

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

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American Honda MOTOR CO., INC., :  
Opposer, :  
v. : Opposition No. 121,151  
TBC CORPORATION, :  
Applicant. :

-----X

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OPPOSER'S OPENING BRIEF

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**Description of the Record**

The record comprises:

1. The file for trademark application file No. 75-874,915 (Trademark Rule of Practice [37 C.F.R. §] 2.122(a));
2. The testimonial deposition of Robert James Gurga on behalf of Opposer taken Monday, March 17, 2003 in Torrance, California, and Exhibits 1-27 thereto (filed April 16, 2003);
3. Exhibits A through J of Opposer's Notice of Reliance filed March 17, 2003;
4. Exhibits 1-9 to Opposer's Notice of Reliance filed January 14, 1004;
5. The testimonial deposition of Gary M. Paulson on behalf of Applicant taken Thursday, March 11, 2004 in Memphis, Tennessee, and Exhibits 1-14 thereto (filed March 15, 2004);
6. Exhibits 15 through 17 to Applicant's Notice of Reliance filed March 15, 2004;  
and
7. Exhibits 18 through 35 to Applicant's other Notice of Reliance filed March 15, 2004.

Items 2 and 5 will be referred to as "Gurga Test. [or Ex.]" and Paulson Test. [or Ex.], respectively. Items 3/4 and 6/7 will be referred to as "Opp.Not.Rel.Ex." and "App.Not.Rel.Ex." respectively.

### ***Introduction***

This is an opposition in which the distributor of the Honda SHADOW line of motorcycles opposes registration of SHADOW for tires. The basis for the opposition is that contemporaneous use of SHADOW for such closely related products as motorcycles and tires will very likely cause confusion.

### ***Recitation of Facts***

Opposer American Honda Motor Co., Inc. (“American Honda”), a California corporation, distributes HONDA products in the United States. Gurga Test., p. 7, lns. 21-22. Opposer’s parent company is the Honda Motor Co., Ltd. (“Honda”), which produces automobiles, motorcycles, all terrain vehicles (“ATVs”) and power equipment.

American Honda is the sole distributor of Honda products in the United States. *Id.*, at p. 17, ln. 15 - p. 18, ln. 25; Gurga Ex. 2. American Honda is authorized by its parent Honda to use Honda’s trademarks in distributing Honda products in the United States. Gurga Test., p. 18, ln. 1 – p. 19, ln. 15, Gurga Ex. 3. Accordingly, American Honda wholesales Honda-built SHADOW motorcycles in the United States. Gurga Test., p. 20, lns. 2 – 9.

American Honda’s witness, Robert Gurga, at the time of his testimony in March, 2003, was in his third year as Senior Manager, Product Planning Group of American Honda’s Motorcycle Division, which distributes motorcycles (on and off-road), ATVs, motor scooters and personal watercraft. His Product Planning Group comprises four departments: Market Information and Technology; Motorcycle Accessories Sales and Marketing; Product Evaluation; and Product Planning. *Id.*, at p. 7, ln. 23 – p. 8, ln. 16.

American Honda ranks number one in motorcycle sales in the United States (number of vehicles sold). Gurga Test., p. 13, lns. 1 – 7. “The cruiser is the key market for motorcycle sales in the U.S.” (*Id.*, at p. 15, lns. 13 – 14), and the SHADOW line **REDACTED** ----- of American Honda’s cruiser sales in 2002 (*Id.*, at p. 16, lns. 5 – 6). **REDACTED** -----

**REDACTED**-----

Historically, the SHADOW line comprises more than sixty models of SHADOW motorcycles, some of which have been sold each model year from 1983 through 2000 under such brand names as SHADOW, SHADOW AMERICAN CLASSIC EDITION, SHADOW AMERICAN CLASSIC EDITION DELUXE, SHADOW CLASSIC EDITION TOURER, SHADOW AERO, SHADOW SABRE, SHADOW SPIRIT, SHADOW VLX, and SHADOW VLX DELUXE. *Id.*, at p. 20, lns. 10 – 16, p. 23, ln. 15 – p. 25, ln. 5; Gurga Ex. 4. For Model year 2003, the line comprised the SHADOW VLX, SHADOW VLX DELUXE, SHADOW AMERICAN CLASSIC EDITION DELUXE, two SHADOW SPIRIT models and SHADOW SABRE. *Id.*, at p. 28, lns. 1 – 24.<sup>1</sup> For the future, **REDACTED** , American Honda plans to “continue to market, sell and promote our [SHADOW] line of motorcycles.” *Id.*, at p. 29, lns. 2 – 17.

