

ESTTA Tracking number: **ESTTA459359**

Filing date: **02/29/2012**

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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Date	02/29/2012
Attachments	Petitioner's Main Brief.pdf (31 pages)(303450 bytes)

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

In the matter of Trademark Registration
No. 2049857, registered April 1, 1997.

Terri Yenko Gould, Executor,)	
)	
Petitioner)	
)	
v.)	Cancellation 92052197
)	
SuperCar Collectibles, Limited)	
)	
Registrant)	
)	

**PETITIONER'S TRIAL BRIEF
IN SUPPORT OF CANCELLATION**

Pursuant to Trademark Rule 2.128, Petitioner Terri Yenko Gould, Executor of the Estate of Donald Frank Yenko, hereby files her main brief in support of cancellation of the subject trademark registration.

Dated: February 29, 2012

Respectfully submitted,

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¹ The majority of Mr. Leonard's testimony was designated "confidential" and is therefore treated in Petitioner's Supplemental Brief, filed herewith and similarly designated.

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II. PETITIONER'S STATEMENT OF ISSUES

A. Does Petitioner Terri Yenko Gould, being Donald Frank Yenko's daughter and the Executor of his estate, have legal standing to bring this cancellation proceeding?

B. Can General Marketing Capital Inc. ("GMCI"), as the recent assignee of the registration in issue, lawfully claim exclusive right to use the name YENKO without license or authority from the Yenko family or the Estate of Donald Frank Yenko?

C. Can GMCI lawfully claim to be the exclusive lawful owner of the name YENKO for any sports car use, including "toy cars"?

III. DESCRIPTION OF THE RECORD

Petitioner's evidence of record consists of:

Testimonial deposition of Terri Gould Yenko, July 13, 2011 (Doc #44)

Testimonial deposition of Tom Clary, July 15, 2011, (Doc #45)

Testimonial deposition of Lester Quam, July 18, 2011 (Doc # 46)

Testimonial deposition of George E. Bullwinkel, July 18, 2011 (Doc #47)

Testimonial deposition of John Latella, December 20, 2011 (Doc #96)

Petitioner's Exhibits 1 - 36 (Docs #13 -32)

Respondent's evidence of record consists of:

Testimonial deposition of Scott D. Dahlberg (including confidential excerpts), August 30, 2010 (Docs #50, 53, 54)

Testimonial deposition of James R. Sullivan, August 30, 2010 (Doc #55)

Respondent's Notice of Reliance, October 31, 2011 (Doc #57)

Testimonial deposition of Jeffrey Leonard, October 25, 2011 (Doc #58, submitted under seal)

Respondent's Exhibits 1 - 93 (Docs #51-95)

V. PETITIONER'S STATEMENT OF THE FACTS

A. A SUMMARY OF THE CASE

Petitioner Terri Yenke Gould, as Executor of the Estate of her father Donald Frank Yenke, has filed this petition to cancel the registration of General Marketing Capital Inc. ("GMCI") of the name YENKO for "toy cars", which it recently acquired from its former owner, SuperCar Collectibles Limited, during the pendency of this proceeding.

Until his untimely death in 1987, Donald Frank "Don" Yenke was the designer and builder of a well-known and respected line of competition and sports vehicles sold under his name. Between 1966 and 1981, over 800 high-performance vehicles were manufactured and sold under Don Yenke's direction and control, all bearing the name and mark YENKO.

At one time, Don Yenke, through his company Yenke Sportscars, Inc., was the owner of U.S. Trademark Registration 0930794 (Registered March 14, 1972) for the following YENKO and Design:



That registration was not renewed after his death in 1987 and therefore expired in 1992. However, the Don Yenke's name and reputation have remained strong to the present day because of the continued interest and devoted efforts of thousands of automobile enthusiasts, including, but not

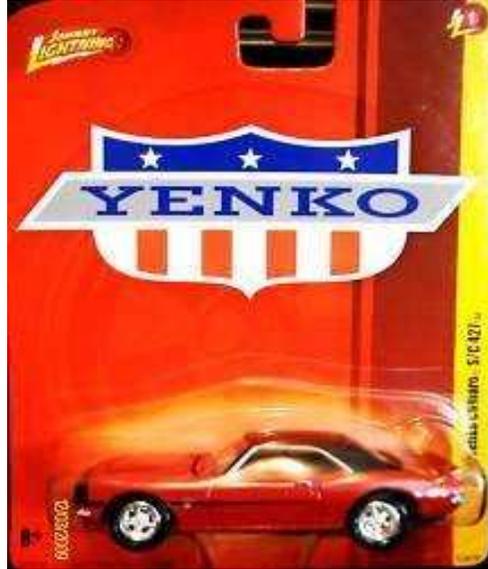
limited to, members of the Yenko Sportscar Club, a Missouri not-for-profit corporation formed by a YENKO owner, Tom Clary, in 1998. In connection with its membership services, the Club enjoys the exclusive use of the YENKO name and mark by virtue of written permission from the Estate and heirs of Don Yenko. That permission states in pertinent part:

[A] national organization needs to be developed to better handle the ever increasing problem of proving the difference between a fake Yenko automobile and the original. It is also vitally important to create a safe-guard for all other Yenko artifacts which help preserve the important history of the Yenko legacy.

