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Filing date: **03/21/2014**

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

Proceeding	92057092
Party	Defendant Bulldog Winch Co., LLC
Correspondence Address	HOWARD SOBELMAN SNELL & WILMER LLP ONE ARIZONA CENTER, 400 E VAN BUREN PHOENIX, AZ 85004-2202 UNITED STATES hsobelman@swlaw.com
Submission	Other Motions/Papers
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Signature	/David E. Rogers/
Date	03/21/2014
Attachments	Respondents Notice of Er_001.pdf(92670 bytes) Notice of filing Amended_001.pdf(310782 bytes)

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

Cequent Performance Products, Inc.,

Petitioner,

v.

Bulldog Winch Co. LLC

Respondent.

Cancellation No.: 92057092

Registration No.: 3455827

Mark: BULLDOG WINCH

Trademark Trial and Appeal Board
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

RESPONDENT'S NOTICE OF ERRATA

Respondent files this Notice of Errata to correct errors in its Motion for Summary Judgment on Laches, filed February 27, 2014. This Notice is filed contemporaneously with the Amended Declaration of Robert A. Horn and is based on information that came to Respondent's attention after a further review of its records.

Page 4, line 15, insert --amended-- before "declaration."

Page 8, line 19, change "\$350,000" to --\$295,000--.

Page 9, paragraph (a), change "\$10,000" to --\$13,500--.

Page 9, paragraph (a), change "\$20,000" to --\$11,000 and \$12,000, respectively,--.

Page 10, paragraph (c), change "\$175,000" to --\$217,000--.

Page 10, paragraph (h), change "\$80,000" to --\$390,000--.

Page 11, paragraph (j), change "2008" to --September of 2007--.

Page 11, paragraph (j), change "Respondent spends about \$2,000 annually" to -- Respondent has spent about \$3,700 since September of 2007--.

Page 11, paragraph (k), change "\$20,000" to --\$15,280 and \$22,100, respectively,--.

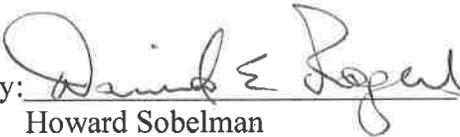
Page 11, paragraph (k), change "\$80,000" to --\$68,200--.

Page 11, paragraph (l), change "\$10,000" to --\$12,600-- and change "in each of 2012 and 2013" to --combined for 2012 and 2013--.

Page 11, paragraph (l), change "\$35,000" to --\$25,375--.

RESPECTFULLY SUBMITTED this 21st day of March, 2014.

SNELL & WILMER L.L.P.

By: 

Howard Sobelman
David E. Rogers
Snell & Wilmer L.L.P.
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Attorneys for Respondent

CERTIFICATE OF SERVICE

I, David E. Rogers, hereby certify that on the 21st day of March, 2014,
Respondent's Notice of Errata was served via email to the following attorney of record
for Petitioner:

Kurt N. Jones
Woodard, Emhardt, Moriarty
McNett & Henry LLP
111 Mon. Cir., Suite 3700
Indianapolis, IN 46204-5137
(317) 634-3456
kjones@uspatent.com

By: David E Rogers
NAME

Attorney Docket No.: 54589.00100

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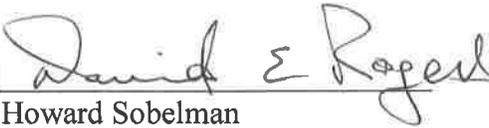
NOTICE OF FILING AMENDED DECLARATION OF ROBERT A. HORN

Respondent hereby files an Amended Declaration of Robert A. Horn in support of its Motion for Summary Judgment on Laches (“MSJ”). This Amended Declaration replaces Mr. Horn’s original Declaration and the attached Amended Declaration is Exhibit 1 to the MSJ. None of the sub-exhibits to Exhibit 1 have changed.

