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

Proceeding	91205338
Party	Defendant Kerry Earnhardt, Inc.
Correspondence Address	ROBERT H CAMERON ROBINSON BRADSHAW & HINSON PA 101 N TRYON STREET , SUITE 1900 CHARLOTTE, NC 28246-0106 UNITED STATES rcameron@rbh.com
Submission	Defendant's Notice of Reliance
Filer's Name	Jennifer Carusone
Filer's e-mail	jcarusone@rbh.com
Signature	/Jennifer Carusone/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**TERESA H. EARNHARDT,**

**Opposer,**

**v.**

**KERRY EARNHARDT, INC.,**

**Applicant.**

**Consolidated Opposition Nos.:  
91205331 (parent) and 91205338**

**In the matter of:**

**Application Serial No. 85/383,910  
Trademark: EARNHARDT COLLECTION  
(Intl. Class 20)**

**Application Serial No. 85/391,456  
Service Mark: EARNHARDT COLLECTION  
(Intl. Class 37)**

**APPLICANT'S SECOND NOTICE OF RELIANCE**

Pursuant to 37 C.F.R. § 2.120(j)(3), Applicant hereby makes of record in this proceeding the following non-confidential excerpts (Exhibit A hereto) and exhibits (Exhibit B hereto) from the June 2, 2014, discovery deposition of Judy Queen. Selected confidential excerpts and confidential exhibits from the deposition are being filed separately with *Applicant's Third Notice of Reliance*.

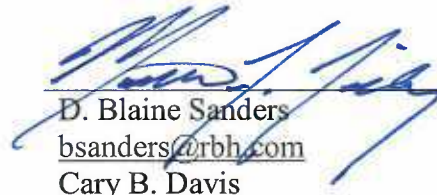
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**Exhibits**

Judy Queen Deposition Exhibits 1, 9

This 30<sup>th</sup> day of October, 2014.



D. Blaine Sanders  
[bsanders@rbh.com](mailto:bsanders@rbh.com)

Cary B. Davis  
[cdavis@rbh.com](mailto:cdavis@rbh.com)

Matthew F. Tilley  
[mtilley@rbh.com](mailto:mtilley@rbh.com)

ROBINSON, BRADSHAW & HINSON, P.A.  
101 North Tryon Street, Suite 1900  
Charlotte, NC 28246-1900  
(704) 377-2536

*Attorneys for Applicant Kerry Earnhardt, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **APPLICANT'S SECOND NOTICE OF RELIANCE** has been served upon each of the parties to this action by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

Larry C. Jones  
Bruce J. Rose  
Carla H. Clements  
Alston & Bird LLP  
Bank of America Plaza  
101 S. Tryon Street, Suite 4000  
Charlotte, NC 28280-4000

This 30<sup>th</sup> day of October, 2014.

  
Cary B. Davis  
  
Matthew T. Tilley

# EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

1		)	
2	TERESA H. EARNHARDT,	)	
3		)	
4	OPPOSER,	)	Opposition No.: 91205331 (parent)
5		)	
6	v	)	Application Serial No. 85/383,910
7		)	Trademark: EARNHARDT COLLECTION
8	KERRY EARNHARDT, INC.,	)	(Intl. Class 20)
9		)	
10	APPLICANT.	)	
11		)	
12	TERESA H. EARNHARDT,	)	
13		)	
14	OPPOSER,	)	Opposition No.: 91205338
15		)	
16	v	)	Application Serial No. 85/391,456
17		)	Service Mark: EARNHARDT COLLECTION
18	KERRY EARNHARDT, INC.,	)	(Intl. Class 37)
19		)	
20	APPLICANT.	)	
21	-----	)	

(Confidential portions: Pages 51 - 62)

DEPOSITION OF JUDY QUEEN

(TAKEN by APPLICANT)

CHARLOTTE, NORTH CAROLINA

JUNE 2, 2014

ALSO PRESENT: Joe Hedrick

REPORTED BY: Meredith R. Johnson  
Court Reporter  
Notary Public

## A P P E A R A N C E S

For the Opposer:

LARRY C. JONES, ESQ.  
BRUCE J. ROSE, ESQ.  
Alston & Bird LLP  
Bank of America Plaza  
101 South Tryon Street, Suite 4000  
Charlotte, North Carolina 28280  
704-444-1000  
704-444-1743 Fax  
larry.jones@alston.com

For the Applicant:

MATTHEW F. TILLEY, ESQ.  
D. BLAINE SANDERS, ESQ.  
Robinson Bradshaw & Hinson, P.A.  
101 North Tryon Street, Suite 1900  
Charlotte, North Carolina 28246  
704-377-2536  
704-373-3952 Fax  
mtilley@rbh.com

Deposition of Judy Queen, taken by the applicant at  
 Robinson, Bradshaw & Hinson, 101 North Tryon Street,  
 Charlotte, North Carolina, on the 2nd day of June, 2014, at  
 9:31 a.m., before Meredith R. Johnson, Notary Public.

# C O N T E N T S

The Witness: JUDY QUEEN

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## P R O C E E D I N G S

Whereupon,

JUDY QUEEN,

having been duly sworn,

was examined and testified as follows:

## EXAMINATION BY COUNSEL FOR APPLICANT

BY MR. TILLEY:

Q Good morning, Ms. Queen.

A Good morning.

Q My name is Matthew Tilley. I'm a lawyer for Kerry Earnhardt, Incorporated. This is a trademark dispute before the TTAB, the Trademark Trial and Appeal Board.

Have you ever testified at a deposition before?

A I have.

Q Okay. I'll just go over then some basic ground rules then just as a refresher. I'll ask you a series of questions. I need you to answer -- I need you to answer audibly on the record. Head nods, yes, and no doesn't show up on the transcript.

You may hear objections from time to time. That's okay. Allow the objections to be said. Unless they're related to attorney-client privilege, you can then answer. Your attorney will tell you if that's not

1 the case.

2 Will you state your name for the record,  
3 please?

4 A Judy Queen.

5 Q And where do you live? What's your address?

6 A 3128 Devon Croft Lane, Charlotte.

7 Q And where do you work, Ms. Queen?

8 A Dale Earnhardt Incorporated.

9 Q And what's your position with Dale Earnhardt  
10 Incorporated?

11 A Vice president of operations.

12 Q And how long have you held that position?

13 A I'm not sure but I've been at DEI since 1998.

14 Q You said you have testified before -- in a  
15 deposition before?

16 A Yes.

17 Q When was that?

18 A Approximately 2003, 2005 maybe.

19 Q And what was that in connection with? What  
20 was the case?

21 A It was regarding a life insurance policy for  
22 Dale Earnhardt.

23 Q Have you testified at any other deposition?

24 A No, not that I remember.

25 Q Have you ever testified at any other

1 Q Are you aware that she's been deposed in this  
2 matter?

3 A Yes.

4 Q Do you know anything about what was said at  
5 that deposition?

6 A No.

7 Q And you've not seen the transcript from that  
8 deposition.

9 A No.

10 Q You said you are now the vice president of  
11 operations at DEI.

12 A Yes.

13 Q And you said you don't know how long you've  
14 held that position? Do you know how long --

15 A Let me do some math. Okay?

16 Q Okay.

17 A I would say 12 years, at least 12 years  
18 maybe.

19 Q Okay. Did you have a position with DEI  
20 before that?

21 A Yes.

22 Q What was that position?

23 A I worked for Dale and Teresa personally,  
24 executive assistant.

25 Q And how long did you do that?

1           A     The remainder of that math, for 16 years,  
2 maybe four years before.

3           Q     Prior to coming -- that was 1998.

4           A     Mm-hmm.

5           Q     So you started as Dale Earnhardt's and Teresa  
6 Earnhardt's --

7           A     Yes.

8           Q     -- executive assistant in 1998.

9           A     Yes.

10          Q     Were you employed by DEI when were you their  
11 executive assistant?

12          A     Yes.

13          Q     Prior to 1998, what did you do? Did you hold  
14 any positions with DEI?

15          A     No.

16          Q     Where did you work prior to 1998?

17          A     Faison Associates.

18          Q     And what did you do there?

19          A     I was their regional controller.

20          Q     What business is DEI in?

21          A     I'm not sure how to answer that. We make  
22 parts and pieces for various race teams. Plus we have  
23 a retail business. Plus --

24          Q     Is there any other business that DEI does?

25          A     We have a airline business.

1           Q     Are there any -- does DEI have any other  
2 lines of business?

3           A     Those are the only ones I can think of now.

4           Q     So parts and pieces for race teams, retail  
5 business, and airline business --

6           A     Yes.

7           Q     -- those are the businesses that DEI's in?

8           A     Mm-hmm.

9           Q     Can you describe the parts of business that  
10 DEI is in?

11          A     They manufacture the gears, transmissions,  
12 and various other parts for race cars plus any outside  
13 parts that vendors request.

14          Q     And, then, what is DEI's retail business?

15          A     They have a retail store that they sell  
16 memorabilia.

17          Q     Does the retail store sell anything else?

18          A     No.

19          Q     And, then, what is DEI's airline business?

20          A     We transport race teams to the various races,  
21 testing, and other companies that require our services.  
22 We provide those as well.

23          Q     You said "testing." When you said "testing"  
24 in connection with the airline business, what does DEI  
25 do with testing in connection with the airline?

