

ESTTA Tracking number: **ESTTA300554**

Filing date: **08/12/2009**

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

Proceeding	91186206
Party	Plaintiff General Motors Corporation
Correspondence Address	Thomas W. Cunningham Brooks Kushman P.C. 1000 Town Center, Twenty-Second Floor Southfield, MI 48075 UNITED STATES tcunningham@brookskushman.com, lsavage@brookskushman.com
Submission	Other Motions/Papers
Filer's Name	Anessa Owen Kramer
Filer's e-mail	akramer@brookskushman.com
Signature	/Anessa Owen Kramer/
Date	08/12/2009
Attachments	Motion to Substitute.pdf (5 pages)(106717 bytes) Exhibit A.pdf (4 pages)(86563 bytes) Exhibit B.pdf (10 pages)(274344 bytes)

Motors Liquidation Company (f/k/a General Motors Corporation) (“MLC”), hereby submits this Motion to Substitute General Motors Company as the party-in-interest in this case pursuant to Federal Rules of Civil Procedure Rule 25(c) and Trademark Trial and Appeal Board Manual of Procedure Rules 512.01. As background, MLC submits the following background and Memorandum in support of its Motion:

1. On September 4, 2008, General Motors Corporation (“GM Corp.”) filed a Notice of Opposition against US Application No. 77/362,098, and the TTAB designated this as US Opposition No. 91186206. GM Corp’s opposition alleged common law rights and/or residual goodwill in the mark EV1. As GM Corp. has previously advised the TTAB, GM Corp. filed for bankruptcy on June 1, 2009. On July 9, 2009, GM Corp. changed its name to Motors Liquidation Company (“MLC”), as shown by the attached document filed with the State of Delaware (Exhibit A).

2. On July 10, 2009, MLC assigned all IP assets relevant to this case, including all common law rights in the EV1 mark and all associated residual goodwill, to an entirely separate and new company named General Motors Company (“GM Company”). Attached as Exhibit B is an excerpt from this Assignment, showing that GM Company is now the owner of all IP assets relevant to this dispute, including any common law rights and/or residual goodwill in the EV1 mark.

3. According to TTAB Rule 512.01, “[w]hen there has been an assignment of a mark that is the subject of, or relied upon in, an inter partes proceeding before the Board the assignee may be joined or substituted, as may be appropriate, upon motion granted by the Board or upon the Board’s own initiative.”


4. Here, because there has been an assignment of all relevant rights as described above, GM Company should be substituted as the party-in-interest.

5. TTAB Rule 512.01 further states that “the assignee may be substituted as a party if the . . . assignor is no longer in existence.” *Id.* In this case, MLC is in existence, but it is not an operating entity. Therefore, it would only be appropriate to substitute GM Company as a party, rather than join GM Company with MLC. MLC’s sole purpose is attending to the dissolution of GM Corporation and selling off assets of GM Corporation. In connection with the July 10, 2009 assignment, GM Company has acquired all relevant discovery materials/information in this case (to the extent such materials/information exist). MLC does not have possession of nor access to any of the discovery materials or responsive documents in this case. No relevant witnesses work for MLC. Rather, relevant witnesses have either left all involved companies or are employed by GM Company. Accordingly, Applicant will not be prejudiced in any manner by the substitution of GM Company as a party to this opposition.

Therefore, pursuant to 37 Federal Rules of Civil Procedure Rule 25(c) and Trademark Trial and Appeal Board Manual of Procedure Rules 512.01, MLC hereby moves this Board to substitute GM Company as the plaintiff in this Opposition.

WHEREFORE, MLC respectfully requests that the Board grant its Motion to Substitute.

Respectfully submitted,

By 
Anessa Owen Kramer
Chanille Carswell
Attorneys for Motors Liquidation Company

Date: August 12, 2009
BROOKS KUSHMAN P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075
Tel:(248)358-4400

CERTIFICATE OF SERVICE

I certify that I served:

**MOTION TO SUBSTITUTE GENERAL MOTORS COMPANY AND MEMORANDUM
IN SUPPORT OF MOTION TO SUBSTITUTE**

on August 12, 2009 by:

 X delivering (via email)

 X mailing (via First-Class mail)

a copy to:

