

ESTTA Tracking number: **ESTTA717448**

Filing date: **12/30/2015**

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

Proceeding	92060464
Party	Defendant Cheytac USA LLC
Correspondence Address	MILO S COGAN FISHERBROYLES LLP 4140 ROSWELL ROAD ATLANTA, GA 30342 UNITED STATES milo.cogan@fisherbroyles.com
Submission	Other Motions/Papers
Filer's Name	Milo S. Cogan
Filer's e-mail	milo.cogan@fisherbroyles.com
Signature	/s/Milo S. Cogan
Date	12/30/2015
Attachments	AMENDED Second Motion to Correct Date FINAL.pdf(172751 bytes ) Exhibit A.pdf(695939 bytes ) Exhibit B.pdf(155509 bytes ) Exhibit C.pdf(44126 bytes ) Exhibit D.pdf(188647 bytes ) Exhibit E.pdf(140880 bytes ) Exhibit F.pdf(236932 bytes ) Exhibit G.compressed.pdf(140520 bytes ) Exhibit H.pdf(108110 bytes ) Exhibit I.pdf(111614 bytes ) Exhibit J.pdf(95602 bytes ) Exhibit K.pdf(121341 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

SAFESIDE TACTICAL, LLC	)	
	)	
Petitioner,	)	
v.	)	Processing No. 92060464
	)	
CHEYTAC USA, LLC	)	Registration No. 4,509,171
	)	
Registrant.	)	

**REGISTRANT CHEYTAC USA, LLC’S AMENDED SECOND MOTION TO GRANT  
CORRECTED DATE OF FIRST USE WITHOUT CONSENT AND MEMORANDUM IN  
SUPPORT**

Registrant CheyTac USA, LLC (“Registrant”), hereby requests that the TTAB grant its Amended Second Motion to Grant Corrected Date of First Use Without Consent due to Registrant’s good faith error pursuant to Rule 2.175 of the Trademark Rules of Practice and Rule 514.01 and 514.03 of the Trademark Trial and Appeal Board Manual of Procedures, which is being amended to correct certain typographical errors and to correct exhibit labelling.

**STATEMENT OF FACTS**

1. Registrant is the owner of the trademarked name “SAFESIDE” (“Registrant’s Mark”) pursuant to its Application filed on or about February 2, 2013, and the Trademark issued on April 8, 2014 (U.S. Registration No. 4,509,171).
2. Registrant incorrectly stated on its original Application that the first use anywhere and the first use in commerce was December 15, 2012, when in fact the correct date for first use anywhere and first use in commerce is June 24, 2011.
3. Registrant’s misidentification of the first use anywhere and first use in commerce constitutes a good faith error.
4. Registrant’s first use anywhere and first use in commerce of Registrant’s Mark occurred on June 24, 2011 when it issued an invoice for the sale of ammunition magazines bearing

Registrant's Mark, and expressly using Registrant's Mark on the invoice. A true and correct copy of the June 24, 2011 invoice demonstrating first use is attached hereto as Exhibit "A."

5. On November 29, 2014, Registrant filed a Section 7 request to correct the mistake and state accurately the date of first use anywhere and the first use in commerce as June 24, 2011, but Registrant's former counsel did not attach the correct evidence in support thereof.

6. Subsequent to the filing of Registrant's Section 7 request, on or about December 1, 2014, Petitioner filed a Petition to Cancel Registrant's Registration on the grounds of priority of use and the likelihood of confusion pursuant to subdivision (d) of Trademark Act Section 2, which Petition was predicated on the incorrectly identified date of first use anywhere and first use in commerce.

7. On or about December 5, 2014 the Section 7 request was corrected and refiled, and the correct invoice identifying the correct date of first use anywhere and first use in commerce was attached establishing date of first use as June 24, 2011.

8. Petitioner claims it "is the owner of Federal Trademark Application Serial No. 86/201,940 for the mark SAFESIDE TACTICAL (hereinafter "Petitioner's Mark") for use in connection with the following services, namely: 'On-line retail store services featuring firearms and related items; Retail store services featuring firearms and related items,' (hereinafter "Petitioner's Services") covered in International Class 35."

9. As stated in Paragraph 7 of Petitioner's Motion for Summary Judgment, Petitioner's Application claims a date of first use of Petitioner's Mark in connection with services on November 15, 2012, and a date of first use in commerce on December 2, 2012.

10. Petitioner's claimed date of first use of November 15, 2012, and December 2, 2012, is approximately eighteen (18) months *after* Registrant's first use on June 24, 2011, as evidenced by the attached Exhibit A.