1           A     The various teams have to attend tests, and  
2 we fly those crew members to those tests.

3           Q     Okay. As VP of operations, what do your  
4 duties include at DEI?

5           A     I oversee the daily operations of the  
6 company.

7           Q     Is that all of its operation? Is that all of  
8 DEI's operations?

9           A     Yes.

10          Q     And so you oversee the parts business, the  
11 retail business, and the airline business.

12          A     Yes, and the administrative piece of it.

13          Q     What's involved with the administrative piece  
14 of DEI's business?

15          A     We have administrative offices as well.

16          Q     And that -- what does that office do for the  
17 rest of the company?

18          A     That would be the accounting offices. We  
19 have an archival department. We have a special events  
20 department.

21          Q     And so you oversee the administrative part  
22 of --

23          A     Yes.

24          Q     -- DEI's business as well?

25          A     Yes.

1 Q How many employees does DEI have?

2 A 55 to 60.

3 Q And of those 55 to 60, how many of DEI's  
4 employees are involved in the parts business?

5 A I'm guessing here but about 20, approximately  
6 20.

7 Q And how many of DEI's employees are involved  
8 in its retail business?

9 A Two.

10 Q And what do those employees do?

11 A They work in the retail store.

12 Q They're clerks for the store?

13 A One is a clerk and the other has a more  
14 supervision role.

15 Q What's involved in that supervisory role?

16 A Basically directing the clerk and coming up  
17 with the product to go in the retail store that's to be  
18 sold in the store.

19 Q When you say "coming up with the product  
20 that's to be included in the retail store," what do you  
21 mean?

22 A We have -- we have collectable merchandise  
23 that we've had at DEI and we're now selling it plus any  
24 new product that is made goes into the store. And she  
25 helps with the approval process of the new items.

1 Q And that would be approval of licensee's  
2 products?

3 A Approval of the products, yes.

4 Q What types of products are sold in the retail  
5 store?

6 A We have clothing. That would include all  
7 types of apparel. We have jewelry. We have decals.  
8 We have golf balls, clocks, several items, just several  
9 miscellaneous items.

10 Q I'm going to come back to that in just a  
11 moment. You mentioned the parts business, the retail  
12 business, and then the airline business. How many  
13 employees are involved in DEI's airline business?

14 A 18, approximately 18.

15 Q And, then, you mentioned an administrative  
16 office within DEI.

17 A Mm-hmm.

18 Q How many employees are involved with the  
19 administrative office?

20 A Approximately 15.

21 Q 15. Are they divided into teams or  
22 departments?

23 A Yes, departments.

24 Q What are those departments?

25 A We have special events. We have accounting.



1 We have maintenance. We have construction. We have  
2 farms. And I mentioned archives. I think that's --

3 Q Do you have a licensing department in the  
4 administrative office?

5 A No, we do not.

6 Q Do you have -- does DEI have a licensing  
7 department at all?

8 A No, we do not.

9 Q Okay. Who handles licensing for DEI?

10 A When you say "handles," can you elaborate on  
11 that, please?

12 Q Let me ask you this: You mentioned retail  
13 items that are sold at the store. Are those typically  
14 items that include -- that are licensed in connection  
15 with Dale Earnhardt's name or likeness?

16 A Yes.

17 Q Who handles the licensing of Dale Earnhardt  
18 licensed products?

19 A Alston & Bird.

20 Q And who within Alston & Bird?

21 A George Taulbee.

22 Q And what is his role in the licensing  
23 program?

24 A He -- I would say he handles the daily  
25 operations of the licensing department to include

1 dealing with all the licensees and providing the  
2 contracts to the licensees and presenting the items for  
3 approval.

4 Q Are you involved in administrating the  
5 licensing program for DEI?

6 A No, sir.

7 Q You don't have any involvement in licensing  
8 Dale Earnhardt --

9 A No --

10 Q -- merchandise?

11 A -- other than reviewing the reports.

12 Q And how often do you get reports?

13 A They're on a monthly basis.

14 Q And who provides those reports?

15 A The accounting department.

16 Q And what do the reports contain?

17 A It's more or less a royalty report. We cut  
18 checks on a monthly basis or quarterly basis, depending  
19 upon the contracts.

20 Q After you review those reports, do you share  
21 them with anyone else?

22 A No.

23 Q Does anyone else receive those royalty  
24 reports?

25 A Well, of course, the accounting department

1 has them, and they are in my office for  
2 Mrs. Earnhardt's review.

3 Q And do you present them to Ms. Earnhardt --  
4 the royalty reports to Ms. Earnhardt for review?

5 A Yes.

6 Q How often?

7 A Whenever she requests those.

8 Q How often has she -- does she request them?

9 A Probably quarterly.

10 Q When was the last time she requested a  
11 royalty report?

12 A Year end.

13 Q Which -- for -- when is --

14 A December.

15 Q -- DEI's year end? Are royalty reports  
16 provided to Mr. Taulbee?

17 A Yes.

18 Q Does Mr. Taulbee ever give comments in  
19 response to royalty reports?

20 A No.

21 Q I asked you about Mr. Taulbee's involvement,  
22 and you said that he administers the day-to-day  
23 licensing program for DEI and Dale Earnhardt licensed  
24 merchandise; is that correct?

25 A Yes.

1           Q     You said one of his duties in doing so was  
2 providing or approving items. What did you mean by  
3 that?

4           A     If I said he approves them, I didn't mean to  
5 say that.

6           Q     Okay.

7           A     He prepares the items for approval by  
8 Mrs. Earnhardt.

9           Q     And what does he do when he prepares items  
10 for approval by Mrs. Earnhardt?

11          A     What they call them is samples, and he --  
12 because we're in two different locations, he arranges  
13 the samples with the various contracts/term sheets and  
14 presents them to her.

15          Q     When he prepares these samples, are these  
16 samples from licensees who have already entered into  
17 license agreements with DEI?

18          A     Maybe or maybe not.

19          Q     So both?

20          A     Yes.

21          Q     When he prepares samples for a licensee that  
22 has already entered into an agreement with DEI, what is  
23 the purpose of preparing the sample?

24          A     The sample may have various different designs  
25 on it. And if they have a contract with us or a

1 license with us, they're forever changing the content  
2 or what is ever on the product. So he has to present  
3 it each time that that product is changed.

4 Q And what is the purpose of preparing it for  
5 approval? What are we -- what is -- well, does  
6 Mr. Taulbee give recommendations with respect to  
7 whether the samples should be approved?

8 A No.

9 Q Okay.

10 A Mrs. Earnhardt has final approval.

11 Q Does anyone discuss with Mrs. Earnhardt  
12 whether or not a sample should be approved from a  
13 licensee before she makes a decision?

14 A She listens to recommendations, yes.

15 Q And who provides those recommendations?

16 A Sometimes Mr. Taulbee and sometimes  
17 Mrs. Clifton, Sherry Clifton.

18 Q Is Mrs. Clifton a DEI employee?

19 A Yes.

20 Q What is her role at DEI?

21 A Special events and manager of the retail  
22 store.

23 Q When Ms. Clifton and Mr. Taulbee give  
24 recommendations whether to approve samples from  
25 licensees, have you ever heard -- excuse me -- what

1 considerations have you -- do they take into account?

2 Do you know?

3 A No, I don't.

4 Q Have you ever been party to their

5 recommendations?

6 A Yes. And it's mainly -- their

7 recommendations mainly would be to color content.

8 Q To color content? What do you mean by saying  
9 that Mr. Taulbee and Ms. Clifton would recommend to  
10 color content?

11 A If we're talking about a T-shirt, there are  
12 various colors on the T-shirts and whether or not they  
13 like that particular color or the color looks good on  
14 that shirt with the design that's in it.

15 Q Do Ms. Clifton and Mr. Taulbee inspect  
16 samples to see if they comply with licensees' license  
17 agreements?

18 A Mr. Taulbee does.

19 Q And does Mr. Taulbee -- excuse me. Do  
20 Mr. Taulbee or Ms. Clifton review samples to see that  
21 the Dale Earnhardt trademarks are used correctly?

22 A Mr. Taulbee does that.

23 Q Have you ever heard Mr. Taulbee recommend  
24 that a sample shouldn't be approved?

25 A Not that I recall.

1 Q Have you heard Mr. Taulbee recommend that a  
2 sample should be changed before it went into  
3 production?

4 A Yes. If the -- yes, I have.

5 Q How many times have you heard Mr. Taulbee  
6 make that recommendation?

7 A Not that often.

8 Q Do you have an estimate of how many times?

9 A I don't. No.

10 Q What was the basis for making that -- why has  
11 Mr. Taulbee made recommendations to change a sample?

12 A If the trademark registration was not correct  
13 on it, the logo that was on it.

14 Q And what was Mr. Taulbee's recommendation  
15 when the logo was not correct?

16 A That they change the logo.

17 Q How did he recommend that they change the  
18 logo?

19 A How is --

20 Q What change did Mr. Taulbee recommend that  
21 the licensee make to the logo?

22 A That they put the registered trademark on  
23 there.

24 Q And when you say that "they put the  
25 registered trademark on there," what do you mean?

1           A     The Dale Earnhardt trademark is registered,  
2     and it has to appear a certain way in order for it to  
3     be a registered item.