Mary Brett
Law Offices of Mary Brett
11797 Bayfield Ct.
Reston, VA 20194

Attorney for Applicant

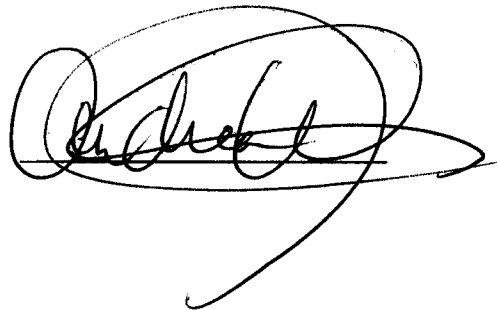
A handwritten signature in black ink, appearing to read "Mary Brett", is written over a horizontal line. The signature is highly stylized and cursive, with large loops and a long, sweeping tail that extends downwards and to the right.

EXHIBIT A

Delaware

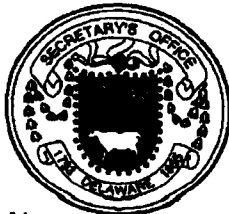
PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "GENERAL MOTORS CORPORATION", CHANGING ITS NAME FROM "GENERAL MOTORS CORPORATION" TO "MOTORS LIQUIDATION COMPANY", FILED IN THIS OFFICE ON THE NINTH DAY OF JULY, A.D. 2009, AT 2:31 O'CLOCK P.M.

0056825 8100

090686660



You may verify this certificate online
at corp.delaware.gov/authver.shtml


Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 7409821

DATE: 07-09-09

State of Delaware
Secretary of State
Division of Corporations
Delivered 02:31 PM 07/09/2009
FILED 02:31 PM 07/09/2009
SRV 090685704 - 0056825 FILE

**CERTIFICATE OF AMENDMENT
OF
RESTATED CERTIFICATE OF INCORPORATION
OF
GENERAL MOTORS CORPORATION**

General Motors Corporation, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"),

DOES HEREBY CERTIFY:

FIRST: The name of the Corporation is General Motors Corporation.

SECOND: The date of filing of the Corporation's original Certificate of Corporation with the Secretary of State of the State of Delaware was October 13, 1916.

THIRD: The date of filing of the Corporation's Restated Certificate of Incorporation with the Secretary of State of the State of Delaware was March 1, 2004.

FOURTH: On June 1, 2009, the Corporation and certain of its direct and indirect subsidiaries filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") (Case Nos. 09-50026 (REG), 09-50027 (REG), 09-50028 (REG) and 09-13558 (REG), respectively). This Certificate of Amendment to the Restated Certificate of Incorporation of the Corporation has been duly adopted in accordance with the provisions of Sections 242 and 303 of the Delaware General Corporation Law (the "DGCL"), pursuant to the authority granted to the Corporation under Section 303 of the DGCL to put into effect and carry out the transactions contemplated by that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009, as amended, by and among the Corporation, certain of its direct and indirect subsidiaries, and NGMCO, Inc., as approved on July 5, 2009 by order (the "Order") of the Bankruptcy Court. Provision for amending the Restated Certificate of Incorporation of the Corporation to change the name of the Corporation is contained in the Order of the Bankruptcy Court having jurisdiction for the reorganization proceedings of the Corporation under the Federal Bankruptcy Code.

FIFTH: Article First of the Restated Certificate of Incorporation of the Corporation be, and it hereby is, amended to read as follows:

"The name of the Corporation is Motors Liquidation Company"

SIXTH: That this Certificate of Amendment shall be effective upon filing.

[signature page to follow]

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Amendment as of this 9 day of July, 2009.

GENERAL MOTORS CORPORATION

By:


Name: Niharika Rande

Title: Assistant Treasurer

EXHIBIT B

OMNIBUS INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT

THIS OMNIBUS INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT (this "Agreement"), dated as of July 10, 2009, is made by and among Motors Liquidation Company (formerly known as General Motors Corporation), a Delaware corporation ("Parent"), Saturn LLC, a Delaware limited liability company ("S LLC"), Saturn Distribution Corporation, a Delaware corporation ("S Distribution"), and Chevrolet-Saturn of Harlem, Inc. ("Harlem," and together with Parent, S LLC and S Distribution, each an "Assignor," and collectively, "Assignors"), and General Motors Company (formerly known as NGMCO, Inc.), a Delaware corporation and successor-in-interest to Vehicle Acquisition Holdings, LLC ("Assignee"). Capitalized terms used herein and not otherwise defined have the meanings given to them in the Purchase Agreement (as defined below).