The original applicant for the registration at issue was one James Sullivan, an individual who, after Don Yenko's death, and without the knowledge or permission of the Yenko Estate, applied for and was issued U.S. Trademark Registration No. 2049857 (registered April 1, 1997) for "toy cars". On or about March 15, 1998 he assigned it to the original respondent, SuperCar Collectibles Ltd. ("SuperCar"). Well after the present cancellation proceeding was under way, GMCI bought the registration from SuperCar by an assignment dated September 9, 2010. There is, however, no evidence record that GMCI is actually selling the described merchandise.

During its ownership of the subject registration, and without the knowledge or authorization of Ms. Yenko or the Estate, SuperCar marketed in interstate commerce certain replicas of genuine YENKO automobiles, one of which is pictured below (see Exhibits P. 36, R. 16²):

² Petitioner's Exhibits are indicate as "P. [number]", Respondent's as "R. [number]"



Through discovery, Petitioner learned that SuperCar also granted at least one purported license to use the YENKO name on reproductions of real historic YENKO automobiles, an example of which is shown below:



The evidence, summarized below, shows that apart from the limited permission given the Yenko Sportscar Club, the Estate and heirs have never given Sullivan, SuperCar, GMCI or anyone else permission to use the name or mark YENKO for any purpose, or to license it to others.

B. TERRI YENKO GOULD

Terri Yenko Gould's testified that after her father's death his will was admitted to probate. Shortly thereafter she was made Executor, or administratrix, of his probate estate. (T. 10³) She is certain that Don gave no permission or license to use his name or the initials "SYC" (Yenko Super Car) to anyone. (T. 11) Since then, although she has been asked to approve such uses, but never did (T. 12, 19-20), but with but a single exception. In 1998 she was informed that a group of Yenko enthusiasts led by Tom Clary wanted to form a collector's club, and a letter of approval was drafted by her attorney John Connelly and sent with her consent. (T. 13-14)

In late 2009 she was told by Lester Quam, a Club member, an attorney, and also the owner of an authentic YENKO automobile, that someone was about to introduce a "new" YENKO Camaro at the December SEMA (Specialty Equipment Manufacturers' Association) show in Las Vegas. Mr. Quam went to that show. He took pictures and collected press releases, all of which pointed to General Marketing Capital, Inc. ("GMCI") and Jeffrey Leonard as their source. (T. 17-19)

Ms. Yenko Gould was quite clear that it was her position that to allow Mr. Leonard and GMCI to market a new Chevrolet automobile under the name YENKO *"would undermine the integrity of my Dad's work, and it would be misrepresented as sanctioned by myself, my family, which it is not"*. (T. 20-21) This led to her retaining the undersigned trademark counsel and the filing of

3 Reference to each witness' testimony is referred to as "T [page]" throughout.

this petition to cancel the first of numerous unauthorized trademark registrations, all of which the USPTO records show are now owned by GMCI.

In her testimonial deposition, Ms. Yenko Gould identified and authenticated Petitioner's exhibits 1- 14, and Respondent's exhibits 1 - 3.

C. TOM CLARY

An American "muscle car" enthusiast since high school, Mr. Clary purchased his first original Yenko, a 1969 YENKO Camaro, in the late '90s. He was surprised to find no formal organization for fans and owners of Yenko automobiles, so he contacted John Connolly, who then represented the Yenko family, and together they arranged an inaugural "reunion" of Yenko owners and enthusiasts in 1998. That initial meeting started a series of annual conventions, and Mr. Clary became the president and chief executive officer of what is today the Yenko Sportscar Club. (While Don Yenko's second wife - Terri Yenko Gould's stepmother - attended that first convention, Terri did not. T. 26)

Mr. Clary identified and authenticated numerous exhibits showing the continued popularity and interest among automobile enthusiasts, including articles from popular magazines, Internet-based chatroom conversations, the popular Hollywood movie "Fast and Furious", and (more particularly) the November, 2010 "Muscle Car and Corvette National Show" at Chicago's Rosemont, Horizon where numerous YENKO automobiles, including both original YENKOs as well as unofficial replicas, were exhibited. In addition, the

SuperCar Collectibles, at that time the owner of the subject trademark registration, operated a sales both at that show offering YENKO replica model cars.