4           Q     So Mr. Taulbee's recommendation was to change  
5     the trademark to make sure it matched the registered  
6     mark.

7           A     Yes.

8           Q     Is Pat Legare involved in licensing for DEI?

9           A     No.

10          Q     What is Pat Legare's role with DEI?

11          A     She is -- she has no position at DEI. She is  
12     a board member of the DEI Foundation.

13          Q     As a board member of the DEI Foundation, does  
14     Ms. Legare have any role in licensing of Dale Earnhardt  
15     licensed products?

16          A     No.

17          Q     What about Cindy Sims? Is Cindy Sims  
18     involved in licensing for DEI?

19          A     No.

20          Q     What is Cindy Sims' role with DEI?

21          A     She is property manager.

22          Q     What do her duties include as property  
23     manager?

24          A     She's responsible for the -- she is over the  
25     maintenance department of DEI, and she is responsible



1 for the -- I guess, the maintenance of all the  
2 properties.

3 Q But she doesn't have any role in licensing.

4 A No.

5 Q Okay. Let me ask you more about DEI's  
6 licensing business. Who negotiates contracts for Dale  
7 Earnhardt licensed merchandise?

8 A Alston & Bird.

9 Q Mr. Taulbee?

10 A Yes.

11 Q Anyone else at Alston & Bird?

12 A No.

13 Q Who identifies new or potential licensing  
14 deals?

15 A Normally they knock on DEI's door, and we  
16 refer them to Alston & Bird.

17 Q So licensees come to you.

18 A Yes.

19 Q Do you know of a time when DEI ever sought  
20 out a licensee?

21 A Yes.

22 Q When was that?

23 A I don't know the years, but I know that DEI  
24 has reached out to a few vendors to see if they would  
25 be interested in producing items.

1 Q Do you remember what types of products were  
2 involved?

3 A I remember one of the licensees as being  
4 Remington. So some sort of guns.

5 Q Do you remember any other products?

6 A Not off the top of my head, no.

7 Q Who makes the decision whether or not to  
8 enter into a licensing deal on behalf of DEI?

9 A Teresa Earnhardt.

10 Q Is anyone else involved in that decision?

11 A No.

12 Q Is Mr. Taulbee involved in those decisions?

13 A He brings the licensee to her, and she makes  
14 the final decision.

15 Q Does Ms. Earnhardt normally meet with the  
16 licensee before Mr. Taulbee brings them to her?

17 A No.

18 Q Does Mr. Taulbee have the initial meetings  
19 with the potential licensee?

20 A He has the initial conversation. I'm not  
21 sure about the meetings, but he has the initial  
22 conversation.

23 Q Is the -- are deals with potential licensees  
24 already negotiated by the time they're brought to  
25 Ms. Earnhardt?

1           A     Not necessarily, no.

2           Q     So Ms. Earnhardt may learn of potential deals  
3 with potential licensees before the negotiations have  
4 completed.

5           A     Yes.

6           Q     Would Ms. Earnhardt direct -- or has  
7 Ms. Earnhardt directed negotiations with respect to  
8 licensees?

9           A     Would you repeat that, please.

10          Q     Has she negotiated directly with licensees?

11          A     No.

12          Q     I'll change the question. Is Ms. Earnhardt  
13 involved with the decisions about how to negotiate with  
14 licensees or potential licensees?

15          A     Not to my knowledge.

16          Q     Who keeps track of revenue that comes in from  
17 licensing of Dale Earnhardt merchandise?

18          A     Our accounting department.

19          Q     Does the accounting department receive the  
20 checks from the licensees directly?

21          A     Yes.

22          Q     Okay. And you said that the accounting  
23 department prepares monthly royalty reports.

24          A     Or quarterly.

25          Q     Or quarterly. And you said that those

1 reports go to Mr. Taulbee and Mrs. Earnhardt and you.

2 A Yes.

3 Q Do they go to anyone else?

4 A No.

5 Q Who owns the marks "Dale Earnhardt" and his  
6 image? Do you know?

7 A I think that's Mrs. Earnhardt.

8 Q If Mrs. Earnhardt owns the Dale Earnhardt  
9 marks and his image, how does DEI license them?

10 MR. JONES: Objection to the form of the question.  
11 Assumes a fact not in evidence.

12 BY MR. TILLEY:

13 Q You can answer.

14 A If my attorney says no --

15 MR. JONES: I'm not saying no. Go ahead and  
16 answer to the best of your knowledge.

17 THE WITNESS: Would you repeat the question.

18 BY MR. TILLEY:

19 Q Well, let me go back. You said Ms. Earnhardt  
20 owns the Dale Earnhardt mark --

21 A Yes.

22 Q -- and the rights in his persona.

23 A Yes.

24 Q DEI licenses the Dale Earnhardt marks and the  
25 rights in his persona to manufacturers of goods;

1 correct?

2 A Yes.

3 Q Okay. If Ms. Earnhardt owns the marks, how  
4 does DEI have the right to license them?

5 MR. JONES: If you know.

6 THE WITNESS: I don't know. I don't.

7 BY MR. TILLEY:

8 Q Has Ms. Earnhardt ever licensed the Dale  
9 Earnhardt marks and the rights in Dale Earnhardt's  
10 persona to DEI?

11 A Not to my knowledge.

12 Q Okay. Do you know if she's ever assigned the  
13 rights and the Dale Earnhardt marks that are in his  
14 persona to DEI?

15 A Not to my knowledge.

16 Q Does Ms. Earnhardt own any other companies  
17 that license the Dale Earnhardt trademarks or rights in  
18 his persona?

19 A The foundation.

20 Q Foundation. And what is the business of the  
21 foundation?

22 A It's a charitable organization, the purpose  
23 of perpetuating Dale's legacy.

24 Q And does the Dale Earnhardt Foundation  
25 license Dale Earnhardt's name or his likeness?

1           A     Their logo is "continue the legend" with a  
2 photo of Dale.

3           Q     Does the Dale Earnhardt Foundation ever  
4 license that logo to anyone else to use?

5           A     No.

6           Q     So the foundation uses the logo with  
7 "continue the legend" and Dale Earnhardt's picture but  
8 doesn't license it to anyone else.

9           A     Not to my knowledge.

10          Q     I asked you what kind of items were sold in  
11 the retail store at DEI, and you told me clothing,  
12 apparel, jewelry, decals, golf balls, clocks, and  
13 miscellaneous items. Can you think of any other Dale  
14 Earnhardt licensed merchandise that is sold in the DEI  
15 retail store?

16          A     There would be some maybe home apparel,  
17 sheets, drapes.

18          Q     You said there are sheets and drapes?

19          A     Mm-hmm.

20          Q     Can you describe those sheets and drapes for  
21 me? What do they look like?

22          A     They would have probably the car, Dale's  
23 image, and his signature.

24          Q     Are there any other products you can think of  
25 that are sold, Dale Earnhardt licensed products that

1 are sold, in the retail store that you can think of?

2 A Pens, pencils, posters, paper.

3 Q And you said that -- well, let me ask you  
4 this: How is the Dale Earnhardt marks or his likeness  
5 used on Dale Earnhardt licensed merchandise?

6 A It is his photo and his signature.

7 Q And does his signature include both his first  
8 name and his last name?

9 A It's a combination of both. We have items  
10 that have "Dale Earnhardt" and "Earnhardt."

11 Q What items do you have that use just  
12 "Earnhardt" as the signature?

13 A Offhand, it is apparel.

14 Q Generally when Dale Earnhardt's signature is  
15 included on Dale Earnhardt licensed merchandise, is it  
16 both names?

17 A Yes.

18 Q So most of the time it's both names.

19 A Mm-hmm.

20 (Exhibit 1 Marked for Identification)

21 BY MR. TILLEY:

22 Q I'll hand you what is to be Exhibit 1.  
23 Mrs. Queen, I'll represent to you that this is the -- a  
24 printout from the page marked "Store" on the Dale  
25 Earnhardt Incorporated Web site.

1 Q And why would you say no?

2 A Because it's very few of the items that we  
3 sell. The list is significant.

4 Q Okay. Let me ask you about how the Dale  
5 Earnhardt trademarks and his likeness are used on these  
6 products. If you'll look at the hat on the brim, on  
7 the front of the hat there's a picture of a man  
8 standing over a checkered flag and then a signature,  
9 "Dale Earnhardt." Have you seen that image before?

10 A Yes.

11 Q Is that one of the Dale Earnhardt trademarks?

12 A To answer that honestly, you'd have to see if  
13 there's a registered sticker on the back of it or a tag  
14 on the back of it. I can't answer that without seeing  
15 that.

16 Q Let me ask it this way: When -- I asked you  
17 when licensees license the Dale Earnhardt trademarks,  
18 how do they use those trademarks on those products?  
19 You said there are signatures, pictures -- or Dale  
20 Earnhardt's picture, and Dale Earnhardt's name; is that  
21 correct?

22 A Or "Earnhardt."

23 Q Or "Earnhardt."

24 A Yes.

25 Q Does Teresa Earnhardt have a registration for



1 the name "Earnhardt" alone?

2 A I don't know that.

3 Q Do you know if the name "Earnhardt" alone is  
4 included in licensing agreements?

5 A I don't know that.

6 Q Does DEI have a registration for "Earnhardt"  
7 alone?

8 A I don't know that either.

9 Q Have you ever reviewed or signed a licensing  
10 agreement on behalf of DEI? Have you ever reviewed a  
11 licensing agreement for DEI?