11. Additionally, Petitioner's claimed date of first use of November 15, 2012 is approximately five (5) months *after* Registrant's second invoice and spreadsheet regarding the use of Registrant's Mark, dated May 5, 2012. A true and correct copy of Registrant's May 9, 2012, invoice and May 9, 2012, corresponding spreadsheet are attached hereto as Exhibits "B" and "C," respectively.

12. On or about January 9, 2015, Registrant filed its Answer to the Petition to Cancel.

13. On or about January 15, 2015, Registrant Filed a Motion to Grant Corrected Date of First Use Without Consent pursuant to 37 C.F.R. § 2.175 and TBMP § 514.01 seeking an order correcting the date of first use as June 24, 2011.

14. On or about February 9, 2015, the Board issued an order indicating Registrant's Motion to Grant Corrected Date of First Use was deficient in that it was missing the required fee and declaration in support which had not been submitted along with the Motion by Registrant's former counsel (the "February 9 Order"). The Board granted Registrant 30 days to perfect its request.

15. On or about February 13, 2015, Registrant filed its Reply in Support of Registrant's Motion to Grant Corrected Date of First Use Without Consent.

16. On or about February 15, 2015, Registrant attempted to submit a declaration and fee to the Board in response to the Board's February 9, 2015 Order, but for unknown reasons Registrant's prior attorney, Mr. Romanoff, submitted the fee and declaration in the Trademark File instead of filing it with the Board (and additionally misdated his submission). A true and correct copy of the documents improperly filed in Trademark File on February 15 are attached hereto as Exhibit "D."

17. Because the documents were filed in the Trademark File and not with the TTAB, Registrant's fee and declaration was returned with notes indicating it was not required. A true and correct copy of the Trademark File notes indicated returned filing is attached hereto as Exhibit "E."

18. On April 4, 2015, attorney for Registrant, Mr. Gerald Romanoff, died.

19. Although Registrant's counsel had attempted to comply with the February 9 Order, on June 5, 2015, the Board entered another order finding that Registrant failed to comply with the February 9 Order and, accordingly, declared that there would be no further consideration to Registrant's Motion to Grant Corrected Date of First Use Without Consent.

20. From July through August, Petitioner claims to have served its First Requests for Production of Documents and Requests for Interrogatory as well as its Motion for Summary Judgment.

21. As evidenced by the exhibits attached to Petitioner's own Motion for Summary Judgment, all documents prepared were mailed or emailed to Mr. Romanoff months after his death and burial service.

22. As evidenced by the Declaration of David McCutcheon In Support of Registrant's Opposition to Petitioner's Motion for Summary Judgment, a true and correct copy of which is attached hereto and marked as Exhibit "F," Registrant itself was never served and never received actual notice of any of the discovery documents prepared by Petitioner that it served on Registrant's deceased attorney.

23. In an order dated mailed on November 28, 2015, the Board indicated it did not deny Registrant's first Motion to Grant Corrected Date of First Use Without Consent without prejudice and that the Registrant's Second Motion to Grant Corrected Date of First Use Without Consent "would be germane to the motion for summary judgment and [is] not barred by the suspension order."

#### **ARGUMENT AND CITATION OF AUTHORITY**

Pursuant to Rule 2.175 of the Trademark Rules of Practice, Registrant respectfully requests the Board grant the instant pretrial motion to correct the date of first use due to good faith error. Rule 2.175 of the Trademark Rules of Practice provides that the Board may issue a certificate of correction "[w]henever a mistake has been made in a registration and a showing has been made that the mistake occurred in good faith through the fault of the owner, . . . ." In order to grant a motion to correct, the

applicant of the request must (1) specifically identify the mistake, (2) describe the manner in which the mistake occurred, (3) provide a showing that the mistake was made in good faith, (4) submit a verified declaration regarding the same, and (5) pay the required fee. (*Ibid.*)

Registrant's motion has satisfied the five requirements of Rule 2.175. With respect to the initial requirements, the mistake Registrant is requesting to be corrected is the date of first use that was incorrectly stated as December 15, 2012 on Registrant's initial application filed on or about February 2, 2013. Based on Paragraph 3 of Registrant's Response to Petitioner's Opposition to Grant Corrected Date of First Use Without Consent, as filed by Registrant's prior attorney Mr. Romanoff, a true and correct copy of which is attached hereto and identified as Exhibit "K," the error occurred "due to an innocent posting of the wrong date from the original invoice."