Speaking from personal experience as head of the Club, and the owner of five genuine YENKO automobiles, he stated that recent actual sale prices of these cars was running from \$220,000 to \$340,000. He personally owns these genuine YENKO Chevrolet automobiles: a 1969 Camaro, a 1960 Chevelle, a 1969 Nova, a 1970 Nova, and a 1971 Vega. (T. 18-19)

Mr. Clary has always followed the direction of the Club's original letter of permission from the Yenke Estate (P. 6), and from time to time coordinates with Terri Yenke Gould by telephone to confirm that he has her continued approval for the Club's activities. (T. 28)

In his testimonial deposition, Mr. Clary identified and authenticated Petitioner's exhibits 15 - 26, inclusive.

D. LESTER QUAM

Lester Quam, an attorney and Las Vegas resident who is licensed to practice law in four states, is like Mr. Clary a long-time performance car enthusiast. He personally owns two original YENKO sports cars, a 1968 Camaro and a 1969 Camaro. He has been with the Yenke Sportscar Club for several years (T. 5-6).

After attending the October 2009 SEMA show in Las Vegas, he contacted Ms. Yenke Gould about what he saw: a supposedly "new" 2010 YENKO

Chevrolet Camaro. (T. 7-8) It was, of course, Mr. Leonard's prototype, which was neither sponsored nor licensed by the Yenke family or Don Yenke's Estate.

At the SEMA show Mr. Quam also observed signs, advertising material and "press releases" apparently originating with Mr. Leonard and his company. Upon searching the Internet, Mr. Quam found even more. Mr. Leonard's specially decorated silver/black Camaro (P. 36)was being held out to the public as a "2010 Yenke Prototype", intended for eventual mass limited production for the high-performance market.

What did this indicate to Mr. Quam, as an enthusiast and personal owner of two genuine YENKO automobiles? *"That the [YENKO] name is still very viable and active."* (T. 14)

Mr. Quam was handed a current GMCI catalog (not marked as an exhibit) from which he identified numerous items offered for sale under the YENKO name and mark. (T. 14-15) When asked if he, based on his personal knowledge and experience, would ever consider buying a "YENKO" automobile from Mr. Leonard or his company, his answer was clear. *"No. ... It's not a Yenke automobile. It's just a car with Yenke badging."* (T. 16-18) Why not? *It "diminishes the value of my automobiles."* (T. 17) He elaborated:

A. From my experience from watching these types of automobiles for the last 35 years, Carol Shelby, a manufacturer of classic automobiles in the '60s had his cars essentially banded, like in this particular fashion as Cobras, several different companies did it over the years and it's pretty much diminished the value of his cars for decades now. And it causes an enormous amount of confusion as to what's a real Shelby and what's a real Cobra and what's not a real Cobra, and that problem still exists for Carol Shelby today". (T. 18)

Mr. Quam also attended the November, 2010 Chicago "Muscle Car and Corvette National Show", and like Mr. Clary, testified from personal observation to the authenticity of the photos of the "YENKO" branded model cars displayed and sold there by GMCI's predecessor in interest and former Respondent SuperCar Collectibles. (T. 19, R. 18, 19)

In his testimonial deposition, Mr. Quam identified and authenticated Petitioner's exhibits 8 - 14, 18, 19 and 36.

E. GEORGE BULLWINKEL (conducted by attorney Quam)

Mr. Bullwinkel, Petitioner's attorney of record, testifying for the sole purpose of laying the foundation for certain documents, identified the following exhibits:

- P. 26 12/11/2009 Letter to SuperCar Collectibles, then the owner of the registration in issue;
- P. 27 Photo of a locally purchased Revell model '69 YENKO Camaro car kit bearing a legend that the YENKO name is used under license;
- P. 28 02/12/2010 letter to Revell questioning its use of the YENKO name;
- P. 29 03/09/2012 response from Revell's attorneys;
- P. 30 09/09/2010 assignment of Reg. 2049847 from SuperCar Collectables to GMCI;
- P. 31 Summary compilation of USPTO records involving the marks YENKO, SYC and YENKO DEUCE, all belonging to GMCI;
- P. 32 Excerpt from Lanham Trademark Act, Sec. 14, 15 U.S.C. §1064;
- P. 33 California Civil Code Section 3344 (Right of Publicity);
- P. 34 Pennsylvania Statutes, 42 Pa.C.S.A. 83A (Right of Publicity)

F. SCOTT DAHLBERG (By Respondent)

Mr. Dahlberg is the owner of SuperCar Collectibles, which was the original respondent in this action, and is GMCI's assignor of the registration in question. He started the company in 1996, and has sold various YENKO "liveried" die cast model automobiles ever since. He built the first prototype YENKO model himself. (T. 8) His company advertises widely in model car collector magazines, and more recently on the Internet.