RECITALS

WHEREAS, Assignors and Assignee are parties to that certain Amended and Restated Master Sale and Purchase Agreement, dated as of June 26, 2009, as amended (the "Purchase Agreement"); and

WHEREAS, pursuant to the Purchase Agreement, Assignors desire to sell, transfer, assign, convey and deliver to Assignee, and Assignee desires to purchase, accept and acquire from Assignors all of Assignors' right, title and interest in and to all Intellectual Property and all rights and benefits associated with the foregoing.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Assignment. Assignors hereby sell, transfer, assign, convey and deliver to Assignee all right, title and interest that Assignors possess in and to all (a) Intellectual Property, whether owned, licensed or otherwise held, and whether or not registrable (including any Trademarks and other Intellectual Property for the Discontinued Brands), and (b) all rights and benefits associated with the foregoing, including all rights to sue or recover for past, present and future infringement, misappropriation, dilution, unauthorized use or other impairment or violation of any of the foregoing and all income, royalties, damages and payments now or hereafter due or payable with respect to any of the foregoing (the "Assigned Intellectual Property"). The Assigned Intellectual Property shall include all (a) Patents set forth on Exhibit A, (b) Trademarks set forth on Exhibit B and (c) Copyrights set forth on Exhibit C.

Section 2. Further Assurances. Assignors shall execute any other documentation and take such other actions, at Assignee's sole cost and expense, as may be reasonably requested by Assignee to enable Assignee to perfect and sustain its rights in and to the Assigned Intellectual Property.

Section 3. Power of Attorney. Each Assignor irrevocably constitutes and appoints Assignee the true and lawful attorney of such Assignor with full power of substitution and gives and grants unto Assignee full power and authority in the name and stead of such Assignor, but on behalf and for the benefit of Assignee, at any time and from time to time, to demand, sue for,

recover and receive any and all Claims of every kind and description whatsoever incident or relating to the Assigned Intellectual Property and to do all acts and things in relation to the Assigned Intellectual Property that Assignee shall deem desirable, for the purpose of fully vesting in Assignee all right, title and interest in and to the Assigned Intellectual Property. Such power of attorney is coupled with an interest and is irrevocable by such Assignor, by reason of such Assignor's dissolution or for any reason whatsoever.

Section 4. Disclaimer. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THE PURCHASE AGREEMENT, ASSIGNORS DO NOT MAKE ANY REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, IN CONNECTION WITH OR WITH RESPECT TO ANY OF THE ASSIGNED INTELLECTUAL PROPERTY OR OTHERWISE WITH RESPECT TO THIS AGREEMENT, INCLUDING ANY REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE, TITLE OR NON-INFRINGEMENT. ALL OTHER REPRESENTATIONS AND WARRANTIES ARE HEREBY DISCLAIMED. EXCEPT AS EXPRESSLY SET FORTH IN THE PURCHASE AGREEMENT, ASSIGNORS ARE ASSIGNING THE ASSIGNED INTELLECTUAL PROPERTY TO ASSIGNEE ON AN "AS-IS, WHERE-IS" BASIS.

Section 5. Conflicts with Purchase Agreement. This Agreement is subject to all of the terms, conditions and limitations set forth in the Purchase Agreement (including the representations, warranties, covenants and agreements set forth in the Purchase Agreement), all of which are incorporated herein by reference. In the event of any conflict between the terms of this Agreement and the terms of the Purchase Agreement, the terms of the Purchase Agreement shall prevail. Nothing contained herein shall be deemed to alter, modify, expand or diminish the terms of the Purchase Agreement.

Section 6. Miscellaneous.

(a) Governing Law. The construction, interpretation and other matters arising out of or in connection with this Agreement shall in all respects be governed by and construed (i) to the extent applicable, in accordance with the Bankruptcy Code and (ii) to the extent the Bankruptcy Code is not applicable, in accordance with the Laws of the State of New York, without giving effect to rules governing the conflicts of laws.

(b) Successors and Assigns; No Third Party Beneficiaries. This Agreement is for the sole benefit of Assignors, Assignee and their respective successors and permitted assigns, and nothing express or implied in this Agreement is intended or shall be construed to confer upon or give to any Person, other than Assignors, Assignee and their respective successors and permitted assigns, any legal or equitable Claims of any nature whatsoever under or by reason of this Agreement.