With respect to the good faith requirement, the misreading and stating incorrectly the date from an invoice in Registrant's initial application was made in good faith and not for any improper purpose. The mistake is essentially clerical or typographical in nature, does not change the original fact that Registrant's Mark was first used on the date indicated on the invoice (Exhibit A, hereto), and the correction was sought in a Section 7 *request originally filed prior to the instant Petition to Cancel*. Regarding the final requirements, Registrant has also submitted a verified declaration and submitted the required fee and verified declaration. (*See* Exhibit F hereto)

Notwithstanding the above, in order to prevail on a motion to correct its date of first use from December 15, 2012, to June 24, 2011, Registrant must provide proof of first use that is clear and convincing and not characterized by contradiction, inconsistencies, or indefiniteness. See, Threshold TV, Inc. v. Metronome Enterprises, Inc., 96 USPQ2d 1031, 1036 (TTAB 2010), citing, Hyrdo-Dynamics, Inc. v. George Putname & Co., Inc., 811 F.2d 1470, 1 USPQ2d 1772, 1773 (Fed. Cir. 1987). Registrant's proof meets this standard.

Registrant presents significant evidence that satisfies the clear and convincing evidence standard in support of its claim that Registrant's date of first use is June 24, 2011, that it's date of first

use significantly predates Petitioner's December 2, 2012 claimed date of first use, and that Registrant's use was continuous from its June 24, 2011 date of first use through the present, including Petitioner's date of first use on December 2, 2012. The evidence in support of the foregoing claims consists of the following documents and evidence:

1. As evidence of its first use, Registrant hereby provides a true and correct copy of its invoice dated June 24, 2011, for the sale of its goods and services under its registered Mark. (Exhibit "A")

2. As further evidence of first and continuing use that predates Petitioner's date of first use, Registrant hereby provides a letter from the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives dated December 19, 2011, a true and correct copy of which is attached hereto and marked as Exhibit "G," indicating that Registrant was "seeking a marking variance to manufacture and mark . . . SAFESIDE bolt-action receivers on behalf of Cheytac USA, LLC."

3. As evidence of continuing use that predates Petitioner's date of first use, Registrant hereby provides a true and correct second invoice dated May 9, 2012, and corresponding spreadsheet also for the sale of its goods and services under its registered Mark. (Exhibits B, C.) Both invoices and the spreadsheet indicate use of Registrant's Mark that predates Petitioner's use of its Mark by 18 months and 5 months, respectively.

4. As further evidence of continuing use that predates Petitioner's date of first use, Registrant hereby provides a true and correct copy of an email dated November 28, 2012, from Registrant's employee regarding the negotiation and sale of Registrant's products utilizing the Mark, specifically for a "Safeside Tactical Engagement Rifle." (Exhibit "H" hereto)

5. As further evidence of continuing use that predates Petitioner's date of first use, Registrant hereby provides a true and correct copy of an email dated November 30, 2012, from Registrant's employee to Stiller Precision regarding the negotiation and sale of items including products described in the email as "2 Safeside." (Exhibit "I" hereto)

6. As further evidence of continuing use, Registrant hereby provides a true and correct copy of an email dated April 30, 2013, from Registrant's employee to Stiller Precision regarding the negotiation and sale of items including products noted as "[t]he 10 Safesides are at nitride now and I expect them to be ready in about 3 weeks." (Exhibit "J" hereto)

7. Finally, as evidence in support of its first and continuous use, Registrant submits and incorporates by reference the attached Declaration of David McCutcheon in support, Exhibit F, verifying each of the above exhibits and stating under penalty of perjury that Registrant has actively marketed and/or sold its goods and services under its Registered Mark from June 24, 2011, to the present day.

### CONCLUSION

Registrant strongly believes the totality of the evidence it has provided proves, by clear and convincing evidence, that the First Use of Registrant's Mark Anywhere and In Commerce occurred on or about June 24, 2011. Accordingly, for the foregoing reasons, Registrant respectfully requests the Board to grant its Amended Second Motion to Grant Corrected Date of First Use Without Consent.

Respectfully submitted, this 30<sup>th</sup> day of December, 2015.

**FISHERBROYLES, LLP**



---

Milo S. Cogan  
Georgia Bar No. 500813

4140 Roswell Rd.  
Atlanta, Georgia 30342  
(404) 606-1169  
(404)935-0271 (fax)  
[Milo.cogan@fisherbroyles.com](mailto:Milo.cogan@fisherbroyles.com)

# **EXHIBIT “A”**



# Receipt

## CheyTac USA

Distance-Power-Accuracy

541 Hazel Ave, Nashville, GA 31639  
 Phone 229.686.3219 Fax 1.888.519.5242

INVOICE: MFJUNE2011  
 DATE: JUNE 24, 2011

EXPIRATION DATE: JULY 2012

TO Name: Mark Fields  
 Address: 3116 Gideon Court  
 Waldorf, MD 20602  
 Fax:  
 Email: mark.l.fields@gmail.com

SALESPERSON	JOB	SHIPPING METHOD	SHIPPING TERMS	DELIVERY DATE	PAYMENT TERMS	DUE DATE
Joe	MF	Best	NA	NA	Paid in Full	Expected