The changes in the Amended Declaration are based upon additional information that Respondent has learned since February 26, 2014, and such information is included in the Notice of Errata filed concurrently herewith.

RESPECTFULLY SUBMITTED this 21st day of March, 2014.

SNELL & WILMER L.L.P.

By: 

Howard Sobelman

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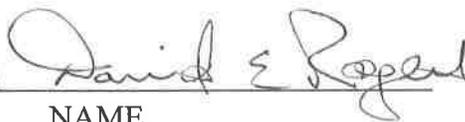
Facsimile: (602) 382-6070

Attorneys for Respondent

CERTIFICATE OF SERVICE

I, David E. Rogers, hereby certify that on the 21st day of March, 2014,
Respondent's Amended Declaration of Robert A. Horn was served via email to the
following attorney of record for Petitioner:

Kurt N. Jones
Woodard, Emhardt, Moriarty
McNett & Henry LLP
111 Mon. Cir., Suite 3700
Indianapolis, IN 46204-5137
(317) 634-3456
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By: 
NAME

Amended Declaration of Robert A. Horn

I, Robert A. Horn, declare as follows:

1. I am the President, founder and owner of Bulldog Winch Company LLC, the Respondent in this action (hereafter, "Respondent"). I submit this amended declaration based on additional information that has come to my attention since February 26, 2014.
2. Respondent is a small company - it was started in 2006 by me, Bob Horn, and I had no employees at that time.
3. Respondent's company name is "Bulldog Winch Company" and it began using "Bulldog Winch" as a trademark in June of 2006. Attached as Exhibit A is a true and correct copy of an invoice from June of 2006.
4. Respondent provides winches used primarily for vehicle recovery in power sports.
5. "Vehicle recovery" occurs when a vehicle, such as an ATV, truck or jeep, becomes stuck in the mud, sand, ditch or otherwise, and must be pulled out. Respondent's winches are mounted to a vehicle and if the vehicle becomes stuck, the winch cable is attached to a fixed object that can support the vehicle's weight. The winch is then activated and the vehicle is "recovered" as the winch draws in the cable and the vehicle is pulled towards the fixed object.
6. I estimate that over 80% of Respondent's "Bulldog Winch" winches are used for vehicle recovery in power sports, less than 10% are mounted on trailers, usually to pull heavy vehicles (for example, a show car) onto the trailer, and the remainder are used for miscellaneous purposes to lift or pull heavy objects.
7. Respondent's winches cost about \$60 to \$900 wholesale, \$90 to \$1,700 to dealers, and \$130 to \$1,700 to consumers. Respondent's winches are not sold directly to consumers, but instead to professional buyers that work for automotive aftermarket wholesalers (who sell to dealers) or dealers. Usually, dealer salespeople assist the ultimate consumer of Respondent's winches with his/her purchase, including recommending the winch brand and model to purchase, and the dealer usually mounts the winch for the consumer.
8. Since Respondent's application for "Bulldog Winch" was published on April 17, 2007, Respondent has (1) added two full-time and two contract employees, (2) expanded its winch product line five-fold, (3) created new packaging for its new and existing products, (4) developed and expanded its customer base and geographical sales territory from about 2-4 states to essentially the entire U.S., (5) developed and used: various advertising, its website, and marketing materials, (6) attended trade shows, and (7) sponsored 21 off-track racing teams (where winches are used for vehicle recovery), all using its "Bulldog Winch" mark. Attached as collective Exhibit B are true and correct copies of Respondent's 2007 catalog and 2013 catalog. Attached as collective Exhibit C are true and correct images of some of Respondent's winches showing the packaging. Attached as collective Exhibit D are examples of Respondent's advertising and marketing materials and a print out of its website. Attached as collective Exhibit E are true and correct copies of photographs of off-track racing teams and events Respondent has sponsored.
 - (a) Respondent created and purchased a 10' x 20' booth for the 2006 SEMA show (which cost about \$13,500 to attend) and a 20' x 20' booth for the 2007 and 2008 SEMA show

(which cost about \$11,000-\$12,000 each to attend). Notably, Petitioner had a booth at the same SEMA show, and in the same exhibition hall. Respondent's booths prominently displayed the "Bulldog Winch" mark. True and correct copies of photographs of Respondent's booth and pages from the SEMA show directory and layouts of the exhibit halls are attached as collective Exhibit F.