12 A Yes.

13 Q When was that?

14 A Several years ago. Maybe seven years ago.

15 Q Have you ever signed a licensing agreement  
16 for DEI?

17 A Not that I recall.

18 Q So that would not be included in your duties  
19 as vice president of operations.

20 A No.

21 Q Have you ever been presented a licensing  
22 agreement that was -- that had a line for your  
23 signature but was later changed?

24 A Not that I recall.

25 (Exhibit 2 Marked for Identification)

1 (Exhibit 3 Marked for Identification)

2 BY MR. TILLEY:

3 Q Ms. Earnhardt [sic], I'm going to give you  
4 two documents here.

5 A I'm Ms. Queen but I'll be glad to look at  
6 them.

7 Q I'm sorry. Ms. Queen, will you look at the  
8 document marked Exhibit 2, do you recognize that  
9 document?

10 A Not off the top of my head, no. I would have  
11 to review it.

12 Q Mrs. Queen, as vice president of operations  
13 for DEI, are you familiar with DEI's licensees?

14 A Vaguely.

15 Q Are you familiar with who they are?

16 A I do know some of the names, yes.

17 Q Is Press Pass a licensee of Dale Earnhardt  
18 Incorporated?

19 A I don't know if they're a current licensee.  
20 I know for sure they're a former licensee.

21 Q Ms. Earnhardt -- excuse me -- Ms. Queen --  
22 I'll stop doing that in a minute -- you'll notice that  
23 there's a serial number down here at the bottom right  
24 hand of the document. Do you see that?

25 A Mm-hmm.

1           Q     And if you'll see the first page of this  
2 document, it's a license agreement by and between Dale  
3 Earnhardt Incorporated and RCR Race Operations as  
4 licensors and Press Pass as licensee. Do you see that?

5           A     Yes.

6           Q     Okay. Will you turn to the page numbered  
7 OPP001670.

8                     Do you see the lines for signatures on that  
9 page?

10          A     Yes.

11          Q     Do you see where it says "Dale Earnhardt  
12 Incorporated" under "licensors"?

13          A     Yes.

14          Q     Who is set up to sign for Dale Earnhardt  
15 Incorporated in this agreement?

16          A     Myself and Bill Patterson.

17          Q     Do you know if you ever signed this  
18 agreement?

19          A     I don't know that.

20          Q     Would you turn back to the second page of the  
21 document. Do you see where it says "recitals"?

22          A     Yes.

23          Q     And do you see where they're Numbered A and  
24 B, the recitals?

25          A     Yes.

1           Q     Recital A says, "Licensors are the legal and  
2     equitable owners of or have rights and authority to and  
3     desire to license certain famous and valuable property  
4     which are set forth on the attached Exhibit A."

5           MR. JONES: I object. You not only misread that.  
6     You didn't read all of that --

7           MR. TILLEY: I --

8           MR. JONES: No, no. You put something on the  
9     record. I'm going to correct it. It says, "Licensors  
10    are the legal and equitable owners of or have rights  
11    and authority to with the right to sublicense and  
12    desire to license certain famous and valuable property  
13    which are set forth on the attached Exhibit A,"  
14    et cetera, et cetera.

15    BY MR. TILLEY:

16           Q     Do you agree that that's what Recital A says,  
17    what Larry just read -- excuse me -- Mr. Jones just  
18    read?

19           A     Yes.

20           Q     And do you see Recital B?

21           A     Yes.

22           Q     Can you read Recital B for me?

23           A     "Licensee is engaged in the business of  
24    manufacturing, marketing, selling, and distributing the  
25    products set forth on Exhibit B attached hereto and

1 desires to obtain a limited license from licensors to  
2 manufacturer or have manufactured, market, sell, and  
3 distribute such projects [sic] bearing the property as  
4 more specifically set forth herein."

5 Q Do you understand that recital?

6 A Yes.

7 Q What does that recital mean?

8 A It means that this licensee can manufacture  
9 products for Dale Earnhardt Incorporated.

10 Q And what does the license give the licensor  
11 the right to do?

12 A To market, sell, and distribute.

13 Q Okay. Does it give the licensor the right  
14 to -- or the licensee the right to use the Dale  
15 Earnhardt trademarks?

16 MR. JONES: Objection. The document speaks for  
17 itself.

18 BY MR. TILLEY:

19 Q You can answer.

20 A The document speaks for itself.

21 Q And what does that mean to you?

22 A If it is a licensed product, then the  
23 licensee can market, sell, and distribute.

24 Q Do you understand Recital A?

25 A Yes.

1 Q What does Recital A mean to you?

2 A That the licensors are the owners and have  
3 the rights and authority with the right to sublicense.

4 Q To sublicense what?

5 A Product, articles, merchandise, apparel,  
6 products, collectables, memorabilia, and souvenirs.

7 Q Okay. It says "certain famous and valuable  
8 property which are set forth on the attached  
9 Exhibit A." Do you see that?

10 A Yes.

11 Q Do you understand that famous and valuable  
12 property set forth on the Exhibit A as the property  
13 being licensed?

14 A Yes.

15 Q Okay. Ms. Queen, will you turn now to the  
16 back of the document -- let me get the right page for  
17 you -- on the page marked OPP001674. What is -- what  
18 is the title to that page?

19 A Marks -- "Exhibit A Marks."

20 Q And so do you understand this exhibit to be  
21 the list of property that is being licensed by this  
22 agreement?

23 A Yes.

24 Q You see where there's a chart, and it says  
25 "DEI as licensor" and then "properties" and a bulleted

1 list?

2 A Yes.

3 Q Will you read that bulleted list and let me  
4 know when you've finished.

5 A I'm finished.

6 Q Mrs. Queen, are any of the properties on that  
7 bulleted list the name "Earnhardt" alone?

8 MR. JONES: Object to the form of the question.

9 You know very well it says the name of "Dale  
10 Earnhardt."

11 BY MR. TILLEY:

12 Q Mrs. Queen, you can answer.

13 A Again, it says the name "Dale Earnhardt."

14 Q Does the name "Earnhardt" by itself appear  
15 anywhere on that list of properties?

16 MR. JONES: Object to the form of the question.

17 THE WITNESS: I have no response.

18 BY MR. TILLEY:

19 Q You don't know if the name "Earnhardt"  
20 appears by itself in the list of --

21 A It reads --

22 Q -- category of properties?

23 A -- "the Dale Earnhardt trademark."

24 Q And then the Dale Earnhardt signature  
25 trademark.

1 A Yes.

2 Q And the name, image, and signature and  
3 likeness of Dale Earnhardt. It also says that.

4 A Yes.

5 Q Anywhere in that list is there any place in  
6 that list where the name "Earnhardt" appears without  
7 "Dale"?

8 MR. JONES: Object to the form of the question.  
9 You're misleading the witness, and you failed to read  
10 "Each as provided and approved by DEI on a case-by-case  
11 basis."

12 BY MR. TILLEY:

13 Q You can answer.

14 A No response.

15 Q No response?

16 A No response.

17 Q The clause that Mr. Jones just mentioned,  
18 "each as provided and approved by DEI on a case-by-case  
19 basis," do you understand what that means?

20 A Yes.

21 Q What does that mean?

22 A Exactly what it says.

23 Q Can you explain it for me?

24 A Each is provided on a case-by-case basis, and  
25 it is also approved on a case-by-case basis.



1           Q     We discussed earlier that Mr. Taulbee at  
2 times reviews and recommends changes to product  
3 samples. Do you remember that?

4           A     Yes.

5           Q     And you told me that, when he recommends  
6 changes to product samples, it's so that the use of the  
7 trademark conforms to the registered mark.

8           A     Yes.

9           Q     When he does that, is his review and  
10 recommendation part of this approval provided for in  
11 this agreement?

12                     (Record read as requested)

13           MR. JONES: I object to the form of the question.

14           BY MR. TILLEY:

15           Q     You can answer.

16           A     I don't understand your question.

17           Q     Do you understand that this agreement  
18 provides DEI the right to approve use of the DEI -- or  
19 the Dale Earnhardt marks on licensed products?

20           A     Yes.

21           Q     Okay. And you said that Mr. Taulbee reviews  
22 samples of licensed products.

23           A     Yes.

24           Q     Is Mr. Taulbee's review of samples of  
25 licensed products part of the approval process provided

1 for in this agreement?

2 A Yes.

3 Q Do you know if a licensee has the right on  
4 their own to modify the Dale Earnhardt marks they've  
5 licensed on their products? Can they use something  
6 other than the registered mark?

7 MR. JONES: Object to the form of the question.

8 THE WITNESS: Even if they did, it wouldn't be  
9 approved.

10 BY MR. TILLEY:

11 Q And so DEI would not -- does not approve  
12 licensees using modified versions of its trademarks or  
13 of the Dale Earnhardt trademark.

14 A I didn't say that. If DEI approves it, yes.  
15 It's on a case-by-case basis.

16 Q Do you know if -- do you know if the license  
17 agreements with DEI's licensees prohibit modification  
18 of the trademarks?

