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Carroll Hall Shelby Trust, and Carroll Shelby
8 Licensing, Inc.

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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

FILED

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 CARROLL SHELBY, CARROLL
HALL SHELBY TRUST and
13 CARROLL SHELBY LICENSING,
INC., a Texas corporation.

14 Plaintiffs,

15 v.

16 FACTORY FIVE RACING, INC, a
17 Massachusetts corporation; LK
MOTORSPORTS, a California
18 corporation, and INTERNET
COMMUNITY PARTNERS, LLC dba
19 FFCOBRA.COM, a limited liability
20 company, state of organization
unknown,

21 Defendants.

CASE NO. 08-07881 CAS JTLx

COMPLAINT FOR:

- 1. INFRINGEMENT OF REGISTERED TRADEMARKS;
 - 2. INFRINGEMENT OF UNREGISTERED TRADEMARKS;
 - 3. TRADEMARK DILUTION;
 - 4. FALSE ADVERTISING;
 - 5. COMMON LAW UNFAIR COMPETITION; AND
 - 6. VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.;
 - 7. VIOLATION OF COMMON LAW RIGHT OF PUBLICITY;
- DEMAND FOR JURY TRIAL

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COMPLAINT

Plaintiffs CARROLL SHELBY, CARROLL HALL SHELBY TRUST, and CARROLL SHELBY LICENSING, INC. (“Plaintiffs”), hereby assert this Complaint against defendants FACTORY FIVE RACING, INC., LK MOTORSPORTS and INTERNET COMMUNITY PARTNERS, LLC dba FFCOBRA.COM and allege as follows:

THE PARTIES

1. Plaintiff Carroll Shelby is, and at all times mentioned herein was, an individual with a residence in the County of Los Angeles, State of California, and Shelby is the sole trustee of the plaintiff Carroll Hall Shelby Trust (hereinafter the “Shelby Trust”), which is a trust duly organized and administered under the laws of the State of California.

2. Plaintiff Carroll Shelby Licensing, Inc. (“CSL”) is a Texas corporation with its principal place of business in Gardena, California.

3. Defendant Factory Five Racing, Inc. (“FFR”) is a Massachusetts corporation with its principal place of business in Wareham, Massachusetts.

4. Defendant LK Motorsports is a California corporation with principal place of business in Hermosa Beach, California.

5. Defendant Internet Community Partners, LLC (“ICP”) is a limited liability company, state of organization unknown, with its principal place of business in Kennesaw, Georgia.

6. Plaintiffs are informed and believe and thereon allege that, at all relevant times hereto, defendants FFR, LK Motorsports and ICP were the agents of one another, and at all times each entity was acting within the course and scope of such agency with the knowledge and consent of its principal and is, therefore, legally responsible for acts of the agent and the damages alleged herein.

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1 JURISDICTION AND VENUE

2 7. This Court has jurisdiction over the claims relating to trademark rights
3 under 15 U.S.C. §§ 1114, 1121(a) and 1125(a), and 28 U.S.C. §§ 1331 and 1338.
4 This Court has supplemental jurisdiction over the state court claims asserted
5 herein pursuant to 28 U.S.C. § 1367(a).

6 8. Venue is proper in the Central District of California pursuant to 28
7 U.S.C. § 1391(b) and (c) because a substantial part of the events or omissions
8 giving rise to the claim occurred here, and because the Defendants reside here by
9 virtue of their having contacts sufficient to subject them to personal jurisdiction.
10 As to defendants LK Motorsports, venue is proper for the additional reason that its
11 principal place of business is located in this district.

12 ALLEGATIONS COMMON TO ALL CLAIMS

13 9. Plaintiff Carroll Shelby is the legendary race car driver who, among
14 other accomplishments, broke the land speed record at the Bonneville Salt Flats and
15 won the 24-hour Le Mans road race during his racing career. After he retired from
16 professional racing, Carroll Shelby broadened his already extensive public
17 reputation by designing some of the most highly prized race and production cars
18 ever built. Through the sale of these high-profile performance cars, automotive
19 parts, accessories and related goods, Carroll Shelby and his related commercial
20 entities have made regular, extensive use of the SHELBY trademark since 1962.
21 The "Shelby" name and trademark remains famous to this day, not only to sports
22 car enthusiasts but to the public in general.