SuperCar Collectibles purchased the registration in question from the original registrant and co-founder of the company James Sullivan, who left the company in about 2008. (T. 10) Since then, it has granted "licenses" to use the YENKO name to several other companies, including Revell. (T. 10)

SuperCar's registration of YENKO was once challenged by an individual named David Heth, but the case was was settled. (T. 24) [See also Dahlberg's confidential testimony.]

In about 1998, SuperCar provided about 150 model YENKO cars to Tom Clary for first Yenke Sportscar Club reunion on Labor Day weekend, 1998. Both he and Jim Sullivan attended. "*[I]t was a fairly large event with a lot of attendees.*" (T. 19) Hope Yenke (Terri Yenke Gould's stepmother) was also there along with John Connolly and a few other of Don Yenke's former associates, but not Don's actual Executor, Terri Gould Yenke (T. 20)

Mr. Dahlberg has never met Don Yenke, has never talked to him, and in particular has never talked to Terri Yenke Gould, his Executor. At the 19989

reunion he only had a few words with Don's widow (Terri's stepmother). As for Don's other daughter, Lynn, he has never met or talked to her (T. 27) At the inaugural 1998 meeting of the Yenko owners, the subject of the family's permission for SuperCar to use the name YENKO "*never came up*". (T. 28)

While he admits that having the name YENKO on some of the models is "*one of the reasons*" they are popular with customers, (T. 37) he also admitted that "*I don't think we have produced a Yenko toy car for several years*". (T. 41)

SuperCar Collectibles assigned the registration in question to GMCI only because "*Basically, it was the challenge to our trademark by the Yenko estate. We looked at things and looked at the cost to defend the trademark and it was going to be beyond our means for the small company that we are*". (T.14)

In his testimonial deposition, Mr. Dahlberg identified and authenticated Respondent's exhibits 4 - 29.

G. JAMES SULLIVAN (For Respondent)

Mr. Sullivan is one of the original co-founders of SuperCar Collectibles, but has since left the company. He filed his application for the registration in issue on July 26, 1995; it issued on April 1, 1997. He eventually assigned it to SuperCar on September 9, 2010. (T. 3-4, R. 79)

Mr. Sullivan was present at the 1998 Yenko Sportscar Club first reunion, and helped sell the specially-made YENKO model cars at the event. He met Hope Yenko (Terri Yenko Gould's stepmother), John Connelly (who he thought had something to do with the Estate) and other former Don Yenko associates.

(T. 5-6) He was present for Scott Dahlberg's testimony and generally agrees with it.

Mr. Sullivan is familiar with some of the auto magazines where SuperCar has advertised some of its YENKO model cars. He knows no reason why the Yenke family or its representatives "*could not have discovered*" this use of their name, nor does he know that any of them objected to it. (T. 9-10)

Mr. Sullivan also owns a genuine YENKO 1969 Camaro. He paid \$40,000 for it ten years ago; it is now insured for \$150,000. (T. 12-13)

When he and his colleagues at SuperCar decided to offer YENKO replica models, they made no effort to contact any representative of the Yenke family to get permission. He merely assumed that because Don Yenke's own 1972 registration No. 0930794 for the YENKO insignia (Don Yenke having died in 1987), the YENKO name was free for him to adopt as his own. (T. 15)

In his testimonial deposition, Mr. Sullivan identified and authenticated Respondent's exhibits 30, 32 and 33.

H. STEVEN LEONARD (For Respondent)

(Because Mr. Leonard's entire testimony was designated as confidential, this portion of Petitioner's brief is submitted separately under seal.)

In his testimonial deposition, Mr. Leonard identified and authenticated Respondent's exhibits 3 and 37-9.

I. JOHN LATELLA (Rebuttal, for Petitioner)

Mr. Latella is a Pittsburgh attorney; Don Yenke was once his client. Don's will was drafted by his office. After Don died in 1987 Mr. Latella was responsible for seeing his will and estate through the Washington County, Pennsylvania probate court. (T. 7) Those probate records show no mention of the transfer or other disposition of rights in the YENKO name or trademark to anyone. (T. 8)

In early 1989 Terri Yenke Gould became the Estate's administratrix. She continued to hold that position through the time he closed his file in the matter. (T. 11)

In his testimonial deposition, Mr. Latella identified and authenticated Petitioner's exhibits 1-4, and Respondent's exhibits 95-97.

VI. ARGUMENT

A. INTRODUCTION

To re-state the obvious: the trademark at issue in this case is YENKO, the name of a singularly famous man, Don Yenke. He was the nationally recognized racing and sports car constructor who perished in the crash of his private airplane in 1987, and whose Estate is the petitioner herein.

