

DOWN THE ROAD

A news column dealing with the who, what, when, where and why of the Kit Car World.

If you have something newsworthy to report, we'd like to hear from you whether or not you happen to be a manufacturer. Call us with the latest scoop here at (714) 635-9040.

Before the bad news, some good news. We've agreed, in conjunction with Willow Springs International Raceway in Rosamond, Calif., to produce something called KIT CAR Illustrated's Open Run on October 28-29. On that weekend the track is hosting the championship round of the American Indy-Car Series, a racing series for older Indy Cars. As part of the weekend, each occupant of a kit car will be admitted for a reduced rate (\$10 instead of the normal \$15) and the cars will have a special opportunity to run four laps around the 2.5-mile race track at a parade pace. For more information, call the track at (805) 256-2471.

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△ Now, for the bad news. In what many would construe as a stunning setback for the kit car industry, Judge Rudi M. Brewster recently ruled against Tom McBurnie and in favor of Ferrari at the U.S. Federal Court in San Diego. The ruling, if it withstands appeal, would set a chilling precedent for the replica industry. Thomas A. Kain, one of the attorneys representing Ferrari, said ominously, "This puts us in a great position to go after replicar makers."

△ As a consequence of the decision, a permanent injunction was initially issued against McBurnie Coachcraft, Inc., and Tom McBurnie which prohibited Tom from manufacturing, selling or distributing the McBurnie California Daytona Spyder. The injunction, which has been stayed pending outcome of an appeal, also prevented him advertising the car, using Ferrari badges, or shipping parts. McBurnie was able to complete any of his cars in production and provide replacement parts for five years.

△ And if having legal problems wasn't bad enough, a man, allegedly a disgruntled customer who was unhappy



about the delay in getting his car, torched several unfinished Daytona Spyders at McBurnie's factory on the morning of April 27th. Armed with a pistol and carrying two cans of gasoline, he ordered the office staff down on the floor (Tom wasn't present) and then poured fuel over several cars and lit them off. A pair of handcuffs in a paper bag was found outside the building after the perpetrator left — so McBurnie is probably lucky he wasn't in attendance. The alleged perpetrator has been arrested and is out on bail.

No Show?

△ As a possible shakeout from the McBurnie decision, at press time there was serious question about whether the SAMA show in Atlanta on July 21-23 would take place. Call SAMA at (619) 284-9268 before leaving.

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△ Let's backtrack a bit here and try to put things into perspective because what might seem simple in the normal course of our daily lives can get extremely confusing in a courtroom setting. There were two cases involved, one with Ferrari suing McBurnie for trademark infringement for copying its design, while McBurnie was suing Ferrari for what amounts to restraint of trade. Because Ferrari wanted to avoid as much confusion as possible in a confusing trial, it broke the two parts of the case off last November, and when that happened the six-man jury became only an advisory jury, allowing the judge to override its decision.

△ Ironically, Ferrari felt so uncomfortable with the way the trial had been going, that it settled out of court with McBurnie. Almost predictably, the jury rendered a confusing decision, which tended to favor McBurnie. The judge, admitting that he had given the jury confusing instructions, then stepped in and overruled in Ferrari's favor.

△ McBurnie, in trying to explain why Ferrari settled with him, says, "They didn't know which way the judge was going to rule. They were basically buying an insurance policy. If the judge had ruled for us, it would have opened the possibility of a multimillion dollar settlement against Ferrari. I had a feeling from the judge that he was going to rule against us, so we settled. Looking back on it, it was the best decision I've ever made."

△ How much was that settlement? "I can't tell you," says Tom. The terms of the agreement does not allow the figure to be disclosed.

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△ The next step in this process is that McBurnie has the option of pursuing