23 10. Carroll Shelby is the creator of various automobiles identified as
24 Shelby Cobras, including the Daytona Coupe. By virtue of sales, advertising,
25 promotion, and news reporting and other independently generated publicity, the
26 appearance and overall image of each such vehicle has acquired distinctiveness and
27 serves to identify Plaintiffs as its source. The trade dress of all such vehicles,
28 including the Daytona Coupe Trade Dress, are famous and represent an extremely

1 valuable goodwill owned by the Shelby Trust.

2 11. The Trust is the owner of a United States registration for the Daytona
3 Coupe Trade Dress under Registration No. 2,958,927.

4 12. The Trust is also the owner of registrations of certain trademarks,
5 including, but not limited, to the following word marks:

6 a. 289, United States Trademark Registration No. 3,283,659 for
7 automobiles and automobile parts;

8 b. 427 S/C, United States Trademark Registration No. 1,728,573, for
9 automobiles and structural parts therefor, automobile accessories, namely
10 replacement automobile engines;

11 c. SHELBY 427 S/C, United States Trademark Registration No.
12 1,768,020 for automobiles; and

13 d. SHELBY, United States Trademark Registration No. 1,538,090 for
14 automobiles.

15 13. Each of the above-listed registrations for the Daytona Coupe Trade
16 Dress and the Shelby Marks is valid and subsisting. In accordance with 15 U.S.C.
17 §1057(b) each such registration is *prima facie* evidence of the ownership and
18 validity of the marks.

19 14. The Trust is also the owner of the unregistered trademark, DAYTONA
20 COUPE.

21 15. Plaintiffs and their predecessor-in-interest have used the foregoing
22 trademarks in interstate commerce since the 1960s. They have used the Daytona
23 Coupe Trade Dress since as early as 1964.

24 16. Ford Motor Company ("Ford") is the owner of the trademark, COBRA,
25 and certain logos featuring the depiction of a cobra. Pursuant to 15 U.S.C. §§1065
26 and 1115(b), Ford Motor Company has an incontestable federal registration of
27 COBRA under U.S. Registration Nos. 807,185 and 1,562,071 and California
28 Registration No. 090,349 covering automobiles, engines, and parts.

1 17. In 1997, Ford granted Carroll Shelby an exclusive worldwide license to
2 use the trademark, COBRA and various device and composite marks featuring the
3 depiction of a cobra (the "Cobra Snake Design logos"), and variations of those
4 marks, in connection with automobiles bearing the trade dress of Shelby Cobra
5 vehicles, including the Shelby Cobra Daytona Coupe (the "Cobra Marks").

6 18. Carroll Shelby and his related companies have extensively used the
7 Cobra Marks in connection with automobiles and related goods, generating a public
8 association of the plaintiffs as the source of Shelby Cobra vehicles bearing the
9 Cobra Marks.

10 19. CSL is the licensing agent of the Trust. In that capacity, CSL manages
11 and has exclusive authority to license and exploit all of the foregoing trademarks
12 and Daytona Coupe Trade Dress respecting automobiles and related products. CSL
13 in fact licenses others the right to use the foregoing trademarks and trade dress in
14 connection with automobiles.

15 20. FFR manufactures, advertises, markets and sells "replicas" of Shelby
16 Cobra vehicles, including kit cars bearing designs confusingly similar to the
17 Daytona Coupe Trade Dress.

18 21. FFR operates a website on the World Wide Web under the domain
19 name www.factoryfive.com, which can be accessed throughout the United States
20 including this judicial district. On that site, FFR advertises and promotes the sale
21 kit cars bearing designs confusingly similar to the Daytona Coupe Dress, among
22 others. The site is interactive, and customers can purchase such products, as well as
23 parts, training, and other products. Plaintiffs are informed and believe that
24 consumers within this judicial district have in fact purchased automobiles bearing
25 designs confusingly similar to the Daytona Coupe Trade Dress, as well as other
26 products.