19 A I don't know that.

20 Q Will you turn to page OPP001648 -- actually,  
21 first turn to OPP001647. Do you see Section 2.2?

22 A Yes.

23 Q Will you read Section 2.2. You don't need to  
24 read on to Subparagraph A. But will you read  
25 Section 2.2 where it says "limitations and

1 restrictions."

2 A "The license and rights granted herein shall  
3 be limited to the express terms set forth herein and  
4 without limitation. Licensee shall not -- and such  
5 license and right shall not include any right of  
6 licensee to do any of the following acts, each of which  
7 is expressly prohibited hereby."

8 Q Do you understand what that means?

9 A Yes.

10 Q What does it mean to you?

11 A It puts limits and restrictions on what a  
12 licensee can and cannot do.

13 Q Will you turn to the next page,  
14 Subparagraph F. And so do you understand what follows  
15 after that paragraph is a list of things that licensees  
16 cannot -- or this licensee cannot do?

17 A Yes.

18 Q Will you look at Subparagraph F.

19 A Yes.

20 Q Will you read Subparagraph F for me.

21 A "No misuse or alterations: Use or knowingly  
22 permit the use of any of the properties in any manner  
23 or for any purpose not specifically authorized under  
24 this agreement or change, alter, add to, delete from,  
25 augment or modify the properties of the licensed

1 products in any way."

2 Q Do you understand what that paragraphs means?

3 A Yes.

4 Q What does it mean?

5 A It means you cannot misuse or alter the  
6 samples, the merchandise.

7 Q It prohibits the licensee from changing any  
8 of the properties; is that correct?

9 A Yes.

10 Q And the properties are the marks, the Dale  
11 Earnhardt marks; is that correct?

12 A Yes.

13 Q And it says that the licensee cannot change,  
14 alter, add to, delete from, augment, or modify the  
15 properties; is that correct?

16 A Yes.

17 Q So that would prohibit the licensee from  
18 modifying the Dale Earnhardt trademarks on its  
19 products.

20 MR. JONES: Object to the form of the question.

21 THE WITNESS: No response.

22 BY MR. TILLEY:

23 Q Ms. Queen, you said that you understood what  
24 that paragraph meant and that it prohibited the  
25 licensee from modifying the properties, which you

1 understood to be the marks.

2 A It also says "on a case-by-case basis."

3 Q And what do you understand the case-by-case  
4 basis to mean?

5 A Excuse me?

6 Q What do you understand the phrase a  
7 "case-by-case basis" to mean.

8 A We read earlier where each one of them is  
9 submitted and approved on a case-by-case basis.

10 Q Is the phrase on a "case-by-case basis"  
11 included in paragraph F?

12 A No.

13 Q Ms. Queen, you said you were familiar with  
14 the Dale Earnhardt marks and its licensing program.  
15 Are you familiar with the registrations that include  
16 the name "Dale Earnhardt"?

17 A No.

18 Q Are you familiar with any trademark  
19 registrations that Teresa Earnhardt or DEI own?

20 A Familiar, yes.

21 Q Okay. Does Teresa Earnhardt own a  
22 registration for the name "Dale Earnhardt"?

23 A Yes.

24 Q Do you know what types of goods are covered  
25 by that registration?

1           A     Not off the top of my head.

2           Q     Is that the only registration Ms. Earnhardt  
3 owns?

4           A     I don't know that.

5           Q     Do you know -- so as far as you know, the  
6 only registration Ms. Earnhardt -- trademark  
7 registration Ms. Earnhardt owns is for the name "Dale  
8 Earnhardt."

9           A     Yes.

10          Q     And you don't know if Ms. Earnhardt has ever  
11 registered the name "Earnhardt" by itself as a  
12 trademark.

13          A     I don't know that.

14                   (Exhibit 4 Marked for Identification)

15 BY MR. TILLEY:

16          Q     I'm going to hand you what's going to be  
17 marked as Exhibit 4. Ms. Queen, have you ever seen a  
18 trademark registration?

19          A     Is this what this is?

20          Q     Answer my question, first. Ms. Queen, have  
21 you ever seen a trademark registration?

22          A     I've seen what it looks like.

23          Q     Ms. Queen, I'll represent to you that this is  
24 a record of a trademark registration for the name "Dale  
25 Earnhardt." Do you see on the registration where it

1 (Off the Record 11:06 a.m. to 11:08 a.m.)

2 BY MR. TILLEY:

3 Q Ms. Queen, we were talking earlier about Dale  
4 Earnhardt licensed merchandise. Who are -- could you  
5 describe the customers for Dale Earnhardt licensed  
6 merchandise?

7 A They run from one end of the spectrum to the  
8 other, from your blue collar worker to your white  
9 collar worker.

10 Q Are they NASCAR fans?

11 A I would say some of them are, yes.

12 Q When you say "some of them are," who would  
13 the other customers for Dale Earnhardt licensed  
14 merchandise be?

15 A I have no idea but I can't tell you they're  
16 all NASCAR because I don't know that.

17 Q Are they mostly NASCAR fans?

18 A I would assume so but, again, I don't know  
19 that for certain.

20 Q Ms. Queen, as vice president of operations  
21 for Dale Earnhardt Incorporated, you're familiar with  
22 the products it sells and who it tries to sell them to;  
23 isn't that correct?

24 A I'm familiar with the products. I could care  
25 less who buys them.

1 Q Okay. Is determining who would buy Dale  
2 Earnhardt merchandise not part of marketing that  
3 merchandise?

4 A That's not part of my responsibility.

5 Q Generally do you know if Dale Earnhardt  
6 licensed merchandise is sold through retail or  
7 commercial channels?

8 A Both.

9 Q When you say "commercial channels," how is  
10 Dale Earnhardt licensed merchandise sold through  
11 commercial channels?

12 A I take that back. The only ones that I know  
13 of are retail. Sorry.

14 Q And generally is Dale Earnhardt licensed  
15 merchandise -- so Dale Earnhardt licensed merchandise  
16 is generally sold as retail merchandise.

17 A Yes.

18 Q Is it sold in stores?

19 A Yes.

20 Q Is it sold online?

21 A Yes.

22 Q Okay. Is it sold trackside at NASCAR events?

23 A Yes.

24 Q Do you know if there's any prohibitions on  
25 licensees selling merchandise directly trackside?



1           A     The sellers have to be approved by the track.  
2     I'm not familiar with that process, but they have to be  
3     approved in order to sell that merchandise.

4           Q     So in order for a licensee to sell Dale  
5     Earnhardt licensed merchandise trackside, they have to  
6     be approved by the track.

7           A     Yes.

8           Q     But you don't know how that process works.

9           A     I'm not familiar with that process.

10          Q     Is Dale Earnhardt licensed merchandise ever  
11     sold through one-on-one agents to customers?

12          A     Not that I'm aware.

13          Q     Okay. Does DEI sell Dale Earnhardt licensed  
14     merchandise on eBay?

15          A     No.

16          Q     Okay. Do you know if any of DEI's licensees  
17     sell Dale Earnhardt licensed merchandise on eBay?

18          A     No.

19          Q     You don't know?

20          A     I don't know, no. They should not. And  
21     our -- Alston & Bird track that and stop it if there  
22     is.

23          Q     So you would expect that the license  
24     agreements with the licensees prohibit them from  
25     selling Dale Earnhardt licensed merchandise directly on

1 eBay.

2 A Yes.

3 Q And you would expect that your attorneys  
4 would intervene to stop a licensee from selling Dale  
5 Earnhardt licensed merchandise on eBay.

6 A Yes.

7 Q Okay. Does DEI maintain a page on eBay?

8 A Not to my knowledge, no.

9 Q Okay. Does Teresa Earnhardt keep a page on  
10 eBay?

11 A Not to my knowledge.

12 Q Okay. Do you have a -- you said you're  
13 familiar with Dale Earnhardt licensed merchandise. Are  
14 you familiar with the prices for which it's sold?

15 A No.

16 Q Do you have any sense of what the prices are  
17 for Dale Earnhardt licensed merchandise?

18 A No.

19 Q Does the price of Dale Earnhardt licensed  
20 merchandise affect the royalty payment DEI would  
21 receive?

22 A They receive a percentage of the total.

23 Q And so if a particular piece of Dale  
24 Earnhardt licensed merchandise were sold for, say, a  
25 hundred dollars and -- well, let me back that out.

1           Q     But you're saying that you don't know the  
2     prices of DEI licensed merchandise.

3           A     No.

4           Q     Ms. Queen, will you turn to Exhibit 1. Will  
5     you list for me the goods that you see in Exhibit 1.

6           A     Apparel.

7           Q     What is the apparel?

8           A     The hat.

9           Q     Okay.

10          A     It looks like a deck of cards. I'm not sure  
11     about that. I'm not sure what that box is. There's a  
12     glass. There's a car. There's a mug, a car tag.

13          Q     Ms. Queen, these are items sold in DEI's  
14     store; is that correct?

15          A     I assume so. If that's what we have listed  
16     on the Internet, I assume it would be sold in the  
17     store.

18          Q     Do you know what the price of that hat is in  
19     DEI's store?

20          A     I do not.

21          Q     Do you know if it's under \$50?

22          A     I would say, yes, it's under \$50.

23          Q     There's a glass there. Do you know what the  
24     price of that glass would be?

25          A     No.

1 Q Would it be under \$50?

2 A I would assume so, yes.

3 Q And when you say you assume so, you're  
4 guessing based on your knowledge of what's in the store  
5 and the prices for which it's sold; is that correct?