QTY	ITEM #	DESCRIPTION	UNIT PRICE	DISCOUNT	LINE TOTAL
1	Rifle	.308 Win. Mag. Custom "Safeside"	\$6,000.00	\$0.00	\$6,000.00
			<b>SUBTOTAL</b>	<b>\$0.00</b>	<b>\$6,000.00</b>
			<b>SHIPPING (EST)</b>		<b>N/A</b>
			<b>TOTAL</b>		<b>\$6,000.00</b>

**THANK YOU FOR YOUR BUSINESS!**

# **EXHIBIT “B”**

Stiller's Precision Firearms LLC

# Invoice

Date	Invoice #
5/9/2012	2332

118 Regency Drive  
Wylie, TX 75098

Phone #: 972-429-5000  
Fax #: 972-941-8884

E-mail: stiller@viperactions.com  
Web Site: viperactions.com

<b>Bill To</b>
CheyTac LLC Darryl Miller 1421 Forest Way Nashville GA 31639

<b>Ship To</b>

P.O. Number	Terms	FFL #	Ship	Via	F.O.B.	Project
			5/9/2012			

Quantity	Item Code	Description	Price Each	Serial #	Amount
10	CheyTac - 1.6 408 Rep R	CheyTac PTAC 408 extreme length bolt action receiver, 1.60" diameter, .645" boltface, right bolt, right port, repeater, black oxide finish	925.00		9,250.00T
2	CheyTac - Lap Xt Rep R	CheyTac Perses extreme length bolt action receiver, lapua boltface, right bolt, right port, repeater	875.00		1,750.00T
4	CheyTac - Mag Lg Rep...	CheyTac Vidar long bolt action receiver, mag boltface, right bolt, right port, repeater	825.00		3,300.00T
4	CheyTac - 308 Sh Rep R	CheyTac Safeside short bolt action receiver, 308 boltface, right bolt, right port, repeater	825.00		3,300.00T
		**** 50% Deposit for OEM actions - \$8800.00 **** Out-of-state sale, exempt from sales tax	0.00%		0.00

<b>Total</b>					\$17,600.00
--------------	--	--	--	--	-------------

# EXHIBIT “C”

**Vendor**  
**Stiller's Precision**  
**Firearms, LLC**  
 118 Regency Drive  
 Wylie, TX 75098

**Phone / Fax / Email**  
 Jerry Stiller  
 Russ Rosene  
 PH: 972-429-5000  
 Fax: 972-941-8884  
 Email:  
 stiller@viperactions.com

**Notes:**  
 FFL # 5-75-085-07-6K-41806 Expires 10/01/2016  
 Website: [www.viperactions.com](http://www.viperactions.com)

Date	Order No.	QTY	Item No.	Description	Price Each
5/9/12	Inv. 2332	10	CheyTac - 1.6 408 Rep R	CheyTac PTAC 408 extreme length bolt action receiver, 1.60" diameter, .645" boltface, right bolt, right port, repeater, black oxide finish	\$925.00
		2	CheyTac - Lap Xt Rep R	CheyTac Perses extreme length bolt action receiver, lapuaboltface, right bolt, right port, repeater	\$875.00
		4	CheyTac - Mag Lg Rep	CheyTac Vidar long bolt action receiver, mag boltface, right bolt, right port, repeater	\$825.00
		4	CheyTac - 308 Sh Rep R	CheyTac Safeside short bolt action receiver, 308 boltface, right bolt, right port, repeater	\$825.00
		1		Wire Transfe Fee From American Nation	\$25.00

;

<b>Subtotal</b>	<b>Subtotal of Purchase</b>	<b>Tax</b>	<b>Total</b>	<b>Method of Payment</b>
-----------------	-----------------------------	------------	--------------	--------------------------

\$9,250.00	\$17,625.00	\$0.00	\$17,625.00	50% Deposit for OEM Actions - \$8,825.00
------------	-------------	--------	-------------	--

\$1,750.00

\$3,300.00

\$3,300.00

\$25.00

# **EXHIBIT “D”**

**S**AFESIDE FEE

**AND**

**DECLARATION**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**The Trademark Trial and Appeal Board**

In the matter of U.S. Registration No. 4,509,171

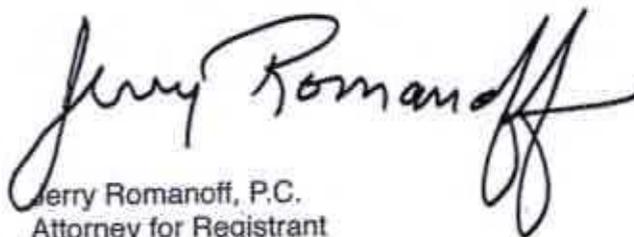
For the mark SAFESIDE

Registered on the principal registration on April 8, 2014

This is in response to your request for the fee and a Declaration in the above matter.