Honda owns the following registrations for motorcycles on the principal register:

<u>Reg. No.</u>	<u>Mark</u>	<u>Reg. Date</u>
1,604,515	<b>SHADOW</b>	7/3/90
2,151,691	<b>SHADOW AMERICAN CLASSIC EDITION</b>	4/21/98

<sup>1</sup> The record does not reveal the exact model lineup for model years 2001 and 2002 because the edition of the Honda Motorcycle Identification Guide relied upon for past models ends with the 2000 model year.

2,260,820	<b>SHADOW AERO</b>	7/13/99
2,430,634	<b>SHADOW 1100 AMERICAN CLASSIC EDITION TOURER</b>	2/27/01

Opp.Not.Rel.Exs. A, B, D and H.

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Gurga Test., p. 44, ln. 11 – p. 45, ln. 13; Gurga Ex. 12.<sup>2</sup>

American Honda provides a wide range of support to its authorized Honda dealers, including sales brochures, technical training, warranty assistance, advertising mats and co-op advertising. Gurga Test., p. 30, lns. 10 – 18. American Honda also advertises its HONDA motorcycles on national television, on radio, and in print. *Id.*, at p. 35, lns. 2 – 25. Examples of SHADOW brochures for 2002 and 2003 constitute Gurga Ex. 8 (Test., pp. 36 – 37). A number of SHADOW print advertisements that have appeared in both enthusiast (e.g., *Cycle World*) and non-enthusiast (e.g., *Sports Illustrated*) publications can be found in Gurga Ex. 9 (Test., pp. 37 – 38). Dealer advertising materials, co-op advertising materials (“we reimburse the dealer for a percentage of his ad expenses”) and radio scripts for SHADOW advertising are illustrated by Gurga Exs. 10 and 11. (Test. pp. 38 – 40).

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<sup>2</sup> During the taking of testimony, Applicant objected repeatedly to this data, despite the fact that it came from the records of maintained (and relied upon) by American Honda in the course of its business, which records were maintained by departments under the direct supervision of the witness. Applicant during its own testimony offered similar sales data (without objection). Paulson Test. pp. 23-24, Ex. 8.

Applicant TBC Corporation (“TBC”) is a national marketer and distributor of passenger car and light truck tires, and other related products, to the automotive aftermarket industry, which is “what people purchase for their cars after the original equipment part wears out.” Paulson Test., p. 5, lns. 17-24. TBC’s witness, Gary Paulson, at the time of his testimony, was entering his second week as Senior Vice President of Sales of the Private Brands Division. *Id.*, at p. 6, lns. 4 – 6; p. 8, ln. 23 – p. 9, ln. 1. The Private Brands Division markets and distributes private label tires – that is, tires with brands owned by TBC – to independent retail and wholesale distributors throughout the United States and Canada. *Id.*, at p. 10, ln 23 – p. 11, ln. 6. TBC appears to be its own best customer, because it owns Tire Kingdom, a retailer of passenger and light truck tires and Big O, a franchised retailer of passenger and light truck tires. *Id.*, at p. 12, ln. 21 – p. 13, ln. 12.<sup>3</sup>

TBC has four private label tire lines – MULTIMILE, CORDOVAN, SIGMA and VANDERBILT, each of which comprises a few different models of tires. For example, within the SIGMA line are such models as REGENT, SHADOW, TEMPEST and STAMPEDE. Paulson Test., p. 11, lns. 7 – 24. TBC’s SIGMA SHADOW is a passenger automobile tire. *Id.*, at p. 11, ln. 25 – p. 12, ln. 11. While TBC “distributes tires under [brands other than CORDOVAN, MULTI-MILE, SIGMA and VANDERBILT] for automobile, truck, sport utility vehicle, farm, industrial, recreational and other applications” (*Id.*, at p. 16, lns. 6-12; Ex. 2., p. 3), none of these other applications includes motorcycle tires (*Id.*, at p. 16, lns. 14 – 19), and TBC’s retail outlets (TIRE KINGDOM and BIG O) “don’t sell them.” *Id.*, at p.27, lns. 6 – 11. Although TBC

