

03-22-2000



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TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)
Document ID #
- Correction of PTO Error
Reel # Frame #
- Corrective Document
Reel # Frame #

Conveyance Type

- Assignment License
- Security Agreement Nunc Pro Tunc Assignment
Effective Date
Month Day Year
- Merger
- Change of Name
- Other Court Order approving sale of receiver-
ship; Civ. 95-2-777; Dist. Ct. Colo.

Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name Indian Motorcycle Supply, Inc.

12071998

Formerly

- Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship/State of Incorporation/Organization Illinois

Receiving Party

Mark if additional names of receiving parties attached

Name IMCOA Licensing America, Inc.

DBA/AKA/TA

Composed of

Address (line 1) 355 King Street W.

Address (line 2) 4th Floor

Address (line 3) Toronto

Ontario, Canada

M5V 1J6

- Individual General Partnership Limited Partnership Corporation Association

Corporation Association

Other

Citizenship/State of Incorporation/Organization Delaware

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

03/21/2000 DNGUYEN 00000084 75138682

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01 FC:481
02 FC:482

40.00 OP
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Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages Enter the total number of pages of the attached conveyance document including any attachments. #

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

| | | | | | |
|---------------------------------------|---------------------------------------|---------------------------------------|----------------------|----------------------|----------------------|
| <input type="text" value="75138682"/> | <input type="text" value="75138683"/> | <input type="text" value="75138684"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| <input type="text" value="75145807"/> | <input type="text" value="74307804"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |
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Number of Properties Enter the total number of properties involved. #

Fee Amount Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment: Enclosed Deposit Account

Deposit Account (Enter for payment by deposit account or if additional fees can be charged to the account.)
Deposit Account Number: #

Authorization to charge additional fees: Yes No

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Lawrence D.W. Graves, Esq.

Signature

Date Signed

11 Feb 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge Zita L. Weirshienk

Civil Action No. 95-Z-777

ELLER INDUSTRIES, INC., a Colorado corporation,
Plaintiff,

v.

INDIAN MOTORCYCLE MANUFACTURING, INC.,
a New Mexico corporation,

Defendant.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

DEC 07 1998

JAMES R. MANSPEAKER
CLERK

RECEIVED

DEC 8 1998

ORDER

SMITH & WOODS, P.C.

The matters before the Court are Eller's Motion For Reconsideration filed on October 28, 1998, Motion To Intervene As Party Plaintiffs filed on November 12, 1998, by certain creditors and beneficiaries, and Objections to IMCOA Licencing America, Inc. (IMCOA)'s offer of purchase of the Sterling Receivership filed by five separate parties including Eller Industries, Inc. (Eller), the proposed intervenors, Cow Creek Band Of The Umpqua Tribe, the Trustee in the Massachusetts bankruptcy action, and Spokes, an apparel company. On November 25, 1998, the Court heard the arguments and statements of counsel for Eller, the receiver, some proposed intervenors, the Cow Creek Band of the Umpqua Tribe, IMCOA, Spokes, as well as statements and oral recommendations of Magistrate Judge O. Edward Schlatter, and opinions of some interested visitors/consumers. Thereafter, the Court made certain oral conclusions of law which are incorporated by reference as if fully set forth, and took the remaining matters under advisement.

The Court is now prepared to rule on the pending matters. On October 23, 1998, this Court issued an order determining that Eller had breached the contract to purchase the receivership. Eller moved for reconsideration based on the receiver's breaches, and more

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specifically, the receiver's inability to close by October 1, 1998. Eller contends that it was surprised by the receiver's sudden repudiation of the contract on October 6, 1998, as both parties knew that there would be no closing on October 1, 1998. After evaluating Eller's argument, the Court remains convinced that Eller materially breached the contract with the receiver by not paying administrative costs, by not providing an Intro Bike, and by not being ready to close by October 1, 1998, *inter alia*. The list of breaches is set forth in full on page 31 of Receiver's Special Report Of The Termination Of Eller Industries, Inc. dated November 13, 1998. The Court is satisfied that there were clear breaches of the contract by Eller. Further, the Court determines that while there were discussions of extending the closing date, a modification of the contract was not agreed upon. The deal never closed as required by the contract.