The man behind the registration in issue (and several others, as the record shows) is obviously not Donald Frank Yenke. Nor is it his Estate,

represented by Petitioner. The man behind it all is Jeffrey "Jeff" Leonard, president of the respondent General Marketing Capital Inc.

Back on February 8, 1999, Mr. Leonard (through one of his companies, Classic Camaro, Inc.) made his first application to register the name YENKO, well knowing it was Don Yenke's name - not his - and that he had no rights in it. He made his application for "*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*".

This case is therefore the tip of a very large iceberg. From 1999 forward Mr. Leonard has been methodically vacuuming up and claiming every trademark-able vestige of Don Yenke's history and heritage. He and GMCI have have acquired thus far a total of ten (10) U.S. trademark registrations⁴, including the mark in issue which was purchased from its former owner on September 9, 2010, right in the midst of this very cancellation proceeding.

The purpose of this cancellation proceeding is therefore to return these rights to his Estate, which is and always has been its rightful owner.

The Estate's testimony, now on file and the subject of the present motion, testimonial record now shows that Mr. Leonard has trying to take for himself and GMCI the good name and reputation - indeed, the very identity - of Don Yenke.

⁴ Most recently Reg. No. 4063536 for "Motor land vehicles", issued November 29, 2011 and supported by the alleged sale of Mr. Leonard's single 2011 Chevrolet Camaro, modified by the application of the YENKO name and badge in stick-on letters.

B. THE CONTROLLING LEGAL STANDARDS

As this Board has frequently stated, the controlling standard in a cancellation case was set by the Federal Circuit in University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., Inc., 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), aff'g 213 USPQ 594 (TTAB 1982). See also, Association Pour La Defense Et La Promotion De L'oeuvre DeMarc Chagall Dite Comite Marc Chagall v. Bondarchuk (hereinafter "Marc Chagall"), No. 92042323 (TTAB 2007).

As this Board recently stated in In re MC MC S.r.l., No. 79022561 (TTAB 2008),

For over twenty years ... the Board has utilized a four-part test to determine whether a false suggestion of a connection under Trademark Act Section 2(a) has been established. As applied in *ex parte* proceedings, the test is articulated as follows:

... 1) that the marks are the same as, or a close approximation of, the name or identity previously used by the other person; 2) that the marks would be recognized as such, in that they point uniquely and unmistakably to that person; 3) that the person named by the marks is not connected with the activities performed by applicant under the marks; and 4) that the prior user's name or identity is of sufficient fame or reputation that a connection with such person would be presumed when applicant's marks are used on applicant's goods. [Citations omitted]

See also, In Buffett v. Chi-Chi's, Inc., 226 USPQ 428, 429 (TTAB 1985); In re Wielinski, Nos. 74412727, 74412841, 49 USPQ2d 1754, 1757 (TTAB 1998); In re White, No. 78146926, 80 USPQ2d 1654(TTAB 2006); In re Joe's Int'l Inc., 43 USPQ2d 1350 (TTAB 1997); TMPEP §1203.03.

To prevail, Petitioner need not prove that either dilution or likelihood of confusion. The intent of the respondent, as in Marc Chagall, is enough. Again quoting:

First, we cannot discount the importance of respondent's intent....

In this case we begin with the proposition that the MARC CHAGALL mark has no significance other than as the name of the painter Marc Chagall. Respondent has neither claimed otherwise nor offered any evidence to the contrary. The evidence on this point in the record is substantial and unambiguous. ... Furthermore, the evidence as to the fame or reputation of the painter Marc Chagall in the United States is likewise substantial and unambiguous....

Accordingly, we conclude that the evidence in this record is more than adequate to establish that the mark would be recognized as the name of the painter Marc Chagall and that the name is of sufficient fame or reputation that when the respondent's mark is used on the goods a connection with the painter Marc Chagall would be presumed. [Marc Chagall, supra, pp 10-13]

We need merely substitute YENKO for CHAGALL, and the Board's reasoning and result - cancellation - is a perfect match to the present case.

C. PETITIONER'S GROUNDS FOR CANCELLATION

- (1) TERRI YENKO GOULD, AS DON YENKO'S DAUGHTER AND EXECUTOR OF HIS ESTATE, HAS STANDING TO CHALLENGE RESPONDENT'S CLAIM TO EXCLUSIVE USE OF THE NAME YENKO FOR SPORTS CAR-RELATED USES .

Ms. Yenke Gould unquestionably has standing to maintain this action.