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<sup>3</sup> According to Paulson Ex. 2, TBC’s SEC Form 10K for FY ended December 31, 2002, Tire Kingdom operates 222 tire stores in the southeastern United States, while Big O has franchised 536 Stores primarily in the western and mid-western states. *Id.*, p. 3 .



during discovery produced tire tread design guides showing that motorcycle tires were distributed under the SIGMA brand in 2003, the tires illustrated were not actually motorcycle tires, but, rather, ATV [all terrain vehicle] tires. Paulson Test. pp. 30, ln. 18 – p. 32, ln. 19. Most HONDA motorcycle dealers sell HONDA, and often other brands of, ATVs; after-market dealers also sell motorcycles and ATVs. Gurga Test., p. 30, lns. 1 – 6, p. 31, lns. 12 – 20.

One further matter is of note. On February 6, 2002, more than one year after this proceeding was initiated, TBC's assignee, TBC BRANDS LLC ("TBCB") filed an opposition against the application of IMCOA Licensing of America, Inc. ("IMCOA") to register the trademark INDIAN SPIRIT for motorcycles (Application Serial No. 76/273,017). Opp.Not.Rel. Ex. 1.<sup>4</sup> The basis for the opposition was that IMCOA Licensing's INDIAN SPIRIT trademark for motorcycles so resembled TBCB's registrations of GRAN ESPIRIT, GRAND SPIRIT and WILD SPIRIT ("the SPIRIT marks") for tires that the applied-for mark INDIAN SPIRIT for motorcycles was confusingly similar to one or more of TBCB's SPIRIT marks for tires. *Id.*, at Notice of Opposition ¶ 6.

In the course of so pleading, TBC averred:

The goods set forth in the application opposed herein [motorcycles] identical (sic) and/or similar and/or related to, the goods [non-motorcycle tires] in connection with which TBC uses Opposer's **SPIRIT** Marks . . . as to be likely, when used in connection with the goods of Applicant [motorcycles], to cause confusion or mistake or to deceive customers, thereby resulting in damage and detriment to TBC, its **SPIRIT** Mark(s) and/or business.

*Id.*, at Notice of Opposition ¶ 7.

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<sup>4</sup> Comparing that Notice of Opposition with the papers filed on behalf of TBC in this proceeding, one sees TBC is represented by the same lead attorney in the same firm in each case.

Other facts and evidence will be referred to in the course of legal arguments to which they are particularly pertinent.

### *Statement of Issue*

Does TBC's mark SHADOW for tires consist of or comprise a mark which so resembles the SHADOW marks registered for motorcycles and SHADOW previously used for motorcycles in the United States by American Honda and not abandoned, as to be likely, when used on or in connection with the tires, to cause confusion, to cause mistake, or to deceive?

### *Argument*

#### I.

#### **Applicant TBC's Opposition Against IMCOA is a Decisive Admission Against Interest in this Proceeding**

##### **A. The Legal Standard for Success**

Section 2(d) of the Trademark Act provides for the refusal or registration when an applied-for mark

[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive.

15 U.S.C. § 1052(d). Plainly: (1) TBC's SHADOW sufficiently resembles the common and initial element of American Honda's various Honda-owned SHADOW marks to create a likelihood of confusion, mistake or deception; (2) Honda owns four registrations that comprise or include the SHADOW mark; (3) Honda has used SHADOW since the 1983 model year, used SHADOW AMERICAN CLASSIC EDITION since model year

1997, first used SHADOW AERO in since model year 1998, and first used SHADOW 1100 AMERICAN CLASSIC EDITION TOURER in model year 1998 (See Gurga Ex. 4), while TBC's SHADOW sales apparently did not commence until 2000 (Paulson Ex. 8); and (4) as of model year 2003, at least SHADOW and SHADOW AMERICAN CLASSIC EDITION were in current use, as were other, unregistered, SHADOW marks.