(c) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument. All signatures of Assignors and Assignee may be transmitted by facsimile or electronic submission, and each such facsimile signature or electronic

delivery signature (including a pdf signature) shall, for all purposes, be deemed to be the original signature of the Party whose signature it reproduces and shall be binding upon such Party.

[Remainder of the page intentionally left blank]

IN WITNESS WHEREOF, the undersigned have caused this Omnibus Intellectual Property Assignment Agreement to be duly executed the day and year first written above.

ASSIGNORS:

MOTORS LIQUIDATION COMPANY

By: Adil Mistry
Name: Adil Mistry
Title: Assistant Treasurer

SATURN LLC

By: _____
Name: _____
Title: _____

SATURN DISTRIBUTION CORPORATION

By: _____
Name: _____
Title: _____

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: _____
Title: _____

ASSIGNEE:

GENERAL MOTORS COMPANY

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the undersigned have caused this Omnibus Intellectual Property Assignment Agreement to be duly executed the day and year first written above.

ASSIGNORS:

MOTORS LIQUIDATION COMPANY

By: _____
Name: _____
Title: _____

SATURN LLC

By: Ted Stenger
Name: Ted Stenger
Title: Executive Vice President

SATURN DISTRIBUTION CORPORATION

By: Ted Stenger
Name: Ted Stenger
Title: Executive Vice President

CHEVROLET-SATURN OF HARLEM, INC.

By: Ted Stenger
Name: Ted Stenger
Title: Executive Vice President

ASSIGNEE:

GENERAL MOTORS COMPANY

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the undersigned have caused this Omnibus Intellectual Property Assignment Agreement to be duly executed the day and year first written above.

ASSIGNORS:

MOTORS LIQUIDATION COMPANY

By: _____
Name: _____
Title: _____

SATURN LLC

By: _____
Name: _____
Title: _____

SATURN DISTRIBUTION CORPORATION

By: _____
Name: _____
Title: _____

CHEVROLET-SATURN OF HARLEM, INC.

By: _____
Name: _____
Title: _____

ASSIGNEE:

GENERAL MOTORS COMPANY

By: SA Malik
Name: Sadia A. Malik
Title: Vice President and Treasurer

State of NEW YORK)
) ss.
County of NEW YORK)

The foregoing instrument was acknowledged before me, the undersigned Notary Public, this ___ day of July, 2009, by Adil Mistry, the Assistant Treasurer of Motors Liquidation Company (formerly known as General Motors Corporation), a Delaware corporation.

Eileen Leckki
Notary Public

EILEEN LECKKI
Notary Public, State of New York
01 LE No. 44-4000668
Qualified in Queens County
Commission Expires April 30, 2011

State of _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me, the undersigned Notary Public, this ___ day of July, 2009, by _____, the _____ of Saturn LLC, a Delaware limited liability company.

Notary Public

State of _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me, the undersigned Notary Public, this ___ day of July, 2009, by _____, the _____ of Saturn Distribution Corporation, a Delaware corporation.

Notary Public

State of _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me, the undersigned Notary Public, this ____ day of July, 2009, by _____, the _____ of Motors Liquidation Company (formerly known as General Motors Corporation), a Delaware corporation.

Notary Public

State of New York)
) ss.
County of New York)

The foregoing instrument was acknowledged before me, the undersigned Notary Public, this ____ day of July, 2009, by Ted Stenger, the Executive Vice President of Saturn LLC, a Delaware limited liability company.

Notary Public

JOHN ELLSWORTH
Notary Public, State of New York
No. 01EL4995735
Qualified in New York County
Commission Expires June 6, 2010

State of New York)
) ss.
County of New York)


The foregoing instrument was acknowledged before me, the undersigned Notary Public, this ____ day of July, 2009, by Ted Stenger, the Executive Vice President of Saturn Distribution Corporation, a Delaware corporation.

Notary Public

JOHN ELLSWORTH
Notary Public, State of New York
No. 01EL4995735
Qualified in New York County
Commission Expires June 6, 2010

State of New York)
) ss.
County of New York)

The foregoing instrument was acknowledged before me, the undersigned Notary Public, this ___ day of July, 2009, by Ted Stenger, the Executive Vice President of Chevrolet-Saturn of Harlem, Inc., a Delaware corporation.



Notary Public

JOHN ELLSWORTH
Notary Public, State of New York
No. 01EL4995735
Qualified in New York County
Commission Expires June 6, 2012