Both the fee and Declaration are enclosed.

Respectfully submitted this 15th day of March 2015



Jerry Romanoff, P.C.  
Attorney for Registrant

Jerry Romanoff, Esq.  
4 Oceanview Court  
Long Beach, New York 11561

Tel: 516-889-4808  
Cell: 914-715-0444  
[jerry@trademark1attorney.com](mailto:jerry@trademark1attorney.com)

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## Credit Card Payment Form

(Do not submit this form electronically via EFS-Web)  
Please Read Instructions before Completing this Form

### Credit Card Information

Credit Card Type:  Visa  MasterCard  American Express  Discover

Credit Card Account #: 3767 430287 54001

Credit Card Expiration Date (mm/yyyy): 10/2019

Name as it Appears on Credit Card: GERALD ROMANOFF

Payment Amount (US Dollars): \$

Cardholder Signature: *Gerald Romanoff* Date (mm/dd/yyyy): 2/15/2015

The USPTO does not accept an s-signature (37 CFR 1.4(e)) on credit card payment forms.  
**Refund Policy:** The USPTO may refund a fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee will not entitle a party to a refund of such fee. The USPTO will not refund amounts of \$25.00 or less unless a refund is specifically requested and will not notify the payor of such amounts (37 CFR 1.26). Refund of a fee paid by credit card will be issued as a credit to the credit card account to which the fee was charged.

**Maximum Daily Limit:** There is a \$49,999.99 daily limit per credit card account. There is no daily limit for debit cards.

### Credit Card Billing Address

Street Address 1: 4 OCEANVIEW COURT

Street Address 2:

City: LONG BEACH

State/Province: New York

Zip/Postal Code: 11561

Country: USA

Daytime Phone #: 914-715-0444

Fax #: 516-859-4193

### Request and Payment Information

Description of Request and Payment Information:

<input type="checkbox"/> Patent Fee	<input type="checkbox"/> Patent Maintenance Fee	<input checked="" type="checkbox"/> Trademark Fee	<input type="checkbox"/> Other Fee
Application No.	Application No.	Application No.	IDON Customer No.
Patent No.	Patent No.	Registration No. 4509171	
Attorney Docket No.		Identify or Describe Mark SAFE G I D C AMENDMENT	

If the cardholder includes a credit card number on any form or document other than the Credit Card Payment Form or submits this form electronically via EFS-Web, the United States Patent and Trademark Office will not be liable in the event that the credit card number becomes public knowledge.

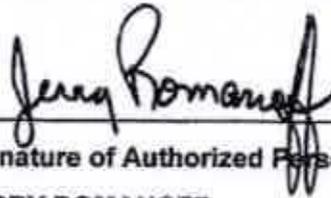
**JERRY ROMANOFF, P.C.**  
*Attorney-at Law*

U.S. REGISTRATION NUMBER 4509171

REGISTRANT: CHEYTAC USA. LLC

**DECLARATION UNDER 37 C.F.R. SEC. 2.20**

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. Section 1001, and that such willful false statement may jeopardize the validity of the document, declares that he is properly authorized to execute this document on behalf of the owner, and all statements made of his own knowledge are true and that all statements made on information and belief are believed to be true.

A handwritten signature in black ink, appearing to read "Jerry Romanoff", is written over a horizontal line.

Signature of Authorized Person

JERRY ROMANOFF

FEB. 15, 2015

# **EXHIBIT “E”**

# NOTE TO THE FILE

SERIAL NUMBER: 85839213  
DATE: 02/20/2015  
NAME: lgray

**NOTE:**

**Searched:**

- Google
- Lexis/Nexis
- OneLook
- Wikipedia
- Acronym Finder
- Other:

**Discussed ID with:**

- Senior Atty  
Managing Atty
- Protest evidence reviewed

**Checked:**

- Geographic significance
- Surname
- Translation
- ID with ID/CLASS mailbox

**Discussed Geo. Sig. with:**

- Senior Atty
- Managing Atty

Checked list of approved Canadian attorneys and agents

**Discussed file with**

**Attorney/Applicant via:**

- Phone
- email
- Requested Law Library search
- Issued Examiner's Amendment and entered changes in TRADEUPS
- Left message with Attorney/Applicant
- Added design code in TRADEUPS
- Re-imagined standard character drawing
- Re-imagined standard character drawing
- Negative translation statement
- Contacted TM MADRID ID/CLASS
- Consented of living individual
- Contacted TM MADRID ID/CLASS about misclassified definite ID
- Changed TRADEUPS to:

OTHER: The Communication filed on 2/18/15 will be noted. However, the payment of \$100 is not a requirement and will be refunded in due course.

