

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

)	
)	
UNIQUE MOTORCARS)	
)	
PETITIONER/OPPOSER)	OPPOSITION NO. 91150352
)	
V.)	
)	
THE TRUSTEES OF THE CARROLL)	
HALL SHELBY TRUST, A TEXAS)	
REVOCABLE TRUST, THE TRUSTEES)	
COMPRISING OF CARROLL HALL SHELBY)	
)	
RESPONDENT/APPLICANT)	
_____)	

ANSWER TO THE BOARD'S ORDER TO SHOW CAUSE

Mail Stop; TTAB Responses No Fee
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir or Madam:

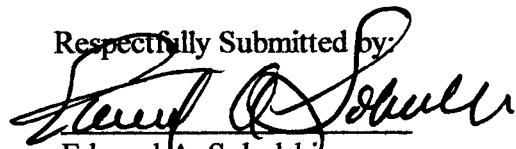
Respondent/Applicant, The Carroll Hall Shelby Trust ("SHELBY") has filed an appeal to the "Injunction and Final Judgment by Consent as to the Claims by Carroll Shelby and Superformance International, Inc.", in the United States Court of Appeals for the First Circuit, Case Number 05-1307, on April 14, 2005. As it now appears, the judgment entered by the United States District Court for the District of Massachusetts, Docket No. 03 CV 11750 RWZ, on January 20, 2005 is now the subject of an appeal,



05-23-2005

Respondent/Applicant hereby requests that the proceeding before the Board be placed in suspension and judgment should not be entered against applicant in this proceeding until, such time as the decision of the Appellate Court is entered.

Date 5/19/05

Respectfully Submitted by:

Edward A. Sokolski
Attorney for Applicant/Respondent
3868 Carson Street, Suite 105
Torrance, CA 90503
(310) 540-5631
(310) 540-2699
edsokolski@cs.com

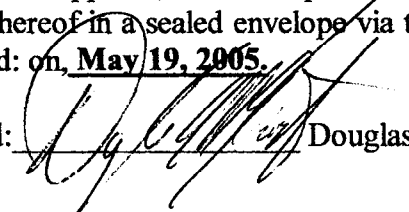
CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the U.S. Postal Service on the date shown below with sufficient postage, via 1st class mail, in an envelope addressed to: MAIL STOP: TTAB RESPONSES NO FEE, COMMISSIONER FOR TRADEMARKS, P.O. BOX 1451, ALEXANDRIA, VA 22313-1451, on May 19, 2005.

Signed:  Douglas M. Kautzky

PROOF OF SERVICE UNDER 37 C.F.R. SEC 1.248

I hereby certify that I served the attached correspondence, ANSWER TO THE BOARD'S ORDER TO SHOW CAUSE, upon Mr. W. Wheeler Smith, Esq., Attorney for Petitioner/Opposer, 3500 Independence Drive, Birmingham, AL 35209, by placing a true copy thereof in a sealed envelope via the United States Postal Service, first class postage prepaid: on, May 19, 2005.

Signed:  Douglas M. Kautzky

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

Unique Motorcars

Opposer

Opposition No. 91150352

v.

Carroll Hall Shelby Trust, a Texas Revocable Trust

Applicant

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

RESPONSE TO OPPOSER'S SUBMISSION OF CIVIL ACTION JUDGMENT

It is respectfully submitted that judgment should not be entered against Applicant for the following reasons:

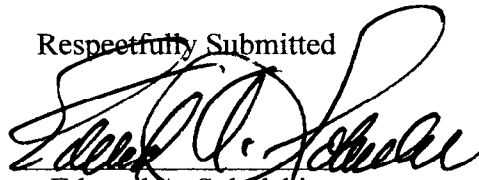
The decision cited by Opposer in supporting its position, i.e. the District Court Decision in the District of Massachusetts (*Shelby Licensing Inc. et al. v. Superperformance International Inc.*—Civil Action No. 00-CV-12581 RWZ) was not based on a properly taken survey to show secondary meaning in Carroll Shelby. This is apparent from the statements on pages 986 and 987 in the decision describing the survey *Carroll Shelby Licensing v. Superformance Int'l*, 251 Fed Supp2d (D. Mass. 2002). It is clearly indicated that the fault of the survey was that it did not show secondary meaning in Carroll Shelby because the questions were not properly asked or phrased.



05-23-2005

Applicant intends to take another survey which it believes will clearly show secondary meaning in Carroll Shelby to the trade dress of the vehicle which is at issue in the present Opposition. It is further to be noted that an Appeal has been filed in the above indicated litigation in the Court of Appeals for the First Circuit (Appeal no.05-1307). In view of this Appeal it is requested that the proceedings in the present Opposition be suspended until the decision of the Appeals Court is entered.

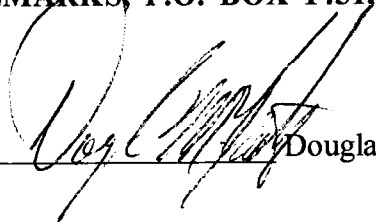
Respectfully Submitted

A handwritten signature in black ink, appearing to read "Edward A. Sokolski", written over a horizontal line. To the right of the signature, the date "5/18/2005" is handwritten.

Edward A. Sokolski
Attorney for Applicant
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(310)-540-5631
(310)-540-2699 (FAX)
edsokolski@cs.com

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the U.S. Postal Service on the date shown below with sufficient postage, via 1st class mail, in an envelope addressed to: **MAIL STOP: TTAB RESPONSES NO FEE, COMMISSIONER FOR TRADEMARKS, P.O. BOX 1451, ALEXANDRIA, VA 22313-1451**, on **May 18, 2005**.

Signed:  Douglas M. Kautzky

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **RESPONSE TO OPPOSER'S SUBMISSION OF CIVIL ACTION JUDGMENT** upon **Mr. W. Wheeler Smith, 3500 Independence Drive, Birmingham, AL 35209**, by placing a true copy thereof in a sealed envelope via United States Postal Service, first-class postage prepaid, on **May 18, 2005**.

Signed:  Douglas M. Kautzky