- (b) Respondent has been a member of Performance Warehouse Association ("PWA") since 2008 and has been in its directory since that time. Notably, Petitioner was a member of the same organization during those same years. True and correct copies of the PWA membership list showing that Respondent and Petitioner have been members since 2008 are attached as collective Exhibit G.

9. Petitioner took no action against Respondent when Respondent's application for "Bulldog Winch" was published in April of 2007.

10. Petitioner took no action against Respondent when Respondent's "Bulldog Winch" mark registered in June of 2008.

11. Respondent expended an estimated \$295,000 promoting its "Bulldog Winch" products since its Application for "Bulldog Winch" was published on April 16, 2007.

12. Respondent has increased the size of its Phoenix facility from 3,000 to 6,000 square feet since April 17, 2007. All of its products are shipped from this facility.

13. Respondent has increased its sales of "Bulldog Winch" products from about \$390,000 in 2007 to about \$960,000 in 2013.

14. Respondent has expanded its geographical sales territory of "Bulldog Winch" winches from about 2-4 states in April of 2007 to essentially the entire United States by April 23, 2013.

15. I am not aware of Petitioner sponsoring off-road racing teams or off-road racing events.

16. Respondent currently sponsors about 12-15 off-track racing teams, which compete around the country and prominently display the "Bulldog Winch" mark on their vehicles. These teams each participate in about 8-10 races per year including in the states of California, Washington, Indiana, Maryland, Texas, Florida, Utah, Nevada and New Mexico.

17. Respondent has no plans to use its "Bulldog Winch" mark on any of Petitioner's "Bulldog" products.

18. Petitioner's vice president contacted Respondent in early April of 2013, but did not demand that Respondent's registration be cancelled or abandoned. Instead, the parties discussed ways in which the use of Respondent's "Bulldog Winch" mark might be altered. True and correct copies of some of these communications are attached as collective Ex. H.

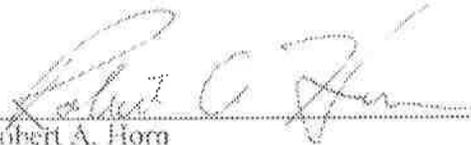
19. Since April 17, 2007, Respondent's sales of "Bulldog Winch" products have increased from about \$390,000 annually to about \$960,000 annually.

20. Respondent has spent an estimated \$295,000 promoting its products sold under the "Bulldog Winch" mark since April 17, 2007. Respondent's expenditures include:

- (a) approximately \$36,000 on the SEMA trade shows in 2006-2008;
- (b) approximately \$400 per year since 2008 to be in the PWA directory;
- (c) a 5% sales commission for all "Bulldog Winch" products sold, or an estimated \$217,000 since April 17, 2007;
- (d) an estimated \$15,280 in co-op advertising with its customers in 2012 and an estimated \$22,100 in co-op advertising with its customers in 2013 and an estimated \$68,200 in total co-op advertising since April 17, 2007;
- (e) an estimated \$12,600 printing catalogs for 2012 and 2013 combined, and an estimated \$25,375 to print product catalogs since April 17, 2007; and
- (f) an estimated \$3,700 beginning in September of 2007 for promotional T-shirts and ball caps that display the "Bulldog Winch" mark.

21. Respondent advertises its "Bulldog Winch" products primarily through co-op advertising with its wholesalers and dealers and by sponsoring off-track racing teams.

I hereby declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.


Robert A. Horn

3/20/14
Date