Aside from Eller's Motion For Reconsideration, the purpose of the November 25, 1998, hearing was to evaluate competing offers to buy the receivership and to evaluate objections to IMCOA's offer of purchase. There were no competing bids submitted to the Court by November 13, 1998, as required by this Court's order of October 23, 1998. Thus, the remaining issue to be determined by the Court is whether the receiver, by accepting the IMCOA offer, is acting in the best interests of the Combined Estates. As the Court emphasized during the hearing, it is not the province of the Court to second-guess the receivership. Instead, the Court determines whether the receiver is using sound business judgment and acting in the best interests of the Combined Estates. In view of the more than 16 million dollars in cash offered by IMCOA, the existence of a newly manufactured Indian Motorcycle, and other favorable aspects of the IMCOA offer contained the Receiver's 26th Report, the Court determines that the receiver is using sound business judgment and is acting in the best interest of the Combined Estates by accepting the IMCOA offer. Accordingly, it is

ORDERED that Eller's Motion For Reconsideration is denied. It is

FURTHER ORDERED that the Motion To Intervene As Party Plaintiffs is denied. It is

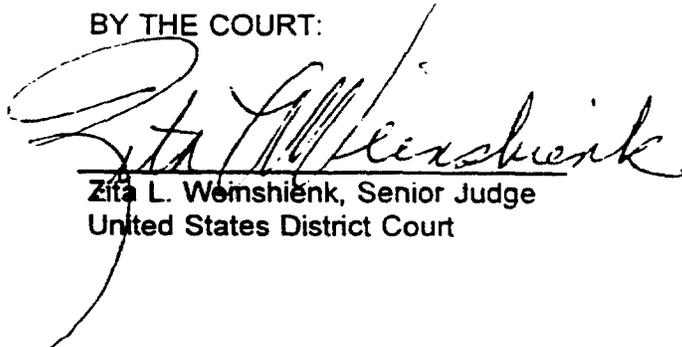
FURTHER ORDERED that all objections to the IMCOA offer of purchase are overruled.

It is

FURTHER ORDERED that the contract for sale of the receivership to IMCOA is approved.

DATED at Denver, Colorado, this 7 day of December, 1998.

BY THE COURT:



Zita L. Wemshienk, Senior Judge
United States District Court

In The United States Patent and Trademark Office

Power of Attorney for
All Existing and Future Applications and Registrations with
Designation of Domestic Representative

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Sir:

IMCOA Licensing America, Inc. ("IMCOA"), on its own behalf and as successor in interest of the trademark registrants and/or owners listed in Exhibit A attached hereto, hereby appoints and designates Lawrence D.W. Graves, of Fierst & Pucci LLP, 64 Gothic Street, Northampton, MA 01060, (413) 584-8067, a member of the Bar of the Commonwealth of Massachusetts, its attorney, with full power of substitution and revocation, to transact all business in the Patent and Trademark Office and in the Courts in connection with all existing, as listed in the before mentioned Exhibit A, and all future applications and registrations. IMCOA also designates Mr. Graves as IMCOA's domestic representative upon whom all notices or process in proceedings affecting the matters listed in Exhibit A may be served.

Respectfully submitted,

Date: Oct. 28, 1999

IMCOA Licensing America, Inc.

By: 
Joseph S. Garten, Vice President
Indian Motorcycle
355 King Street West, 4th Floor
Toronto, Ontario, CANADA M5V 1J6

Certificate of Mailing

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2900 Crystal Drive
Arlington, Virginia 22202-3513