The only remaining question is whether TBC's use of SHADOW in connection with its goods – tires – is likely to cause confusion. By claiming that IMCOA Licensing's application to register the INDIAN SPIRIT mark is confusingly similar to its own SPIRIT registrations, TBC has answered that question. Moreover, TBC's position – at least with respect to similarity of goods – finds solid support in *In re Jeep Corp.*, 222 USPQ 333 (TTAB 1984), which cites a plethora of authority in the course of concluding that:

Because of the close relationship between the goods of applicant and registrant, the common class of purchasers therefor, and the potential for overlapping trade channels, that purchasers who encounter such goods bearing the mark "LAREDO" are likely to assume, quite reasonably, that registrant's tires are approved by applicant or are manufactured to applicant's specifications or are in some other way connected or associated with applicant. Under the circumstances, we conclude that the contemporaneous use of the mark "LAREDO" for applicant's land vehicles and structural parts therefor and for registrant's pneumatic tires is likely to cause confusion, mistake, or deception.

222 USPQ at 337.

#### **B. Admissions Against Interest are Recognized in Opposition Proceedings**

Paragraph 8 of TBCB's Notice of Opposition against IMCOA Licensing (Opp.Not.Rel.Ex.1), while no model of clarity,<sup>5</sup> indisputably alleges that IMCOA

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<sup>5</sup> Paragraph 8 states: "The registration and/or use of the mark set forth in the application opposed herein, is likely to cause confusion, mistake, and/or deceive as to the origin, sponsorship and/or association of Applicant's goods to be sold under the said mark sought to be registered by Applicant vis-a-vis Opposer and/or Opposer's **SPIRIT** Mark(s) and/or to mislead purchasers of Applicant's and/or Opposer's goods,

Licensing's use of INDIAN SPIRIT on motorcycles will cause confusion, mistake or deceit with respect to one or more of TBCB's marks GRAN ESPIRIT, GRAND SPIRIT and WILD SPIRIT for tires – which we now know means non-motorcycle tires. That allegation, of course, is subject to Fed. R. Civ. P. Rule 11; specifically, it is a certification that “to the best of the [presenter's] knowledge, information and belief, formed after an inquiry reasonable under the circumstances, -- . . . the claims . . . and other legal contentions therein are warranted by existing law or by a non frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; [and] the allegations and other factual contentions have evidentiary support. . . .” Fed.R.Civ.P. 11(b)(2) and (3). Federal Rule 11 is applicable in TTAB proceedings. Trademark Rule of Practice [37 C.F.R. §] 2.116(a); TBMP §318.

The present case is stronger than the *IMCOA Licensing* case is for likelihood of confusion between the same mark for “motorcycles” and “tires” for two reasons:

*First*, this case presents a situation of forward confusion (new tires causing confusion with existing motorcycles) rather than reverse confusion (new motorcycles causing confusion with existing tires). Motorcycles have tires that wear out and are replaced. Tires do not have motorcycles that wear out and are replaced. *Gurga Test*. pp. 41-43.

*Second*, there is a greater resemblance between the Honda SHADOW marks, in all of which SHADOW is the initial word, and TBC's SHADOW than there is between TBC's GRAN ESPIRIT, GRAND SPIRIT and WILD SPIRIT and IMCOA Licensing's INDIAN SPIRIT.

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and/or the public in general, into believing that Applicant's goods are sold by, emanate from, and/or in some way, directly or indirectly, as associated with TBC, and/or Opposer's SPIRIT Mark(s), or products, or vice versa, to the damage and detriment of TBC.”

Even before the amendments to Rule 11 in 1983 and 1993 that made clear the obligations of signing pleadings, *Baker's Franchise Corp. v. Royal Crown Cola Corp.*, 404 F.2d 985, 986-87; 160 USPQ 192, 194 (CCPA 1969) established that a party's prior inconsistent pleading – in that case a notice of opposition alleging likelihood of confusion arising from use of the same marks for skim milk and soft drinks – is properly admissible, if not conclusive, in a subsequent proceeding in which the pleader in the first action asserts a different position.

### **C. TBC is the Real Party in Interest in Both Proceedings**

Applicant TBC, a Delaware corporation, filed its intent-to-use application on December 17, 1999. The opposer in the *IMCOA Licensing* opposition, which was filed no earlier than February 6, 2002, is TBCB, a Delaware limited liability company. TBCB is the assignee from, and licensor to, TBC of the marks relied upon in that opposition. Opp.Not.Rel.Ex.1, ¶ 1. Trademark assignments and licenses-back have been described as “a useful structure to meet certain commercial needs.” 2 McCarthy on Trademarks § 18:9 (4<sup>th</sup> ed. Rel. # 14, 6/2000). One such corporate objective commonly found in Delaware is state tax reduction. What is relevant here is that TBC is using the GRAND SPIRIT and WILD SPIRIT marks in the same manner it uses the SHADOW mark for tires. Paulson Test., p 42, ln. 1 – p. 45, ln. 4.

