F.2d at 822.

The United States District Court for the Central District of California, Judge Manuel L. Real, granted summary judgment in favor of the Defendants who had altered the photograph by changing the numbers on all racing cars depicted, transforming Motschenbacher's number '11' into '71' . . . attaching a "wire-like device known as a 'spoiler' to plaintiff's car, . . . [and] add[ing] the word 'Winston', the name of their product, to that spoiler . . ." *Id.*

The Ninth Circuit (Circuit Judges Koelsch, Hufstedler, and Trask) reversed, holding that California courts would afford legal protection to an individual's proprietary interest in his own identity. According to the Court, the fact that Motschenbacher's "likeness" was unrecognizable in the commercial and that R.J. Reynolds had changed the number of Motschenbacher's racing car from "11" to "71" and added a "spoiler" to the car did not preclude a finding that Motschenbacher was identifiable as the plaintiff in view of automobile's distinctive markings: white pinstriping, oval medallion, and red color.

Endnotes

[1] Presiding over this appeal were Judges T.G. Nelson and Kleinfeld, Circuit Judges, and Charles Legge, District Judge, sitting by designation.[back ^]

[2]The court concluded that the Plaintiffs could not prevail: "Obviously, if no right of publicity survives death, the plaintiffs have no rights after the deaths of the Marx Brothers. Even if there is a limited descendible right, applicable to a product or service promoted by the celebrity, the defendants are not using the names or likenesses of the Marx Brothers in connection with any product or service that the comedians promoted during their lives. Since California law would recognize, at

most, a descendible right of publicity only in connection with particular commercial situations - products and services - that a celebrity promoted during his lifetime, we conclude that California would not recognize a descendible right of publicity that protects against an original play using a celebrity's likeness and comedic style." *Marx,* 689 F.2d at 323.[back ^]

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Pennsylvania

Effective: February 07, 2003

Purdon's Pennsylvania Statutes and Consolidated Statutes Currentness
Title 42 Pa.C.S.A. Judiciary and Judicial Procedure (Refs & Annos)
Part VII. Civil Actions and Proceedings
Chapter 83. Particular Rights and Immunities (Refs & Annos)
Subchapter A. Rights of Action

§ 8316. Unauthorized use of name or likeness

(a) Cause of action established.–Any natural person whose name or likeness has commercial value and is used for any commercial or advertising purpose without the written consent of such natural person or the written consent of any of the parties authorized in subsection (b) may bring an action to enjoin such unauthorized use and to recover damages for any loss or injury sustained by such use.

(b) Parties authorized to bring action.–Such action may be brought by:

(1) The natural person.

(2) A parent or guardian of a natural person, if the natural person is a minor.

(3) If such natural person is deceased, any person, firm or corporation authorized in writing to license the commercial or advertising use of the natural person's name or likeness by the natural person during the natural person's lifetime or by will or other testamentary device; an executor named in a will or designated by a court of competent jurisdiction; or where there is no such authorization, then by the deceased person's surviving spouse at the time of death until the surviving spouse's death or, in a case where there is no surviving spouse, then any other heir or group of heirs having at least a 50% interest in the deceased person's estate as provided for under law.

(4) Any other person, firm or corporation authorized in writing by such natural person to license the commercial or advertising purposes of the person's name or likeness.

(c) Repose.–No action shall be commenced under this section more than 30 years after the death of such natural person.

(d) Immunity.–No person, firm or corporation, including their employees and agents, in the business of producing, manufacturing, publishing or disseminating material for commercial or advertising purposes by any communications medium shall be held liable under this section unless they had actual knowledge of the unauthorized use of the name or likeness of a natural person as prohibited by this section.

(e) Definitions.–As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Commercial or advertising purpose."

(1) Except as provided in paragraph (2), the term shall include the public use or

holding out of a natural person's name or likeness:

(i) on or in connection with the offering for sale or sale of a product, merchandise, goods, services or businesses;

(ii) for the purpose of advertising or promoting products, merchandise, goods or services of a business; or

(iii) for the purpose of fundraising.

(2) The term shall not include the public use or holding out of a natural person's name or likeness in a communications medium when:

(i) the natural person appears as a member of the public and the natural person is not named or otherwise identified;

(ii) it is associated with a news report or news presentation having public interest;

(iii) it is an expressive work;

(iv) it is an original work of fine art;

(v) it is associated with announcement for a commercial or advertising purpose for a use permitted by subparagraph (ii), (iii) or (iv); or

(vi) it is associated with the identification of a natural person as the author of or contributor to a written work or the performer of a recorded performance under circumstances in which the written work or the recorded performance is lawfully produced, reproduced, exhibited or broadcast.

"Commercial value." Valuable interest in a natural person's name or likeness that is developed through the investment of time, effort and money.

"Communications medium." Includes, but is not limited to, a newspaper, magazine, book, newsletter, billboard, telephone, radio, television, recording, computer software, digital communications network, transit ad, audiovisual work or global communications network.

"Expressive work." A literary, dramatic, fictional, historical, audiovisual or musical work regardless of the communications medium by which it is exhibited, displayed, performed or transmitted, other than when used or employed for a commercial or advertising purpose.