27 22. FFR utilizes the trademarks owned by and licensed to Plaintiffs in the
28 metatags of its website to draw Internet traffic to the site. Without limitation, such

1 unauthorized use includes the trademark, COBRA, in the metatags of its "Roadster"
2 page, the "Factory Five Challenge" page, and the "Coupe Kit" page. Further, the
3 metatags of the "Coupe Kit" page and the "Roadster Build School" page each
4 contain the "427" mark. These marks appear in the metatags but not in the posted
5 content of the web pages, reflecting a design to conceal their use. FFR's
6 misconduct demonstrates a knowing disregard for the rights of the Plaintiffs, and
7 also demonstrates FFR's malice, willfulness, and fraud in its continued use of the
8 trademarks and the Daytona Coupe Trade Dress.

9 23. A link entitled "Discussion Forum" on the Home Page of Factory
10 Five's website directs Internet users to a website operated by ICP.

11 24. The ICP website is identified by the domain name, www.ffcobra.com.
12 It can be accessed, both directly or through the aforementioned link in Factory
13 Five's website, throughout the United States, including this judicial district.

14 25. On that site, ICP advertises and promotes the sale of Factory Five
15 automobiles and kit cars bearing the Daytona Coupe Trade Dress, and other
16 products sold by Factory Five. ICP has also sold tickets for the raffle of a Factory
17 Five automobile bearing a design confusingly similar to the Daytona Coupe Trade
18 Dress. In addition, on the website, ICP offers for sale and, on information and
19 belief, sells other merchandise. ICP also solicits and accepts monetary donations
20 on the site. Further, the website provides a discussion forum for Shelby Cobra
21 enthusiasts, advertises related goods and services, events, contests, and various
22 other items of interest to Shelby Cobra enthusiasts and potential consumers.
23 Internet users within this judicial district can, and on information and belief, have
24 purchased merchandise through the ICP website.

25 26. In addition to utilizing a domain name that contains and is confusingly
26 similar to the trademark, COBRA, ICP also utilizes the trademarks owned by and
27 licensed to Plaintiffs in the metatags of its website so as to draw Internet traffic to
28 the site. Specifically, but without limitation, the metatags of the Home Page of the

1 website www.ffcobra.com repeatedly contains the trademarks, "COBRA," and
2 "SHELBY COBRA."

3 27. The Home Page of the ffcobra.com website features a "hotlink,"
4 enabling visitors directly to access the Factory Five website and to report safety
5 problems concerning Factory Five cars.

6 28. The Home Page of the website www.ffcobra.com also contains a link
7 entitled "Win this Factory Five Racing Type 65 Coupe!" The linked page offers for
8 sale tickets for a raffle to win a; "London Cobra Show Raffle Car" (the "Raffle Car
9 Page"). The metatags of the Raffle Car Page contains repeatedly refers to
10 trademarks owned by and licensed to Plaintiffs, including "COBRA" and
11 "SHELBY COBRA."

12 29. The Raffle Car Page contains a link entitled "LCS Merchandise."
13 Without limitation, the metatags of the page to which the LCS Merchandise link
14 directs the user includes repeated references to the trademarks, "COBRA" and
15 "SHELBY COBRA."

16 30. ICP's use of the aforementioned marks in the metatags but not in the
17 posted content of its web pages reflects a design to conceal their use. ICP's
18 misconduct demonstrates a knowing disregard for the Plaintiffs' rights, and also
19 demonstrates ICP's malice, willfulness, and fraud.

20 31. LK Motorsports is a manufacturer and distributor of Factory Five
21 automobiles and kit cars bearing the Shelby Trade Dress. On its website located at
22 <http://mwdshosting.com/~lkmotors>, LK Motorsports represents that it is "the West
23 Coast's premier builder of Factory Five replica cars!" The website also displays
24 and offers for sale vehicles bearing designs confusingly similar to the Daytona
25 Coupe Trade Dress, among other proprietary trade dress. LK Motorsports also
26 makes unauthorized use of the trademarks, SHELBY, SHELBY COBRA, and
27 COBRA, in connection with those vehicles. The website states, for instance, that
28 LK Motorsports has been producing "hand-built Cobras for over a decade" and that

1 it has won races in "LK Motorsports built Cobras." It also displays an engine
2 bearing the trademark, COBRA. LK Motorsports uses the trademark, SHELBY
3 COBRA, in advertising its "Mk3 Roadster," LK Motorsports also claims that its
4 Mk3 Roadster "continues the legacy" of the original Shelby Cobras. The
5 trademark, COBRA, appears in the metatags of the home page of the site. The
6 trademarks, SHELBY and COBRA appear in the metatags of Mk3 page of the site.
7 The trademark, DAYTONA COUPE, appears in the Type 65 page of the site. The
8 trademark, COBRA, appears in the metatags of the Challenge Car page of the
9 website.