## II.

### **There is Likelihood of Confusion Between SHADOW for Motorcycles and SHADOW for Tires**

#### **A. The du Pont Factors**

It is still the law that likelihood of confusion under Section 2(d) is determined by considering each of the thirteen factors first set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361; 177 USPQ 563, 567 (CCAP 1973), “when of record.” See: TMEP § 1207.01; 3 McCarthy on Trademarks § 23:79 (4<sup>th</sup> ed. Rel. # 22 6/2002). We consider the factors verbatim, in sequence.

*1. The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.*

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TBC’s SHADOW and American Honda’s SHADOW component of its SHADOW line are identical in appearance, sound, connotation and commercial impression. To the extent certain models in the SHADOW line have additional words in their model name, SHADOW is always the first, dominant word.

*2. The similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use.*

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The goods described in TBC’s application are “tires,” without limitation. Motorcycles have tires. Tires do not last as long as motorcycles, and can wear out in as few as 600 miles (or as many as 25,000). *Gurga Test.*, pp. 41-42. There is nothing to prevent a SHADOW motorcycle owner from replacing his tires with SHADOW tires. At least in theory. TBC claims not to be in the motorcycle tire business, but the registration it seeks would allow it to enter that business tomorrow. It is well established that “absent restrictions in the application and registration, goods and services are presumed to travel in the same channels of trade to the same class of purchasers.” *Hewlett-Packard Co. v.*

*Packard Press Inc.*, 251 F.3d 1261, 1268; 62 USPQ2d 1001, 1005 (Fed. Cir. 2002).

“Registrability is determined based on the description in the application, and restrictions on how the mark is used will not be inferred.” *In re Shell Oil Co.*, 992 F.2d 1204, 1208 n.4; 26 USPQ2d 1687, 1690 n.4(Fed. Cir. 1993). There can be few more closely related goods than an article and its component parts. Registration of SHADOW for tires would make it *prima facie* illegal for Honda to sell replacement tires for its SHADOW motorcycles the way it sells other replacement parts for them -- under the SHADOW brand.

3. *The similarity or dissimilarity of established, likely-to-continue trade channels.*

Motorcycle owners buy motorcycle tires from motorcycle dealers, after-market dealers and tire dealers. *Gurga Test.*, p. 42, lns. 14 – 17. TBC markets and sells tires, including ATV tires, in the automotive aftermarket (*Paulson Test.*, p. 5, lns. 17 – 20) both at wholesale through distributors and at retail through its wholly-owned BIG O and TIRE KINGDOM chains (*Id.*, at p. 10, lns 7 – 20). A number of well-known tire companies -- including Bridgestone, Michelin, Dunlop and Pirelli -- make both automobile and motorcycle tires. *Gurga Test.*, p. 45, ln. 18 - p. 46, ln. 11. It is apparent that the parties’ trade channels are parallel, likely to have some degree of overlap, and are even more likely to be perceived as overlapping. *In re Jeep Corp., supra.*

4. *The conditions under which and buyers to whom sales are made, i.e. “impulse” v. careful, sophisticated purchasing.*

Plainly, replacement tires for vehicles are not “impulse” purchases; nor are they careful, sophisticated purchases in the sense that luxury homes, jewelry or even vehicles may be. This factor does not weigh heavily in favor of either American Honda or TBC.

5. *The fame of the prior mark (sales, advertising, length of use).*

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As a glance at any busy street or highway will confirm, not everyone drives a motorcycle all the time. However, the SHADOW line of motorcycles is the best-selling line of on-road motorcycles from the nation's most prolific seller of motorcycles. In the more than two decades since its introduction, American Honda's SHADOW line has sold dozens of

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SHADOW is about as famous as a motorcycle nameplate is likely to get in this market.

6. *The number and nature of similar marks in use on similar goods.*

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The record does not include definitive evidence of this.