"Name" or "likeness." Any attribute of a natural person that serves to identify that natural person to an ordinary, reasonable viewer or listener, including, but not limited to, name, signature, photograph, image, likeness, voice or a substantially similar imitation of one or more thereof.

"Natural person." A living person, or a deceased person who was domiciled within this Commonwealth at the time of such person' s death.

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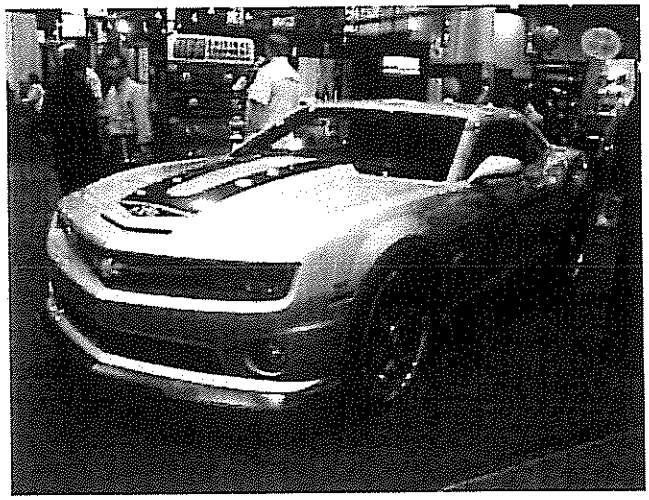
Re Cancellation 92052197

DECLARATION OF LESTER QUAM

(Unsigned draft of April 20, 2011)

My name is Lester Quam and I reside in Chicago, Illinois. I am an attorney, and also the owner of two original YENKO high-performance automobiles and a long-time member and supporter of the Yenko Sportscar Club. I am personally familiar with the facts set forth in this Declaration.

In October of 2009 I was asked by Terri Yenko Gould, as Executor of Don Yenko's estate, to investigate the apparent misappropriation of the Yenko name and trademarks by an aftermarket auto parts supplier named Steve Leonard, and his company General Marketing Capital, Inc. In the course of my investigation I discovered that Mr. Leonard had announced that he was introducing a "new" YENKO Camaro at the 2009 SEMA show in Las Vegas, Nevada. I personally attended that show and saw the subject automobile, as pictured in the photos below.



As is apparent from the photos, the subject automobile bore numerous indicia of apparent sponsorship or approval by Don Yenko's estate, including the name YENKO, the Yenko crest, and the symbol "sYc", which is known to the automotive community as standing for "Yenko Sports Cars" or "Yenko Super Car". I therefore immediately contacted Ms. Yenko Gould and

asked her about it. She confirmed that she had never been asked nor had she ever authorized or approved Mr. Leonard's adoption and use of the Yenko name and trademarks in this manner.

When I looked further into the matter and determined that Mr. Leonard had caused several press releases to be issued to the automotive press, claiming to have "purchased" the rights to use the Yenko name and marks. My investigation turned up several instances of these false claims, as shown in the following exhibits submitted with Ms. Yenko Gould's Declaration:

8. GMCI press release (from Chevy High Performance Magazine Internet blog) "*Yenko Muscle Car Legend Set To Return*"; "*Jeff Leonard is the man behind. General Marketing Capital Incorporated (GMCI), which currently has ownership of the Yenko trademark...*" (Discovery Production No. 32)

9. GMCI press release: "*Official 2010 Yenko Camaro Prototype Debuts at SEMA*" (11/3/2009) (Discovery Production No. 35)

10. GMCI press release: "*Westminster, Calif. – (October 14, 2009) As the 45th Anniversary of the Yenko legacy draws near, General Marketing Capital Incorporated (GMCI) announced today its ownership of the classic trademark*" (Discovery Production No. 36)

11. GMCI press release (from Autoblog) "*Yenko brand brought back to life*" (11/03/2009) (Discovery Production No. 26)

12. GMCI press release (from AutoGuide) "*GMCI has just announced that it has purchased the Yenko name and brand*" (Discovery Production No. 27)

13. Camaro Forum (Internet thread) comments on GMCI's announcement of its "*ownership of the classic trademark*" (Oct 2009) (Discovery Production No. 37)

14. GMCI press release (from Sports Car Market (2009), Jeff Leonard's claim of "*officially licensed Yenko products*" (Discovery Production No. 10)

I am also personally familiar with the continuing popularity and interest in Yenko automobiles from my many years of following the collector hobby, and from my own experiences with the Yenko Sportscar Club, its events and publications. This is further shown by the number of trade publications and Internet chat rooms which picked up and repeated Mr. Leonard's claim to be the "owner" of the Yenko name and marks, as exemplified by the exhibits listed above. It is also shown by the numerous scale models of Yenko automobiles which have

been put on the market, including those made by, or purportedly licensed by, the prior owner of the trademark registration for "toy cars" which is at issue in this cancellation proceeding.

From my personal knowledge and experience in the field of high-performance automobiles, and particularly vehicles with high collector value because of their heritage and history, it is my opinion that the unauthorized appropriation and use of the Yenko name and marks by Mr. Leonard and his companies will have the natural and probable effect of diluting their value, causing confusion in the automotive marketplace as to source, and cause financial injury to the Estate of Don Yenko and his heirs.

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: _____

Date: _____