10 32. Defendants' use of the trademarks owned by and licensed to Plaintiffs
11 in the metatags of their websites has the effect of attracting to their websites
12 Internet users seeking genuine SHELBY brand goods and services.

13 33. FFR, LK Motorsports and IPC use the trademarks owned by and
14 licensed to Plaintiffs, and the Daytona Coupe Trade Dress, with knowledge of
15 Plaintiffs' rights in them, and with the intention to capitalize upon the extensive
16 fame of Carroll Shelby, and upon the goodwill established by him and the Plaintiffs
17 in those designations of origin.

18 **FIRST CLAIM FOR RELIEF**

19 (Infringement of Registered Trademarks under 15 U.S.C. § 1117)

20 34. Plaintiffs incorporate the allegations of each foregoing paragraph as
21 though fully set forth herein.

22 35. The foregoing registered trademarks and Daytona Coupe Trade Dress
23 are distinctive of goods originating with Shelby. Through sales and advertising, the
24 marks have become associated in the minds of consumers with the Plaintiffs'
25 products.

26 36. Defendants' continuing use of the registered trademarks and Daytona
27 Coupe Trade Dress is unauthorized.

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1 37. Defendants' use of the registered trademarks and Daytona Coupe
2 Trade Dress is likely to cause and, on information and belief, has actually caused
3 confusion in the marketplace by creating the false and mistaken impression that
4 Defendants' infringing products and websites are affiliated, connected or associated
5 with Plaintiffs, or that they originate with, or are sponsored or approved by
6 Plaintiffs.

7 38. Defendants' use of the registered trademarks and Daytona Coupe
8 Trade Dress has caused and, if not enjoined, will continue to cause, irreparable and
9 continuing harm to Plaintiffs in the diminution of value and goodwill of the marks
10 and trade dress, and in their impairment to serve as designations of source, for
11 which Plaintiffs have no adequate legal remedy. Accordingly, Plaintiffs are entitled
12 to provisional, preliminary and permanent injunctive relief to compel cessation of
13 all infringing and otherwise harmful conduct.

14 39. As a direct and proximate result of Defendants' wrongful conduct,
15 Plaintiffs have been and will continue to be damaged by, without limitation, a
16 diminution in the value of the registered trademarks and Daytona Coupe Trade
17 Dress, and in their reputation and goodwill, in an amount to be proven at trial.

18 40. Defendants' wrongful use of the registered trademarks and Daytona
19 Coupe Trade Dress was and continues to be knowing, deliberate, willful,
20 fraudulent, and without extenuating circumstances. Plaintiffs are therefore entitled
21 to recover three times the amount of actual damages, statutory damages and
22 attorney's fees and costs incurred in this action, and Defendants' profits from the
23 sale of infringing goods.

24 **SECOND CLAIM FOR RELIEF**

25 (Infringement of Unregistered Trademarks under 15 U.S.C. §
26 1125(a)(1)(A))

27 41. Plaintiffs incorporate the allegations of each foregoing paragraph as
28 though fully set forth herein.

1 42. The trademark, DAYTONA COUPE, and the unregistered Cobra
2 Marks are distinctive of goods originating with Plaintiffs. Further, through sales
3 and advertising, the marks have become associated in the minds of consumers with
4 the products of Plaintiffs.

5 43. Defendants' continuing use of the foregoing unregistered trademarks is
6 unauthorized.

7 44. Defendants' use of the unregistered marks is likely to cause and, on
8 information and belief, has actually caused confusion in the marketplace by
9 creating the false and mistaken impression that Defendants' products and websites
10 are affiliated, connected or associated with Plaintiffs, or that they originate with, or
11 are sponsored or approved by Plaintiffs.