Again quoting from Marc Chagall, supra:

Petitioner [Ms. Meyer] has standing to bring this proceeding. Ms. Meyer testifies that Marc Chagall died in 1985, that she is the granddaughter of and one of the heirs of Marc Chagall, that she is

a member of the petitioner committee and that the purpose of the petitioner committee is to defend the rights and the work of the painter Marc Chagall. ... This testimony, together with petitioner's claim that the mark in the registration petitioner seeks to cancel falsely suggests a connection with Marc Chagall, establishes petitioner's standing. See generally Jewelers Vigilance Committee Inc. v. Ullenberg Corp., 823 F.2d 490, 2 USPQ2d 2021, 2023 (Fed. Cir. 1987).

Again, we need merely substitute YENKO for CHAGALL to see that these cases are nearly identical in fact, in law. So should be the result.

(2) RESPONDENT'S MARK WILL INEVITABLY BE FALSELY SEEN AS AUTHORIZED BY DON YENKO'S ESTATE AND HEIRS.

The evidence is undeniable that the name YENKO bears a strong association with the reputation and achievements of Don Yenke even today, a quarter-century after his death.

GMCI may be expected to argue that because Petitioner's stepmother Hope, and her sister Lynn, were seen at the 1998 inaugural meeting of the Yenke Sportscar Club where the first few replica model cars of GMCI's predecessor in interest, SuperCar Collectibles Limited, were sold, that the Estate somehow acquiesced in its use of the Yenke name, and that such acquiescence somehow inures to GMCI's present benefit.

Such arguments have been rejected by this Board in the past. See In re Sloppy Joe's International, Inc., TTAB No.74345270 (1997), where the Board held:

We agree with the Examining Attorney, however, that no consent to register the involved mark can be implied by the mere attendance and participation of some Hemingway family members at these events. We have no basis on which to conclude that such

family members are authorized to consent to the registration of Hemingway's likeness for the involved services. [In re Sloppy Joe's International, Inc., TTAB No.74345270 (1997)]

That argument should be rejected in this case as well.

- (3) DON YENKO'S FAME AND REPUTATION ARE SUCH THAT A CONNECTION WITH RESPONDENT WILL BE PRESUMED.

GMCI's owner Steve Leonard is hardly a newcomer to high performance automobiles. He, like the original registrant James Sullivan, is not a newcomer who just happened to pick the name YENKO out of the blue. Far from it. Both well knew the name and reputation of Don Yenke. Both sought to capitalize on that name for their own personal gain.

Such intent, even in the absence of the other factors - which are in abundance in this case - is enough to establish a presumption that the public will make the association with Don Yenke that these interlopers intended. University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., Inc., 703 F.2d 1372, 1377, 217 USPQ 505, 509 (Fed. Cir. 1983) ("*Evidence of such intent would be highly persuasive that the public will make the intended false association.*"); In re North American Free Trade Association, No. 74179335 (TTAB 1997).

VI. CONCLUSION

The Respondent has admitted prior knowledge of Don Yenke and his fame and continuing reputation, and its intent to profit from the public's false association with Respondent and its merchandise.

Petitioner has therefore conclusively shown that GMCI's use of the YENKO name and mark:

- (a) Falsely suggests a connection with the Estate and heirs of Don Yenke, in violation of the Trademark Act, Section 2(a); and
- (b) That the mark in question is or will be used by it to misrepresent the source of the goods or services on or in connection with which the mark is used, in violation of the Trademark Act, Section 14.

This petition for cancellation should therefore be sustained, and U.S. Trademark Registration No. 2049857 should be canceled.

Respectfully submitted

/George E. Bullwinkel/

George E. Bullwinkel
Attorney for Petitioner

Dated: February 29, 2012

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VII. APPENDIX

A. Petitioner's Exhibits

1. Last will and testament of Donald Frank Yenko (5/9/1986)
2. Adjudication and decree, No. 63-87-0349, PA Court of Common Pleas (1994)
3. Letters of administration, No. 63-87-0349, (4/7/1989)
4. Certificate of grant of letters of administration, (10/8/2010)
5. "We know Jack!", YENKO general history
6. Letter of permission from John E. Connolly the agent of the Estate of Donald Frank Yenko to the Yenko Sportscar Club of Alton, Missouri, (1/26/1998)
7. Photo, former Yenko Chevrolet dealership, Cannonsburg, PA (3/19/2008)
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..."*
9. GMCI press release: *"Official 2010 Yenko Camaro Prototype Debuts at SEMA"* (11/3/2009)
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"*
11. GMCI press release (from Autoblog) *"Yenko brand brought back to life"* (11/03/2009)
12. GMCI press release (from AutoGuide) *"GMCI has just announced that it has purchased the Yenko name and brand"*
13. Camaro Forum (Internet thread) comments on GMCI's announcement of its *"ownership of the classic trademark"* (Oct 2009)
14. GMCI press release (from Sports Car Market (2009), Jeff Leonard's claim of *"officially licensed Yenko products"*