6 A Yes.

7 Q There's a -- a diecast car there. Do you see  
8 that?

9 A Yes.

10 Q Do you know what the price of that car is?

11 A No.

12 Q Would it be under \$50?

13 A It's according to the size of the car, and  
14 I'm not sure which size it is.

15 Q There's a license plate in the picture. Do  
16 you see that?

17 A Yes.

18 Q Would that license plate be -- have a price  
19 over \$50?

20 A No.

21 Q Would you expect it to?

22 A No.

23 Q And there's a coffee mug. Would you expect  
24 the price of that coffee mug to be over \$50?

25 A No.

1           Q     Okay. Do you think they'd ask for  
2 information -- for specifications on how these goods  
3 were made?

4           A     Again, I can't answer that.

5           Q     Are any of these goods in -- on Exhibit 1  
6 customizable?

7           A     Prior to being made, yes.

8           Q     When the customer comes in and sees one of  
9 these goods on the shelf, can he talk to the store  
10 clerk and ask him to change the product?

11          A     No.

12          Q     We talked about the registration for the name  
13 "Dale" -- the trademark registration for the name "Dale  
14 Earnhardt," and you said that you're not aware of any  
15 other registrations for Dale Earnhardt that are owned  
16 by either Teresa Earnhardt or DEI.

17          A     I can't name those for you, no. I know there  
18 are others, but I can't name those for you off the top  
19 of my head.

20          Q     Okay. Do you know if Teresa Earnhardt or DEI  
21 own any registrations for home building services?

22          A     I do not know that.

23          Q     Do you know if Teresa Earnhardt or DEI are  
24 engaged in home building services?

25          A     I don't know that either.

1 Q Okay. Do you know if DEI is engaged in home  
2 building services?

3 A No, not to my knowledge.

4 Q DEI is not involved in home building  
5 services.

6 A (Shakes head side to side.)

7 Q Is DEI involved in the manufacture,  
8 production, or sale of furniture?

9 A Not to my knowledge.

10 Q Does DEI license any of the Dale Earnhardt  
11 marks for furniture?

12 A We have in the past.

13 Q When was that?

14 A Several years ago. I'm not sure.

15 Q How long -- approximately how long ago?

16 A Again, I'm not certain. And, again, it would  
17 be -- it would -- your definition of furniture. What's  
18 it made out of? Are we talking about blow-up  
19 furniture? Are we talking about wooden furniture? We  
20 have furniture with Dale Earnhardt's name on it.

21 Q When you say you have "furniture with Dale  
22 Earnhardt's name on it," what type of furniture are you  
23 referring to?

24 A We're talking about children's beds, chairs.

25 Q What kind of chairs?

1           A     Blow-up chairs, blow-up sofa.

2           Q     By "blow-up sofa," you mean an inflatable  
3 sofa?

4           A     Yes.

5           Q     Are those currently -- are those products  
6 currently being produced?

7           A     I don't know.

8           Q     So you don't know if the inflatable chair and  
9 the inflatable sofa are currently being produced.

10          A     I don't know that. I know we have samples.  
11 But I don't know if they're currently being produced.

12          Q     Do you know if the children's bed is  
13 currently being produced?

14          A     I don't know that either.

15          Q     Do you know if DEI currently has a license  
16 agreement with any furniture manufacturer?

17          A     I don't know that.

18          Q     And do you know if DEI has any license  
19 agreement currently with a contractor or a construction  
20 contractor?

21          A     No.

22          Q     Okay. Does Teresa or DEI have a registration  
23 for the mark "Earnhardt Collectables"?

24          A     I don't know that.

25          Q     Does Teresa or DEI have a registration for

1 the mark "Earnhardt Collection"?

2 A I don't know that either.

3 Q Do you know if DEI has ever used the term  
4 "Earnhardt Collectables" as a trademark?

5 A Not as a trademark. We refer -- all of the  
6 memorabilia has been called "Earnhardt Collectables,"  
7 but I don't think it was trademarked. I don't know  
8 that for certain.

9 Q Who has called it that?

10 A Inside and outside contacts.

11 Q But when that merchandise has been referred  
12 to as "Earnhardt Collectables," "Earnhardt  
13 Collectables" wasn't being used as a trademark?

14 A Again, I don't know that for certain.

15 Q Has DEI ever used the term "Earnhardt  
16 Collection" as a trademark?

17 A I don't know that for certain.

18 Q Since you have been vice president of  
19 operations, has DEI ever used "Earnhardt Collection" as  
20 a trademark?

21 A Not that I'm aware of.

22 Q Okay. We mentioned home builders, and you  
23 said that DEI has -- well, let me ask you this: Has  
24 DEI ever licensed any of the Dale Earnhardt marks to a  
25 home builder?



1           A     Not to my knowledge.

2           Q     Has it done so since you've been vice  
3 president of operations?

4           A     Not to my knowledge.

5           Q     And so DEI is not currently licensing any of  
6 the Dale Earnhardt marks to a home builder.

7           A     Not to my knowledge.

8           Q     Have you ever met Sajjan Dhaliwal or anyone  
9 from JAS-AM, Inc.?

10          A     No.

11          Q     When I say "JAS-AM, Inc.," do you know of  
12 that company?

13          A     No.

14          Q     Okay. When I say "Sajjan Dhaliwal," do you  
15 know Sajjan Dhaliwal?

16          A     Yes.

17          Q     Who is Sajjan Dhaliwal?

18          A     I know him as -- I don't know if this is  
19 current knowledge.

20               MR. JONES: Go ahead. We'll mark it later.

21               THE WITNESS: Mrs. Earnhardt has purchased some  
22 property from him.

23               BY MR. TILLEY:

24           Q     What property has Ms. Earnhardt purchased  
25 from him?

1 works at DEI.

2 Q To your knowledge, has DEI ever received a  
3 phone call asking if they're sponsoring the Earnhardt  
4 Collection?

5 A Not to my knowledge.

6 Q Has anyone come to you and been confused  
7 about whether or not DEI or Teresa are sponsoring the  
8 Earnhardt Collection?

9 A I don't think so.

10 Q There are a number of famous racers in the  
11 Earnhardt family, aren't there, Ms. Queen?

12 A Two that I can bring to mind.

13 Q Who are the two that you bring to mind?

14 A Dale Earnhardt and Dale Earnhardt Jr.

15 Q You said you believe the designation  
16 "Earnhardt Collection" would be viewed by the public as  
17 pointing unmistakably to Dale Earnhardt, and by that  
18 you meant senior.

19 A Yes.

20 Q Why not Dale Earnhardt Jr.?

21 A If they're going to refer to Dale  
22 Earnhardt Jr., they refer to him as Dale Jr.

23 Q You never heard anyone refer to Dale  
24 Earnhardt Jr. as anything other than Dale Jr.?

25 A I'm not saying I've never heard that, but the

1           A     I can't say that I do.

2           Q     Were you involved in providing answers to  
3 questions as part of discovery in this case?

4           A     No.

5           Q     Okay. Will you turn to -- I'll represent to  
6 you, then, that this is a set of responses from  
7 Ms. Earnhardt to discovery -- interrogatories served by  
8 Kerry Earnhardt, Inc. Will you turn to page 4, please.  
9 Do you see where it says Interrogatory Number 3?

10          A     Yes.

11          Q     Can you read what it says for Interrogatory  
12 Number 3?

13          A     "Identify the person or entity associated  
14 with Opposer who is most knowledgeable about the annual  
15 sales of merchandise licensed under the marks "Dale  
16 Earnhardt," "Earnhardt" alone, i.e., not with "Dale" or  
17 "Earnhardt Collectables."

18          Q     And do you see there where it says response  
19 to Interrogatory Number 3?

20          A     Yes.

21          Q     And it says it is -- there's an objection  
22 and, then, the next paragraph is "As presently informed  
23 Opposer understands that Amy Hallman, licensing  
24 coordinator for Dale Earnhardt Incorporated, is likely  
25 the most knowledgeable person regarding such matters."

1 A Yes.

2 Q Do you agree with that? Is Amy Hallman the  
3 most knowledgeable person with respect to annual sales  
4 of merchandise licensed under Dale Earnhardt marks?

5 A She no longer is an employee of Dale  
6 Earnhardt Inc.

7 Q When did she leave DEI?

8 A 2013, not quite sure about that.

9 Q Sometime last year?

10 A I think it was sometime last year or early  
11 this year.

12 Q Did she quit or was she fired?

13 A She quit.

14 Q Do you know why she quit?

15 A No. I don't think her resignation said.

16 Q Do you know where she works now?

17 A She works for another racing team.

18 Q Prior to her departure in 2013 would  
19 Ms. Hallman have been the most knowledgeable person at  
20 DEI regarding the merchandise licensed under the Dale  
21 Earnhardt marks?

22 A Yes.

23 Q Will you look at Interrogatory Number 4,  
24 please. Will you read Interrogatory Number 4, please?

25 A "Opposer incorporates by reference all of the

1       foregoing objection."