# EXHIBIT “F”



3.

In December of 2011, CheyTac USA, LLC, received confirmation that the variance submitted through the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives had been approved. The letter dated December 19, 2011, from the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives attached as Exhibit G to Registrant's Second Motion to Grant Corrected Date of First Use Without Consent is a true and correct copy of a letter I received from the ATF regarding a requested variance on behalf of CheyTac USA, LLC, for the mark SAFESIDE for which occurred in December 2011. the sale of its Safeside branded rifles and rifle systems.

4.

Once the variance was approved by the ATF, CheyTac USA, LLC continued to promote, market, and sell rifles and rifle systems under the Safeside brand. Specifically, in May of 2012, CheyTac USA, LLC purchased receivers from Stiller actions. The May 9, 2012, invoice attached as Exhibit B to Registrant's Second Motion to Grant Corrected Date of First Use Without Consent is a true and correct copy of an invoice sent for the sale of a custom .308 short bolt action receiver bearing the mark SAFESIDE for which occurred in May 2012.

5.

The May 9, 2012, spreadsheet corresponding to the invoice of the same date, attached as Exhibit C to Registrant's Second Motion to Grant Corrected Date of First Use Without Consent is a true and correct copy of an invoice sent for the sale of a custom .308 short bolt action receiver bearing the mark SAFESIDE for which occurred in May 2012.

//

6.

In November of 2012, in response to our continued sales and promotion of the Safeside brand, CheyTac USA, LLC sent a quote to a customer regarding its Safeside branded product. The email dated November 28, 2012, from Registrant's employee regarding the negotiation and sale of Registrant's products utilizing its Mark, specifically for "Safeside Tactical Engagement Rifle," attached as Exhibit H to Registrant's Second Motion to Grant Corrected Date of First Use Without Consent is a true and correct copy of said email.

7.

Later, in November of 2012, CheyTac USA, LLC negotiated with Stiller Precision for the purchase of new receivers bearing the Safeside mark. The email dated November 30, 2012, from Registrant's employee to Stiller Precision regarding the negotiation and sale of items including products described as "2 Safeside," attached as Exhibit I to Registrant's Second Motion to Grant Corrected Date of First Use Without Consent is a true and correct copy of said email.

8.

In April of 2013, new actions bearing the Safeside brand were being manufactured by Stiller Precision for CheyTac USA, LLC, and further communications were taking place with respect to this prospective commercial transaction. The email dated April 30, 2013, from Registrant's employee to Stiller Precision regarding the negotiation and sale of items including products noted as "[t]he 10 Safesides are at nitride now and I expect them to be ready in about 3 weeks," attached as Exhibit J to Registrant's Second Motion to Grant Corrected Date of First Use Without Consent is a true and correct copy of said email.

//

9.

The brand Safeside has personal meaning to me and references back to my time spent in the military while stationed in Iraq. Although CheyTac USA, LLC has not sold many of the rifle systems, I am proud of the brand and the product.

10.

CheyTac USA, LLC has not abandoned the Mark since its first use in 2011, currently has Safeside branded inventory in stock, and is ready, willing, and able to complete the continued sales of the Safeside branded products as of the date of this declaration.

11.

When I applied for the Safeside trademark, I am informed and believe that my attorney performed all possible checks and "due diligence" necessary through the Trademark Office and was granted the trademark to use the Safeside mark accordingly.

Executed at Nashville, Georgia

Date: December 17, 2015 By: David R. McCutcheon  
David McCutcheon, President

# **EXHIBIT “G”**



U.S. Department of Justice

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

Martinsburg, West Virginia 25405

www.atf.gov

DEC 19 2011

903050:ADM  
3311/2012-213  
5-75-41806

Jerry Stiller  
Stiller's Precision Firearms, LLC  
2405 Country Meadow Lane  
Wylie, Texas 75098

Re: Stiller's Precision Firearms, LLC, FFL#: 5-75-41806  
Cheytac USA, LLC, FFL#: 1-58-07415

Dear Mr. Stiller:

This letter is in response to your correspondence received December 6, 2011, to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Branch, in which you request a marking variance from the provisions of 27 CFR Section 478.92(a)(1). The cited section requires, in part, that firearms manufactured by a licensed manufacturer must bear certain identification markings that include the name, city, and state of the manufacturer.