15. Don Yenke personal history
16. "We know Jack!", YENKO general history [Duplicates R. 5]
17. Detailed history of Yenke models, years, and production numbers
18. Photo Group: Original and replica YENKO cars at Nov. 2009 Chicago Show
19. Photo Group: YENKO Model Cars At Nov. 2009 Chicago Show
20. MOTOR TREND CLASSIC magazine, Spring 2010 special edition – cover and eight internal pages of photos and text
21. POPULAR MECHANICS magazine article reprint, Spring 1997
22. ROTTEN TOMATOES Internet movie review, “The Fast And The Furious”, 2009
23. THE FAST LANE Internet advertisement for replica Yenke Camaro S/C, Spring 2010
24. CAR TECH advertisement for book “YENKO, The Man, The Machines, The Legend”, 2010
25. Internet ad: 1957 Yenke Wildfire Corvette offered for \$140,000 (2/13/2008)
26. Cease-and-desist letter to Supercar Collectibles (respondent's predecessor in interest) (12/11/2009) (also 26A)
27. Photo: Revell “69 Camaro Yenke/SC 427 Coupe” model car
28. Letter, attorney Bullwinkel to Revell, Inc. (2/10/2010)
29. Revell attorney's letter claiming its scale model YENKO cars are sold under license (3/9/2010)
30. Assignment of Reg. 2049857 by Supercar Collectible [sic] to General Marketing Capital, Inc. (9/9/2010)
31. Summary of YENKO and sYc trademark registrations and applications, (12/9/2009, updated 4/19/2011)
32. U.S. Trademark Act, §14 (15 U.S.C. § 1064) highlighted
33. California Civil Code §3344, §990

34. Pennsylvania statute, Ch. 83, § 8316
35. [Not used]
36. Declaration of Lester Quam (to introduce photos)
37. SuperCar Collectibles "1965 Cobra Shelby"
38. SuperCar Collectibles "1968 Mustang "Bullitt" movie car"
39. SuperCar Collectibles "1968 Yenko 427 Camaro (Street Fighter)"
40. Revell "'69 Camaro Yenko/SC" model kit information sheet

B. Respondent's Exhibits

1. Atty Venit letter ot SEMA (10/30/2009)
2. Atty Gemignani (SEMA) letter to Venit (11/3/2009)
3. Atty Quam letter to Leonard (11/2/2009)
4. SuperCar Collectibles "1969 Yenko 427 Camaro (Supercar LE)"
5. SuperCar Collectibles "1969 Yenko 427 Camaro (Supercar Original #2)
6. SuperCar Collectibles "1969 Yenko 427 Camaro (Supercar Original #5
7. SuperCar Collectibles "1969 Yenko 427 Camaro (Supercar Original #7
8. [Duplicate of R. 7]
9. SuperCar Collectibles "1969 Yenko 427 Camaro (Daytona Yellow)
10. SuperCar Collectibles "1969 Yenko 427 Camaro - LeMans Blue
11. Supercar Collectibles "1969 Yenko Camaro (Supercar LE of 1,002)
12. Supercar Collectibles "1969 Yenko Camaro - Rally Green" (1:20 scale)
13. Supercar Collectibles "1969 Yenko Camaro - Rallye Green (1:20 scale)"
14. Supercar Collectibles "1969 Yenko 427 Camaro (Supercar LE)

15. Supercar Collectibles "1969 Yenko Nova 427 - Ralley [sic] Green"
16. Supercar Collectibles "1968 Yenko 427 Camaro (small 1:64 scale)
17. Supercar Collectibles "1968 Yenko 427 (Street Fighter)"
18. Supercar Collectibles "1969 Yenko Camaro (Supercar LE of 20)
19. Supercar Collectibles "1969 Camaro 427 Yenko (Street Fighter) Blue
20. Supercar Collectibles "1969 Camaro 427 Yenko (Street Fighter) Orange
21. Supercar Collectibles "1969 427 Camaro (SC/LE) Gold
22. Supercar Collectibles "1969 Yenko 427 Camaro (Supercar LE of 750)
23. Supercar Collectibles "1969 Yenko 427 Camaro (Supercar LE) Green
24. Supercar Collectibles "1969 Yenko 427 Camaro (Supercar LE) Green (2)
25. Supercar Collectibles "1969 Yenko 427 Camaro (Supercar LE) Orange
26. Supercar Collectibles "1969 Yenko 427 Camaro (Supercar LE) Orange (2)
27. Supercar Collectibles "1969 Yenko 427 Camaro (Supercar LE) Gold
28. Supercar Collectibles "1969 Yenko 427 Camaro (Supercar LE) Gold (2)
29. Supercar Collectibles "1969 Yenko 427 Camaro (Supercar LE) Green
30. Photo from inaugural Yenko Sportscar Club convention
31. Atty Oberhardt letter to Revell re Sullivan YENKO reg. (9/24/2003)
32. Internet screen shot from *www.performance-years.com* re 2004 Supercar Reunion
33. Internet screen shot from *www.performance-years.com* re 1969 Camaro Yenko Tribute
34. Internet screen shot from *www.photobucket.com* re Yenko Prototype
35. Clipping from DIECAST MAGAZINE (2008)