2           Q     Actually, that's the response.  Next one up.

3           A     Excuse me.  "Identify each person or entity  
4       with knowledge of any confusion concerning Applicant's  
5       use of the 'Earnhardt Collection' mark and Opposer's  
6       products or services and for each such person summarize  
7       the nature and extent of that knowledge."

8           Q     Do you understand what that request is  
9       asking?

10          A     I think so.

11          Q     What do you understand that request to be  
12       asking?

13          A     They're asking the identity of each person or  
14       entity with knowledge of any confusion concerning  
15       Applicant's use of the Earnhardt Collection mark and  
16       Opposer's products or services.

17          Q     And will you look at the response to  
18       Interrogatory Number 4.  There's an objection and then  
19       in the next paragraph it says, "As presently informed,  
20       Opposer believes there is no such person or entity."

21                Do you see that?

22          A     Yes.

23          Q     Is that answer correct, to the best of your  
24       knowledge?

25          A     Yes.

1 the discovery requests a little more than a month ago,  
2 you don't recall any other discussions about them.

3 A No.

4 Q Okay. And you didn't have any other  
5 discussions about them.

6 A No.

7 Q Okay. Ms. Queen, are you the only person  
8 within DEI who reports directly to Ms. Earnhardt?

9 A Yes. Yeah.

10 Q You're her only direct report?

11 A Yes.

12 Q And so everyone else within DEI ultimately  
13 reports to you, and then you report to Ms. Earnhardt.

14 A Yes.

15 Q Okay. Is Ms. Earnhardt still involved in  
16 DEI's business on a day-to-day basis?

17 A Yes.

18 Q She is involved --

19 A Yes.

20 Q -- on a day-to-day basis?

21 A Yes.

22 Q Does she come into the office?

23 A She works from home and works from the  
24 office.

25 Q How often does she work from home?

1           A     90 percent of the time.

2           Q     Okay. How often do you speak with

3     Ms. Earnhardt?

4           A     On a daily base.

5           Q     On a daily basis?

6           A     (Nods head up and down.)

7           Q     Multiple times a day.

8           A     Some days, yes.

9           Q     Is that mostly over the telephone?

10          A     Yes.

11          Q     Do you normally work from DEI's offices?

12          A     I do. I work from home as well.

13          Q     Your own home?

14          A     Yes, and her home.

15          Q     You work from Ms. Earnhardt's home?

16          A     Uh-huh.

17          Q     How often do you work from Ms. Earnhardt's  
18     home?

19          A     A couple times a month.

20          Q     Couple times a month. Do you ever travel  
21     with Ms. Earnhardt?

22          A     Yes.

23          Q     When you travel with Ms. Earnhardt, is it  
24     related to DEI's business?

25          A     Yes.

1 Q Have you ever traveled with her not related  
2 to DEI's business?

3 A Yes.

4 Q Would those personal -- was it a personal  
5 trip?

6 A Her personal business.

7 Q Her personal business. Have you ever  
8 accompanied her on vacations?

9 A Working vacations.

10 Q Okay. And by "working vacations," what do  
11 you mean?

12 A We worked most of the time.

13 Q Okay. Do you handle Ms. Earnhardt's  
14 schedule?

15 A No.

16 Q Okay. Does someone within DEI handle  
17 Ms. Earnhardt's schedule?

18 A No. I relay the information to her, and she  
19 sets her own schedule.

20 Q Okay. Does anyone with DEI or you make  
21 Ms. Earnhardt's travel arrangements?

22 A I have made them. I make limited ones now.  
23 She makes her own and then she has other people making  
24 hers.

25 Q Those other people, are those employees of



1       DEI?

2           A     I think Pat Legare makes some of those  
3       arrangements for her, and her pilot does as well.

4           Q     Do you coordinate the maintenance and work on  
5       her personal homes?

6           A     It depends on the locations.

7           Q     What locations do you handle the maintenance  
8       for?

9           A     I don't actually handle the maintenance.  
10       They coordinate the maintenance through me. Several of  
11       her condos and a few of her residences.

12          Q     Okay. You said you were Ms. Earnhardt's  
13       personal assistant.

14          A     Mm-hmm.

15          Q     When did you stop being Ms. Earnhardt's  
16       personal assistant?

17          A     Again, I'm not real sure but I gave the years  
18       earlier. Whatever those years are.

19          Q     Okay. Sometime before 2000?

20          A     Yes, yes.

21          Q     Okay. And you were also Dale Earnhardt's  
22       personal assistant --

23          A     Yes.

24          Q     -- at that time. Were you in your role as  
25       Dale Earnhardt's personal assistant familiar with his

1 a little more time to get there.

2 BY MR. TILLEY:

3 Q Prior to Dale Earnhardt Senior's death, Dale  
4 Jr. and Kerry were both in racing; is that correct?

5 A Dale Jr., was, yes, and I think Kerry was on  
6 a very limited basis. I'm not real sure about Kerry.

7 Q And you said you were familiar with Kerry  
8 Earnhardt's relationship with Dale Earnhardt Senior in  
9 the context of their business.

10 A Vaguely. I meant --

11 Q And what is that understanding?

12 A If Kerry visited the office, I may or may not  
13 have seen them there together.

14 Q Do you have any sense of whether Dale  
15 Earnhardt -- well, prior to Dale Earnhardt Senior's  
16 death in 2001, Dale Jr. and Kerry Earnhardt were both  
17 involved in DEI; is that correct? They were racing for  
18 DEI.

19 A Dale Jr. raced for DEI. Kerry may have run  
20 some limited races with DEI. Yeah.

21 Q Did Dale Earnhardt Senior ever appear with  
22 Dale Earnhardt Jr. or Kerry Earnhardt, make public  
23 appearances with either one of them?

24 A Probably.

25 Q Did DEI ever work to promote or publicize the

1 careers of Dale Earnhardt Jr. or Kerry Earnhardt?

2 A As long as -- if they were working for us,  
3 I'm sure they did, yes.

4 Q And they were working for DEI before Dale  
5 Earnhardt Senior's death?

6 A Again, Dale Jr. was and I'm not sure about  
7 Kerry. I think he ran some races on a limited basis  
8 for DEI.

9 Q During the time prior to Dale Earnhardt  
10 Senior's death when Dale Jr. and Kerry Earnhardt were  
11 racing, do you think the public viewed the name  
12 "Earnhardt" as referring only to Dale Earnhardt Senior?

13 A Yes.

14 Q Even though DEI was trying to promote Dale  
15 Earnhardt Jr. and Kerry Earnhardt?

16 A Yes. They differentiated that by their  
17 names, Dale Jr. and Kerry Earnhardt.

18 Q So they used their first names.

19 A That's not what I said.

20 Q Okay. What did you say?

21 A I said they differentiated those two by their  
22 names, Dale Jr. and Kerry.

23 Q And so there were three members of the  
24 Earnhardt family being promoted as racers.

25 A Not by -- well, yes.

1 Q By DEI?

2 A Yes, by DEI, by the licensing of the  
3 products. Dale raced for another race team.

4 Q And we mentioned this, but for a time Kerry  
5 used to work for DEI; isn't that correct?

6 A Kerry worked for DEI after Dale's death. And  
7 for the limited races, you could say he worked for DEI,  
8 yes.

9 Q When did Kerry stop working for DEI?

10 A I think approximately 2012.

11 Q Do you know if Kerry Earnhardt owns a  
12 trademark in his own name?

13 A I don't know that for certain.

14 Q You said he worked at DEI until sometime  
15 2012. Is that what you said?

16 A Yes.

17 Q Did he quit or was he terminated?

18 A He was terminated.

19 Q Who made the decision to terminate Kerry  
20 Earnhardt from DEI?

21 A It was Teresa's final determination.

22 Q You said "it was Teresa's final  
23 determination." Did someone make the determination on  
24 a preliminary basis for Teresa made the final decision?

25 A There were discussions, yes.

# **EXHIBIT B**

Complete details for all Dale Earnhardt Foundation events. [Read More](#)



## DEI SHOWROOM & RETAIL STORE MAY 2014 HOURS

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
				1 11AM-2PM	2 11AM-2PM	3 11AM-2PM
4 TALLADEGA	5 11AM-2PM	6	7	8	9	10 KANSAS
11 HAPPY MOTHERS DAY	12	13	14	15 10AM-4PM	16 CMS - TRUCKS 10AM-4PM	17 CMS - ALL-STAR 10AM-4PM
18	19 10AM-4PM	20 10AM-4PM	21 10AM-4PM	22 CMS POLE DAY 10AM-4PM	23 WOO DIRT TRACK 10AM-4PM	24 CMS - NNS 10AM-4PM
25 CHARLOTTE 600	26 10AM-4PM	27	28	29 11AM-2PM	30 11AM-2PM	31 11AM-2PM

EXHIBIT

1

6/2/2014

Dale Earnhardt Incorporated Store - Shop for Dale Earnhardt Gifts & Merchandise

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

Teresa H. Earnhardt,	§	Consolidated Opposition Nos.
	§	91205331 (parent) and 91205338
Opposer,	§	
	§	In the matter of:
vs.	§	
	§	Application Serial No. 85/383,910
Kerry Earnhardt, Inc.,	§	Mark: EARNHARDT COLLECTION
	§	(Intl. Class 20)
Applicant.	§	
	§	Application Serial No. 85/391,456
	§	Mark: EARNHARDT COLLECTION
	§	(Intl. Class 37)

**OPPOSER'S RESPONSES TO APPLICANT'S  
FIRST SET OF INTERROGATORIES**

Pursuant to 37 C.F.R. § 2.120 and Rules 26 and 33 of the Federal Rules of Civil Procedure, Opposer, Teresa H. Earnhardt, hereby provides the following responses to *Applicant's First Set of Interrogatories*.