In your correspondence, you indicate that you are seeking a marking variance to manufacture and mark Model PTAC, PERSES, VIDAR, and SAFESIDE bolt-action receivers on behalf of Cheytac USA, LLC. Included in your correspondence, you submitted the following identifying information and drawings to indicate the required markings to be placed on the Model PTAC, PERSES, VIDAR, and SAFESIDE bolt-action receivers:

Serial Number: PTAC: 37600001 *Chey 8*  
PERSES: 43500001 *Lap*  
VIDAR: 82000001 *Long*  
SAFESIDE: 40700001 *Shit 5*

Model: PTAC, PERSES, VIDAR, or SAFESIDE

CHEYTAC USA LLC NASHVILLE, GA

# EXHIBIT ‘H’

## Wiley

---

**From:** Rich Mulder <rich@cheytac.com>  
**Sent:** Wednesday, November 28, 2012 1:01 PM  
**To:** ~~thomas@cityofsomers.com~~  
**Cc:** darryl@cheytac.com  
**Subject:** Cheytac .308 Quote  
**Attachments:** ~~Tim Thomas - ELSMERE PD.pdf~~

Tim,  
Here is the quote on our Safeside Tactical Engagement Rifle .308 (dealer cost for Law Enforcement agencies). Some areas of discussion are; suppressor needs, weapons case, night vision capability and quantity of magazines. All of which, we can add to your quote as you consider your options. If you have suppressor needs (recommend the AAC MK13-SD at a cost of \$1,965) we will have to discuss this with you in order to set the rifle up properly. Our weapons cases come already formed for your weapon and components at a cost of \$675. You have additional magazine options in loads of 5 or 10 rounds. If night vision is required, we recommend the M2124. Please feel free to contact me or Darryl in the CC block. VR

Rich Mulder  
[rich@cheytac.com](mailto:rich@cheytac.com)  
229-686-3219

# **EXHIBIT “I”**

## Wiley

---

**From:** Stillers Precision <stiller@viperactions.com>  
**Sent:** Friday, November 30, 2012 1:54 PM  
**To:** Darryl  
**Subject:** Re: CheyTac USA M300 Intervention

Hi Darryl,

Same serial numbers as the PTAC's or a new scheme?

Regards,

Russ

On 11/30/2012 11:40 AM, Darryl wrote:

> That is correct, but if I could? I would like to make it 15 M300, and  
> 3 Perses and 2 Safeside for a total of 20?

>

> Thank you,

>

> Darryl

>

>

> -----Original Message-----

> From: Stillers Precision [<mailto:stiller@viperactions.com>]

> Sent: Friday, November 30, 2012 11:58 AM

> To: Darryl

> Subject: Re: CheyTac USA M300 Intervention

>

> Hi Darryl,

>

> Are you looking at the 20 we talked about?

>

> Regards,

>

> Russ

>

> On 11/30/2012 10:46 AM, Darryl wrote:

>> Good Morning Russ/Jerry,

>>

>>

>> As we spoke earlier, we would like to move forward with the new action:

>>

>> We would like to have a new variance with you for our new model M300

>> Intervention utilizing your Tactical 408 (1.45 O.D.)

>>

>> We would like for the left side to state:

>>

>> M300 INTERVENTION

# **EXHIBIT “J”**

## Wiley

---

**From:** Stillers Precision <stiller@viperactions.com>  
**Sent:** Tuesday, April 30, 2013 11:49 AM  
**To:** Darryl  
**Subject:** Re: CheyTac USA, LLC

Hi Darryl,

We have 13 Perses in assembly QC now, I expect they will be ready to ship within a week. The 10 Safesides are at nitride now and I expect to have them back and ready in about 3 weeks.

I will check on the remaining M300 & Vidars and let you an ETA.

When you send payments can you send me a copy or payment amount and date? I do not have access to the account and I want to have you properly credited for payments.

Also - were you going to send us some 408 brass to ensure function on your actions?

Regards,

Russ

On 4/30/2013 7:34 AM, Darryl wrote:

> Good Morning Gentlemen!

>

> Just checking on our order?

>

> Thank You,

>

> Darryl P. Miller

> CheyTac USA, LLC

> 229-686-3219

>

>

>

# EXHIBIT “K”

**Motion to Approve a Section 7 Request Without Consent  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRIAL AND APPEAL BOARD**

**SAFESIDE TACTICAL, LLC**

**Petitioner**

**vs.**

**CHEYTAC USA, LLC**

**Registrant**

**Processing Number: 92060464**

**Registration Number: 4,509,171**

*8,839,213*

**RESPONSE TO PETITIONER'S OPPOSITION TO GRANT  
CORRECTED DATE OF FIRST USE WITHOUT CONSENT**

**The Registrant, Cheytac USA, LLC, through its counsel, Jerry Romanoff, files the Response to the Petitioner's Opposition to Grant Corrected Date of First use Without Consent filed on January 30, 2015.**