36. Settlement Agreement with David Heth et al.(6/3/1997) [Confidential]
37. Classic Camaro 1984½ Catalog (excerpts)
38. Classic Camaro Catalog '85B (excerpts)
39. Classic Camaro 1986 Catalog (excerpts)
40. Classic Camaro 1967-1987 Anniversary Catalog (excerpts)
41. Classic Camaro '88 Catalog (excerpts)
42. Classic Camaro 1989 Catalog (excerpts)
43. Classic Camaro '91/'92 Catalog (excerpts)
44. Classic Camaro 1992 Catalog (excerpts)
45. Classic Camaro 1994 Catalog (excerpts)
46. Classic Camaro 1995-1996 Catalog (excerpts)
47. Classic Camaro Catalog 97C (excerpts)
48. Premier Telecard magazine (excerpts)
49. Classic Industries Sweepstakes program
50. Classic Industries Camaro Catalog 98C (excerpts)
51. Classic Industries Camaro Catalog 99A (excerpts)
52. Classic Industries Camaro Catalog C2000 (excerpts)
53. Classic Industries Camaro Catalog C2002 (excerpts)
54. Classic Industries Camaro Catalog C2003 (excerpts)
55. Classic Industries Camaro Catalog C2005 (excerpts)
56. Classic Industries Camaro Catalog C2006 (excerpts)
57. Classic Industries Camaro Catalog C2008 (excerpts)

58. Classic Industries Camaro Catalog C200? (excerpts)
59. USPTO search report for YENKO Reg. 3161668
60. USPTO search report for YENKO Reg. 3097652
61. USPTO search report for YENKO Reg. 3779462
62. USPTO search report for YENKO Reg. 3812169
63. USPTO search report for YENKO Reg. 3585627
64. USPTO search report for YENKO Reg. 2314585
65. USPTO search report for YENKO Reg. 2049857
66. USPTO search report for YENKO Ser. No. 77149030
67. USPTO search report for YENKO Ser. No. 77149025
68. USPTO search report for SYC Reg. 3607796
69. USPTO search report for SYC Reg. 3083835
70. USPTO search report for SYC Reg. 3842228
71. Atty Roquemore letter to Leonard (3/29/2007) [Confidential]
72. Atty Buyan letter to atty Roquemore (3/30/2007) [Confidential]
73. Atty Roquemore letter to Atty Buyan (4/2/2007) [Confidential]
74. Atty Buyan letter to atty Roquemore (4/5/2007) [Confidential]
75. Atty Roquemore letter to Atty Buyan (4/5/2007) [Confidential]
76. Atty Buyan letter to atty Roquemore (4/11/2007) [Confidential]
77. Atty Roquemore letter to Atty Buyan (4/13/2007) [Confidential]
78. Atty Buyan letter to atty Roquemore (4/23/2007) [Confidential]
79. Assignment, Supercar Collectibles to GMCI (9/6/2010) [Confidential]

80. PTO Status report, Ser.No. 75165573,YENKO and Design (8/23/2011)
81. PTO Status report, Ser.No. 75165572,YENKO and Design (8/23/2011)
82. Judgment order, Case No. 778892, Orange Cty CA (4/22/1998)
83. Database printout "Yenko Usage 1984-2011" (no date)
84. Classic Camaro "Search results for "YENKO" (no date)
85. Trial Brief, Case No. 778892, Orange Cty CA (3/30/1998)
86. Trademark License Agreement, GMCI and General Motors Corp. (unsigned, undated) [Confidential]
87. Classic Industries invoice to Tom Clary, Alton MO (3/26/1997)
88. Classic Industries invoice to Tom Clary, Alton MO (4/26/1997)
89. Classic Industries invoice to Tom Clary, Alton MO (6/16/1997)
90. The Supercar Registry bulletin board excerpt (10/25/2011)

CERTIFICATE OF SERVICE

George E. Bullwinkel, an attorney of record, hereby certifies that one copy of the foregoing PETITIONER'S TRIAL BRIEF IN SUPPORT OF CANCELLATION was served by mailing, first class, postage prepaid, on March 1, 2012, and also by electronic mail, to the following:

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