12 45. Defendants' use of the unregistered marks has caused and, if not
13 enjoined, will continue to cause, irreparable and continuing harm to Plaintiffs in the
14 diminution of value and goodwill of the marks, and in their impairment to serve as
15 trademarks, for which Plaintiffs have no adequate legal remedy. Accordingly,
16 Plaintiffs are entitled to provisional, preliminary and permanent injunctive relief to
17 compel cessation of all infringing and otherwise harmful conduct.

18 46. As a direct and proximate result of Defendants' wrongful conduct,
19 Plaintiffs have been and will continue to be damaged by, without limitation, a
20 diminution in the value of the unregistered trademarks, and in their reputation and
21 goodwill, in an amount to be proven at trial.

22 47. Defendants' wrongful use of the trademarks is knowing, deliberate,
23 willful, fraudulent, and without extenuating circumstances. Plaintiffs are therefore
24 entitled to recover three times the amount of actual damages, as well as attorney's
25 fees and costs incurred in this action, and FFR's profits from the sale of infringing
26 goods.

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THIRD CLAIM FOR RELIEF

(Dilution of Trademarks under 15 U.S.C. § 1125(c))

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3 48. Plaintiffs incorporate the allegations of each foregoing paragraph as
4 though fully set forth herein.

5 49. Through the Defendants' unauthorized use of each of the foregoing
6 trademarks and trade dress in connection with the infringing products and their
7 websites, Defendants have intended to cause, have caused, and are likely to
8 continue to cause dilution of the distinctive quality of those marks and trade dress
9 in violation of 15 U.S.C. §1125(c).

10 50. The acts of Defendants are intended to trade upon Plaintiffs'
11 reputation, and are likely to tarnish or injure Plaintiffs' business reputation.

12 51. Unless enjoined by this Court, Defendants' use of the foregoing
13 trademarks and trade dress will continue to cause, irreparable and continuing harm
14 to Plaintiffs in the diminution of their value and goodwill, and in their impairment
15 to serve as designations of source, for which Plaintiffs have no adequate legal
16 remedy. Accordingly, Plaintiffs are entitled to provisional, preliminary and
17 permanent injunctive relief to compel cessation of all infringing and otherwise
18 harmful conduct.

19 52. As a direct and proximate result of Defendants' wrongful conduct,
20 Plaintiffs have been and will continue to be damaged by, without limitation, a
21 diminution in the value of the trademarks and trade dress, and in their reputation
22 and goodwill, in an amount to be proven at trial.

23 53. Defendants' wrongful use of the trademarks and trade dress is
24 knowing, deliberate, willful, fraudulent, and without extenuating circumstances.
25 Plaintiffs are therefore entitled to recover three times the amount of actual damages,
26 as well as attorney's fees and costs incurred in this action, and Defendants' profits
27 from the sale of infringing goods.

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FOURTH CLAIM FOR RELIEF

(False Advertising under 15 U.S.C. § 1125(a)(1)(B))

54. Plaintiffs incorporate the allegations of each foregoing paragraph as though fully set forth herein.

55. Among other false and misleading representations made by LK Motorsports on its website, the representation that LK Motorsports has produced Cobras, whether for a decade or at all, is false. It is likewise false that the LK Motorsports won races in “LK Motorsports built Cobras.” The statement that the Mk3 Roadster “continues the legacy” of the original Shelby Cobras is also false.

56. LK Motorsports made its false and misleading representations to induce consumers to purchase Factory Five products. To the injury of Plaintiffs, the representations have in fact induced such purchases.

57. The false representations have caused and, if not enjoined, will continue to cause, irreparable and continuing harm to Plaintiffs, including but not limited to damage to the goodwill of Plaintiffs’ business, for which Plaintiffs have no adequate legal remedy. Accordingly, Plaintiffs are entitled to provisional, preliminary and permanent injunctive relief to compel cessation of all infringing and otherwise harmful conduct.