**STATEMENT OF FACTS**

- 1. On November 29, 2014, the Registrant filed a Section 7 Request Form requesting to change the date of FIRST USE ANYWHERE and FIRST USE IN COMMERCE date.**
- 2. Attached to the Section 7 Request Form was an invoice showing the correct date of FIRST USE ANYWHERE and FIRST US IN COMMERCE date to be June 24, 2011.**



**\*02-10-2015\***

3. The Section 7 Request was based on a GOOD FAITH ERROR due to an innocent posting of the wrong date from the original invoice.
4. A copy of the original invoice is attached.
5. On January 15, 2015, the Registrant filed an amendment to the original Section 7 Request form and inadvertently included the wrong invoice that is the basis for the Section 7 GOOD FAITH request change.
6. The correct date of FIRST USE ANYWHERE and FIRST USE IN COMMERCE is June 24, 2011 as shown on the attached invoice (originally submitted on November 29, 2014).
7. The original filing of the Section 7 was prior to the Petition to Cancel filed by the Petitioner.
8. On December 1, 2014, the Petitioner filed the Petition to Cancel after the filing of the Registrant's Section 7.
9. The Section 7 had to be corrected and was refiled on December 5, 2014.

### ARGUMENT

**The Petitioner states in their Opposition to Registrant's Motion to Grant Corrected Date of First Use without Consent that the " the attached invoice shows the correct date that should have been posted. This invoice was the First use of the Mark. Despite the foregoing statement, the invoice attached to Registrant's motion is dated May 9, 2012 not June 24, 2011."**

**Petitioner's Counsel is well aware of the existence of the correct invoice dated June 24, 2011. They received a copy during the settlement discussions. They received a copy when the original Section 7 was filed with the correct invoice dated June 24, 2011.**

**The Petitioner's counsel was well aware that the wrong invoice was included in the second Section 7 filing on January 15, 2015.**

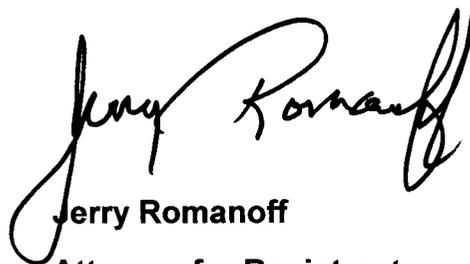
**The Section 7 request is an important part of the Registrant's defense and should not be considered a material change because of the good faith error.**

**The only issue in the Petition to Cancel is the DATE OF FIRST USE ANYWHERE and FIRST USE IN COMMERCE.**

**The Registrant, by counsel, respectfully requests that the Board approve the Section 7 Request by the Registrant.**

**Dated: February 9, 2015**

**Respectfully submitted.**

A handwritten signature in black ink, appearing to read "Jerry Romanoff", written in a cursive style.

**Jerry Romanoff**

**Attorney for Registrant**

**4 Oceanview Court**

**Long Beach, NY 11561**

**516-889-4808 TEL**

**516-889-4193 FAX**

**jerryromanoff@aol.com**



# Receipt

## CheyTac USA

*Distance-Power-Accuracy*

541 Hazel Ave, Nashville, GA 31639  
 Phone 229.686.3219 Fax 1.888.519.5242

INVOICE: MFJUNE2011

DATE: JUNE 24, 2011

EXPIRATION DATE: JULY 2012

TO Name: Mark Fields  
 Address: 3116 Gideon Court  
 Waldorf, MD 20602  
 Fax:  
 Email: mark.l.fields@gmail.com

SALESPERSON	JOB	SHIPPING METHOD	SHIPPING TERMS	DELIVERY DATE	PAYMENT TERMS	DUE DATE
Joe	MF	Best	NA	NA	Paid in Full	Expected

QTY	ITEM #	DESCRIPTION	UNIT PRICE	DISCOUNT	LINE TOTAL
1	Rifle	.308 Win. Mag. Custom "Safeside"	\$6,000.00	\$0.00	\$6,000.00
			<b>SUBTOTAL</b>	<b>\$0.00</b>	<b>\$6,000.00</b>
				<b>SHIPPING (EST)</b>	<b>N/A</b>
				<b>TOTAL</b>	<b>\$6,000.00</b>

**THANK YOU FOR YOUR BUSINESS!**

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

In the matter of U.S. Registration No. 4,509,171;

For the mark SAFESIDE:

Cancellation No. 92060464

Safeside Tactical, LLC,

Petitioner

vs

CheyTac USA, LLC,

Registrant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I caused a copy of the foregoing this 9th day of

February, 2015 to be served, via first class mail, postage prepaid upon:

Mathew H. Sawyers, Esq.

344 Maple Avenue West, suite 151

Vienna, VA 22180



Jerry Romanoff  
Attorney for Cheytac USA, LLC