7. *The nature and extent of any actual confusion.*

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It is well-settled that "actual confusion is not necessary to show a likelihood of confusion." *Hewlett-Packard, supra*, 281 F.3d at 1267; 63 USPQ2d at 1004. None is known in this case – which may be at least partly attributable to the fact that TBC has not yet, anyway, apparently sold any SHADOW motorcycle tires. As noted already, TBC has taken the position that confusion *is* likely between (non-motorcycle) tires and motorcycles when both contain the term SPIRIT in their model names.

8. *The length of time during and conditions under which there has been concurrent use without evidence of actual confusion.*

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This is not significant for the reasons set forth in the previous section.



9. *The variety of goods on which the mark is or is not used (house mark, "family" mark, product mark).*

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SHADOW is a "family" product mark for motorcycles and their structural component parts, and American Honda seeks protection here only against registration of SHADOW for a product – a tire – which is a component part of motorcycles.

10. *The market interface between applicant and the owner of a prior mark: (a) a mere "consent" to register or use, (b) agreement provisions designed to preclude confusion, i.e. limitations on continued use of the marks by each party, (c) assignment of mark, application, registration and good will of the related business, (4) laches and estoppel attributable to owner of prior mark and indicative of lack of confusion.*

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This is not an applicable factor in this case.

11. *The extent to which applicant has a right to exclude others from use of its mark on its goods.*

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Since the opposed application is, technically, still an intent-to-use application, it is difficult to assess this factor. We do know, however, that Applicant TBC (technically, TBCB) has claimed that its ownership of three SPIRIT marks for tires gives it the right to prevent registration of INDIAN SPIRIT for motorcycles. Here the motorcycle mark owner is the prior user (and registrant), so such a claim would be absurd; TBC's underlying premise that motorcycle and tire brands cannot coexist with similar names, however, is correct.

12. *The extent of potential confusion, i.e. whether de minimis or substantial.*

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The amount of potential confusion can be estimated to be substantial among SHADOW motorcycle riders seeking replacement tires and encountering SHADOW tires of any sort. The potential confusion extends to a broader class of motorcycle riders, motorcycle enthusiasts, and consumers in general who are familiar with Honda's SHADOW motorcycles and who encounter SHADOW tires of any sort.

*13. Any other established fact probative of the effect of use.*

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None, other than TBC's admission, come readily to mind.

**B. Balancing the Factors.**

Mark similarity and product similarity (with the aid of TBC's admission) weigh heavily in American Honda's favor. Trade channels, conditions of sale, "fame" of the SHADOW motorcycle mark and potential for confusion weigh in favor of American Honda or, at worst, are neutral. The remaining factors – similar marks for similar goods, actual confusion, variety of goods, market interface and applicant's right to exclude, have no discernable weight in favor of either party.

**Conclusion**

For the reasons set forth above, the opposition should be sustained. The *du Pont* factors which are “of record” weigh overwhelmingly against TBC, and – at least as far as this factual situation is concerned – confirm the validity of the position it asserted in its opposition against IMCOA Licensing.

New York, NY  
June 28, 2004

Respectfully submitted,

**Fish & Richardson P.C.**

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## CERTIFICATE OF SERVICE

I am employed in the County of New York. My business address is Fish & Richardson P.C., 45 Rockefeller Plaza, Suite 2800, and New York, New York 10111. I am over the age of 18 and not a party to the foregoing action.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for personal delivery, for mailing with United States Postal Service, for delivery by First Class Mail.

On June 28, 2004, I caused a copy of the following documents:

A sealed copy of Opposer's Opening Brief and a copy of Opposer's  
Opening Brief for Public Record

to be served on the interested parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope, and addressed as follows:

Matthew J. Cuccias, Esq.  
Marsha Gentner, Esq.  
Jacobson Holman PLLC  
400 Seventh Street, NW  
Washington, DC 20004


**Attorney for Plaintiff**  
**United States Philips Corporation**

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<b>DELIVERY:</b>	of business to an authorized courier or a driver authorized by that courier to receive documents.
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I declare that I am employed in the office of Fish & Richardson P.C. at whose direction the service was made.

I declare under penalty of perjury that the above is true and correct. Executed on June 28, 2004, at New York, New York.

  
Laurie Buchanan

TBC CERTIFICATE OF SERVICE.doc