on _____
Date Signature Printed

| Trademark Registrant | Class | Serial No. | Registration No. |
|---|-------|------------|------------------|
| American Indian Motorcycle Co., Inc. | 25 | 74-498,031 | |
| American Indian Motorcycle Co., Inc. | 25 | 74-299,745 | |
| American Indian Motorcycle Co., Inc. | 28 | 74-296,910 | |
| American Indian Motorcycle Co., Inc. | 06 | 74-296,910 | |
| American Indian Motorcycle Co., Inc. | 12 | 74-296,909 | |
| Hendee Manufacturing Company | 12 | 386,946 | 351,941 |
| Hendee Manufacturing Company | 12 | 39,008 | 39,008 |
| Hendee Manufacturing Company | 12 | 15,220 | 67,699 |
| Hendee Manufacturing Company | 12 | 83,586 | 103,728 |
| Hendee Manufacturing Company | 12 | 545,002 | 509,706 |
| Hendee Manufacturing Company | 12 | 83,585 | 103,727 |
| Hendee Manufacturing Company | 12 | 76,373 | 98,282 |
| Indian Brewing Company | 25 | 75-106,876 | |
| Indian Brewing Company | 32 | 75-106,876 | |
| Indian Motorcycle Company, Inc. | 32 | 75-052,764 | |
| Indian Motorcycle Company, Inc. | 29 | 75-052,764 | |
| Indian Motorcycle Company, Inc. | 42 | 75-052,764 | |
| Indian Motorcycle Company, Inc. | 30 | 75-052,764 | |
| Indian Motorcycle Company, Inc. | 33 | 75-052,764 | |
| Indian Motorcycle Manufacturing Company, Inc. | 25 | 74-063,475 | |
| Indian Motorcycle Manufacturing Company, Inc. | 03 | 74-546,202 | |
| Indian Motorcycle Manufacturing Company, Inc. | 04 | 74-546,202 | |
| Indian Motorcycle Manufacturing Company, Inc. | 08 | 74-546,202 | |
| Indian Motorcycle Manufacturing Company, Inc. | 14 | 74-546,202 | |
| Indian Motorcycle Manufacturing Company, Inc. | 16 | 74-546,202 | |
| Indian Motorcycle Manufacturing Company, Inc. | 18 | 74-546,202 | |
| Indian Motorcycle Manufacturing Company, Inc. | 28 | 74-546,202 | |
| Indian Motorcycle Manufacturing Company, Inc. | 32 | 74-546,202 | |
| Indian Motorcycle Manufacturing Company, Inc. | 42 | 74-546,202 | |
| Indian Motorcycle Manufacturing Company, Inc. | 12 | 74-153,568 | |
| Indian Motorcycle Manufacturing Company, Inc. | 12 | 72-355,024 | 921,459 |
| Indian Motorcycle Manufacturing Company, Inc. | 34 | 74-397,285 | |
| Indian Motorcycle Café, Inc. | 42 | 74-503,651 | |
| Indian Motorcycle Café, Inc. | 42 | 74-503,651 | |
| Indian Motorcycle Manufacturing Company | 12 | 75-076,242 | |
| Indian Motorcycle Manufacturing Company | 25 | 75-076,242 | |
| Indian Motorcycle Manufacturing Company | 42 | 75-076,242 | |
| Indian Motorcycle Manufacturing, Inc. | 12 | 74-325,013 | 1,953,518 |
| Indian Motorcycle Manufacturing, Inc. | 12 | 74-259,617 | |
| Indian Motorcycle Manufacturing, Inc. | 12 | 74-498,149 | |
| Indian Motorcycle Manufacturing, Inc. | 12 | 74-491,840 | |
| Indian Motorcycle Manufacturing, Inc. | 12 | 74-571,637 | 1,967,843 |
| Indian Motorcycle Manufacturing, Inc. | 18 | 74-485,160 | |

| Trademark Registrant | Class | Serial No. | Registration No. |
|---------------------------------------|-------|------------|------------------|
| Indian Motorcycle Manufacturing, Inc. | 25 | 74-485,062 | |
| Indian Motorcycle Manufacturing, Inc. | 25 | 74-249,305 | |
| Indian Motorcycle Manufacturing, Inc. | 12 | 74-249,303 | |
| Indian Motorcycle Manufacturing, Inc. | 12 | 74-325,096 | |
| Indian Motorcycle Manufacturing, Inc. | 12 | 74-491,841 | |
| Indian Motorcycle Manufacturing, Inc. | 12 | 74-325,097 | 1,827,074 |
| Indian Motorcycle Supply | 12 | 74-307,804 | |
| Indian Motorcycle Supply | 25 | 75-138,684 | |
| Indian Motorcycle Supply | 25 | 75-145,807 | |
| Indian Motorcycle Supply | 16 | 75-138,682 | |
| Indian Motorcycle Supply | 25 | 75-138,683 | |
| Indian Tabac Company | 34 | 75-128,241 | |
| Indian Tabac Company | 25 | 75-293,947 | |
| Kellwood Company | 25 | 72-022,312 | 652,777 |
| Liberty Holding Company, Inc. | 32 | 74-480,331 | |
| Liberty Holding Company, Inc. | 03 | 74-480,330 | |