**GENERAL OBJECTIONS**

1. Opposer objects to each and every interrogatory to the extent that it seeks information protected from discovery by the attorney-client communications privilege or the attorney work product immunity doctrine.
2. Opposer objects to each and every definition, instruction and interrogatory to the extent that it purports to require Opposer to search for information not within Opposer's possession, custody or control. To do so would place an undue added burden upon Opposer.
3. Opposer objects to each and every definition, instruction and interrogatory to the extent it purports to require Opposer to provide discovery or information and

materials not otherwise required under 37 C.F.R. § 2.120 and the applicable Federal Rules of Civil Procedure.

4. Opposer objects to any requirement that she identify or provide a list of any documents withheld from discovery pursuant to either the attorney-client communications privilege and/or the attorney work product immunity doctrine and which documents were created on or after May 16, 2012, the date on which each Notice of Opposition was filed in this proceeding. Such a requirement would be unduly burdensome and would interfere with this proceeding by deterring the creation of such documents.

5. These responses are made without waiver of and with preservation of:

(a) all questions as to competency, relevancy, materiality, privilege and admissibility of the responses and the subject matter thereof as evidence for any purpose and in any further proceeding in this action and in any other action;

(b) the right to object to the use of any such responses or the subject matter thereof, on any ground in any further proceeding in this action and any other action;

(c) the right to object on any ground at any time to a demand or request for further response to these or any other interrogatories or other discovery requests involved or related to the subject matter of the discovery to which these responses are provided; and

(d) the right at any time to review, correct, add to, supplement or clarify any of the responses contained herein.

6. The following responses are based upon information and documents presently available to and located by Opposer and her attorneys. Opposer has not completed her investigation of the facts relating to this proceeding, has not completed

her discovery in this proceeding, and has not completed her preparation of her testimony. The responses given herein to the discovery requests are without prejudice to Opposer's right to produce evidence of any additional facts or materials.

These general objections apply to all of Opposer's interrogatories. To the extent that the specific General Objections are cited herein in response to specific discovery requests, those specific citations are provided because they are believed to be particularly applicable to the requests and are not to be construed a waiver of any other General Objections applicable to information or materials falling within the scope of the requests.

#### RESPONSES TO INTERROGATORY NOS 1-11

##### Interrogatory No 1:

Identify each person or entity with knowledge of Opposer's use of the marks EARNHARDT (alone, *i.e.*, not with "DALE") or EARNHARDT COLLECTABLES and for each such person, summarize the nature and extent of that knowledge.

##### Response to Interrogatory No. 1:

Opposer incorporates by reference all of the foregoing objections.

As presently informed, the persons most knowledgeable about such use are Opposer's licensees, and the identification of those licensees will be reflected in the copies of the license agreements produced by Opposer.

##### Interrogatory No 2:

Identify the person or entity associated with Opposer who is principally responsible for marketing, promotion, manufacture or sales of goods or services under the marks EARNHARDT (alone, *i.e.*, not with "DALE") or EARNHARDT COLLECTABLES.

##### Response to Interrogatory No. 2:

Opposer incorporates by reference all of the foregoing objections.

As presently informed, the persons so associated with Opposer are Opposer's licensees, and the identification of those licensees will be reflected in the copies of the license agreements produced by Opposer.

Interrogatory No 3:

Identify the person or entity associated with Opposer who is most knowledgeable about the annual sales of merchandise licensed under the marks DALE EARNHARDT, EARNHARDT (alone, *i.e.*, not with "DALE") or EARNHARDT COLLECTABLES.

Response to Interrogatory No. 3:

Opposer incorporates by reference all of the foregoing objections.

As presently informed, Opposer understands that Amy Hallman (Licensing Coordinator of Dale Earnhardt, Inc.) is likely the most knowledgeable person regarding such matters.

Interrogatory No 4:

Identify each person or entity with knowledge of any confusion concerning Applicant's use of the EARNHARDT COLLECTION mark and Opposer's products or services and for each such person, summarize the nature and extent of that knowledge.

Response to Interrogatory No. 4:

Opposer incorporates by reference all of the foregoing objections.

As presently informed, Opposer believes there is no such person or entity.

Interrogatory No 5:

Identify each person or entity that Opposer has licensed to use the marks EARNHARDT (alone, *i.e.*, not with "DALE") or EARNHARDT COLLECTABLES.

Response to Interrogatory No. 5:

Opposer incorporates by reference all of the foregoing objections.

As presently informed, the license agreements regarding the usage of the mark DALE EARNHARDT were understood by the parties to those license agreements to include the right to

use EARNHARDT alone and/or with other generic or descriptive terms, and in fact some, if not all, of the licensees made and/or sold merchandise reflecting that understanding.

Interrogatory No 6:

Identify each person who participated in the decision to cause, or attempt to cause, "the commercial rights in Dale Earnhardt's name and persona [to pass] to his widow, Teresa H. Earnhardt," as alleged in Paragraph 4 of the Notice of Opposition.

Response to Interrogatory No. 6:

Opposer incorporates by reference all of the foregoing objections.

Opposer also objects to this interrogatory on the grounds that the requested information is neither relevant to any issue to be determined in this proceeding nor reasonably likely to lead to the discovery of admissible evidence relevant to any issue to be determined in this proceeding.

Interrogatory No 7:

Identify each person Opposer may call as a witness at the trial of this matter or upon whose sworn statement or testimony Opposer may rely at trial or at any other proceeding in this action.

Response to Interrogatory No. 7:

Opposer incorporates by reference all of the foregoing objections.

Opposer also objects to this interrogatory on the grounds that it is premature to require Opposer to provide her pretrial disclosures, and the interrogatory exceeds the scope of discovery permitted under the controlling precedents and rules of the TTAB.

Interrogatory No 8:

Identify each person Opposer may call as an expert witness at the trial of this matter, and with respect to each such person identify:

- (a) a complete statement of all opinions the witness will express and the basis and reasons for them;
- (b) the facts or data considered by the witness in forming them;
- (c) any exhibits that will be used to summarize or support them;

(d) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(e) a list of all other case in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and

(f) a statement of the compensation to be paid for the study and testimony in the case.

Response to Interrogatory No. 8:

Opposer incorporates by reference all of the foregoing objections.

Opposer has not yet determined whether she may use at trial any expert witness(es).

Interrogatory No 9:

Identify all persons having knowledge of facts relating to the subject matter of this action and, as to each such person, set forth a summary of the important facts known or observed by such person and state whether any written or recorded statement was taken from such person concerning any of the subject matter of this action.

Response to Interrogatory No. 9:

Opposer incorporates by reference all of the foregoing objections.

Opposer also objects to this interrogatory on the grounds that it is vague and ambiguous and, to the extent understood, overly broad, unduly burdensome, and beyond the bounds of discovery permitted under the controlling precedents and rules of the TTAB.

Interrogatory No 10:

If any document identified herein was, but is no longer, in Opposer's possession, custody or control, state whether it: (i) is missing or lost; (ii) has been destroyed; (iii) has been transferred, voluntarily or involuntarily, to another; or (iv) has otherwise been disposed of, and in each instance explain the attendant circumstances of such disposition, including the date and place thereof.

Response to Interrogatory No. 10:

Opposer incorporates by reference all of the foregoing objections.

As presently informed, Opposer has no information responsive to this interrogatory.



Interrogatory No 11:

If any information requested by an interrogatory was, but is no longer available to Opposer because of the absence, resignation, or termination of any employee, officer, or other agent, describe such information as completely as possible and identify any person who has or had more complete knowledge concerning such information.

Response to Interrogatory No. 11:

Opposer incorporates by reference all of the foregoing objections.

As presently informed, Opposer has no information responsive to this interrogatory.

Dated: January 24, 2013

Respectfully submitted,



Larry C. Jones  
Carla H. Clements  
Alston & Bird, LLP  
Bank of America Plaza  
101 South Tryon Street, Suite 4000  
Charlotte, North Carolina 28280-4000  
Telephone: (704) 444-1000

Attorneys for Opposer,  
Teresa H. Earnhardt

VERIFICATION

I, Teresa H. Earnhardt, have read the foregoing *Opposer's Responses to Applicant's First Set of Interrogatories*, and I believe the same to be true and correct based either upon my personal knowledge or upon information supplied to me by others which I believe to be true and correct.

This \_\_\_\_ day of \_\_\_\_\_, 2013

\_\_\_\_\_  
Teresa H. Earnhardt

CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Opposer's Responses to Applicant's First Set of Interrogatories" was duly served on Applicant by depositing a copy of same in the United States mail, first-class postage prepaid, on the 24<sup>th</sup> day of January, 2013 addressed to Applicant's attorneys of record as follows:

D. Blaine Sanders  
Matthew F. Tilley  
Robinson Bradshaw & Hinson, P.A.  
101 N. Tryon Street, Suite 1900  
Charlotte, NC 28246-0106

  
\_\_\_\_\_  
Carla H. Clements