58. LK Motorsports’ false representations have been and continue to be, knowing, deliberate, willful, fraudulent, and without extenuating circumstances. Plaintiffs are therefore entitled to recover three times the amount of actual damages, statutory damages and attorney’s fees and costs incurred in this action, and Defendant’s profits from the sale of infringing goods.

FIFTH CLAIM FOR RELIEF

(Common Law Unfair Competition)

59. Plaintiffs incorporate the allegations of each foregoing paragraph as though fully set forth herein.

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1 68. The Defendants' misconduct is oppressive, fraudulent and malicious
2 within the meaning of California Civil Code § 3294.

3 **EIGHTH CLAIM FOR RELIEF**

4 (Violation Of Statutory Right Of Publicity Under California Civil Code § 3344)

5 69. Plaintiff incorporates the allegations of each foregoing paragraphs as
6 though fully set forth herein.

7 70. The Defendants are knowingly using plaintiff Shelby's name and
8 identity for the purpose of advertising, selling and soliciting purchases of services
9 without plaintiff's consent. As a result, Plaintiff is sustaining and will continue to
10 sustain both economic and non-economic damage. Among other things, he has
11 sustained damage to his reputation and the goodwill in his name and likeness.

12 71. The violation of plaintiff Shelby's exclusive right in the use of his
13 name has caused, and if not enjoined will continue to cause, irreparable harm for
14 which there is no adequate legal remedy.

15 72. Defendants' misconduct is oppressive, fraudulent and malicious within
16 the meaning of California Civil Code § 3294.

17 **PRAYER FOR RELIEF**

18 PLAINTIFFS PRAY FOR THE FOLLOWING RELIEF:

19 1. As to the First, Second, Third, Fourth, Fifth, Seventh and Eighth
20 Claims for Relief, Plaintiffs' damages and Defendants' profits, in an amount
21 adjusted by the Court pursuant to statutory authority;

22 2. As to the Fifth, Seventh and Eighth Claims for Relief, punitive
23 damages;

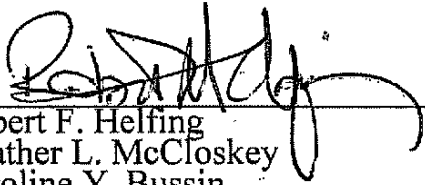
24 3. As to all Claims for Relief, a provisional, preliminary and permanent
25 injunction, enjoining Defendants and their officers, directors, agents, and affiliates
26 from using directly or indirectly the subject trademarks, the Daytona Coupe Trade
27 Dress, the Shelby name and identity, and any other mark or designation of origin
28 that imitates, simulates or is confusingly similar to each; from doing directly or

1 indirectly any acts or making any statements that are likely to cause confusion,
2 mistake or deception in the marketplace as to the origin of products manufactured
3 or distributed by Defendants, or those bearing the subject trademarks, trade dress
4 and Shelby name and identity, from doing directly or indirectly any acts that are
5 likely to diminish the value of such intellectual property, and from using directly or
6 indirectly any trade practices including those complained of herein, that compete
7 unfairly with or injure Plaintiffs or Plaintiffs' business related to that intellectual
8 property;

9 4. As to all Claims for Relief, Plaintiffs' costs in this action and
10 attorney's fees and expenses, and such additional and further relief as the Court
11 deems just and proper.

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DATED: December 1, 2008 SEDGWICK, DETERT, MORAN & ARNOLD LLP

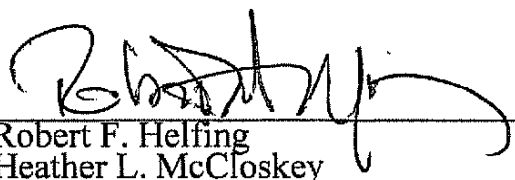
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DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiffs Carroll Shelby, Carroll Hall Shelby Trust and Carroll Shelby Licensing, Inc. hereby demand a trial by jury.

DATED: December 1, 2008 SEDGWICK, DETERT, MORAN & ARNOLD LLP

By: 
Robert F. Helfing
Heather L. McCloskey
Caroline Y. Bussin
Attorneys for Plaintiffs Carroll Shelby, Carroll Hall Shelby Trust and Carroll Shelby Licensing, Inc.