

BULKY DOCUMENTS

(Exceeds 100 pages)

Proceeding/Serial No: 91162330

Filed: 10-24-05

Title: Motion to Dismiss
Opposer's Opposition

Part 1 of 2

TTAB

***Cary Brett Berman
1917 Lafayette Road
Gladwyne, PA 19035
(610) 227-5600***

October 11, 2005

United States Department of Commerce
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Va. 22202-3513

In re Application Serial No. : 78/320850
Mark : ENYCE
International Class : 12
Applicant : Cary Berman
Filed : October 30, 2003
Published : August 24, 2004

Dear Sir/Madam:

Enclosed for filing in the above captioned matter are the original and one copy of the following:

1.MOTION TO DISMISS OPPOSER'S OPPOSITION DUE TO
WITHHOLDING OF EVIDENCE DURING DISCOVERY AND DUE TO
CONFLICTING INFORMATION OBTAINED DURING DISCOVERY. .

Respectfully submitted,



Cary Berman

CC: Carole E. Klinger, Esquire



10-24-2005

U.S. Patent & TMOtc/TM Mail RcptDt. #64

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

Cary Brett Berman
1917 Lafayette Road
Gladwyne, PA 19035
(610) 227-5600

L. C. Licensing, Inc.

Opposer,

Opposition No. 91162330
Serial No. 78320850

**MOTION TO DISMISS
OPPOSER'S OPPOSITION**

v.

CARY B. BERMAN

Applicant

In re Application Serial No.	: 78/320850
Mark	: ENYCE
International Class	: 12
Applicant	: Cary Berman
Filed	: October 30, 2003
Published	: August 24, 2004

Applicant, representing himself pro se submits this MOTION TO DISMISS OPPOSER'S OPPOSITION DUE TO WITHHOLDING OF EVIDENCE DURING DISCOVERY AND DUE TO CONFLICTING INFORMATION OBTAINED DURING DISCOVERY.

The Applicant is Cary Berman. Cary Berman is a law abiding U.S. citizen living at 1917 Lafayette Rd., Gladwyne, Pa. 19035. Applicant is not represented by council and represents himself pro se.

Applicant believes that it should receive registration and approval to utilize Application Serial No. : 78/320850 for the Mark ENYCE filed in International Class 12 on October 30, 2003 and Published for opposition on August 24, 2004.

1. The letter attached as Exhibit "1" from Opposer's council offers various reasons why individuals cannot be produced for depositions. The forth paragraph of the letter states the names of three individuals who "conceived" Opposer's Mark. Applicant was informed that Mr. Tony Shellman was not employed by Opposer and could not be produced for a deposition based on this letter and a subsequent telephone conversation that Applicant had with Opposer's council for further clarification.

2. Exhibit "2" directs that "pending disposition of the motion to compel.....the parties should not file any paper...."; therefore this Motion is filed at this time as the ruling on the previous Motion is complete. An attempt was made to present this information at an earlier date. Exhibit "3" is a letter requesting an exception with respect to this issue.

3. Exhibit "4" is a copy of the deposition of one of the three individuals who "conceived" Opposer's Mark; Mr. Rolondo Felix. Mr. Felix provides information about the conception of Opposer's Mark starting on page 16. On page 26 Mr. Felix states that "I thought of the name, and I presented it to them the following day". On page 28 Mr. Felix states that "the day I thought of this I was by myself". On page 39 Mr. Felix states that "Initially I was thinking of NYC, New York City.

4. Exhibit "4" is a copy of the deposition of one of the three individuals who "conceived" Opposer's Mark; Mr. Rolondo Felix. Mr. Felix provides information about his employment. On page 48 Mr. Felix states that "I am executive vice president of enyce". On page 49 Mr. Felix states that "I am an executive vice president for enyce, an employee of enyce which is owned by Liz Claiborne". On pages 67,68& 69 Mr. Felix answers questions regarding the name of the corporation that he has stated that he is an officer of with confusion by finally stating on page 69 "I am not sure, to tell you the truth".

5. Exhibit "4" is a copy of the deposition of one of the three individuals who "conceived" Opposer's Mark; Mr. Rolondo Felix. Mr. Felix provides information about one of the other individuals, Mr. Tony Shellman starting at the bottom of page 92. On page 93 Mr. Felix states that he sees Mr. Shellman "Pretty much every day, every business day"; "He has an office"; "He has day-to-day activities". Yet Mr. Felix states on page 93 that "Tony Shellman is an independent contractor" and on page 95 that "Tony is an independent contractor". On page 94 Mr. Felix states that "Tony attends meetings".

6. Exhibit "5" is a copy of the deposition of one of the three individuals who "conceived" Opposer's Mark; Mr. Evan Davis. Mr. Davis provides information about his employment. On page 51 Mr. Davis states that his job title is "President". On page 50 Mr. Davis states that "I'm employed by enyce, which is a division of Liz Claiborne". On page 50 Mr. Davis is asked if it is a division or a subsidiary, he states that "I'm not sure" and continues to state that he does not know the name of the corporation that he is president of by stating that " I have direct deposit. Honestly, I don't really don't know". On page 52 Mr. Davis states that "My taxes I get and I send it to my accountant. I don't even open it. They give me my 1099 or my W-2 , whatever it may be, you know. I just get it, put it in a pile and send it to my accountant. I put it in a pile and I don't even know what it is ". On page 53 Mr. Davis is asked if the corporate entity has a bank account, he states that "I'm sure it does, yeah".

7. Exhibit "5" is a copy of the deposition of one of the three individuals who "conceived" Opposer's Mark; Mr. Evan Davis. Mr. Davis provides information about one of the other individuals, Mr. Tony Shellman starting at the bottom of page 62. On page 62 Mr. Davis states that "Mr. Shellman is an outside contractor". On pages 65 & 66 Mr. Davis states that Mr. Shellman receives a monthly check that is the same amount every month. On page 63 Mr. Davis states about Mr. Shellman that " he reports to Mr. Felix" who is a corporate officer as Executive Vice President. On page 63 Mr. Davis states that Mr. Shellman has an office at the corporate location. On page 68 Mr. Davis states that Mr. Shellman receives reimbursements for his expenses.

8. Exhibit "6" is a copy of an article from "Look" magazine about Tony Shellman. The author is quoted in the 6th paragraph of the last page " Shellman didn't waste any time starting ENYCE, a sportswear company geared toward 14 to 34 year-olds. He said that the name ENYCE originated from a bet. While chilling with a group of friends, someone bet Shellman that he couldn't copyright the abbreviation NYC. After brainstorming, Shellman won the bet by wisely deciding to place an E on the front and end of the NYC".

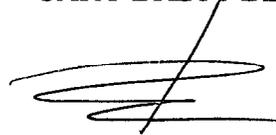
9. Exhibit "7" is a copy off the internet of Publication 15-A from the Internal Revenue Service. Exhibit "8" is a copy off the internet from "Bay Area Recruiters, inc". The information contained in these documents clearly show the difference between an Independent or Outside Contractor and an Employee. Mr. Shellman clearly is an Employee as he has an office that he is at every day, receives monthly payments, attends meetings, reports to an officer and receives travel expenses.

Applicant respectfully requests that THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD dismiss Opposer's Opposition to Applicants Mark. Opposer has withheld discovery by hiding behind the illegal premise that Mr. Tony Shellman could not be produced for a deposition because he is not an employee of the company. Opposer's corporate officers are hiding information as they claim that they do not know the name or structure of their corporation. Opposer claims that Applicants Mark should not be allowed because it will somehow effect the marketing and use of Opposer's Mark. Conflicting information exists regarding the conception of Opposer's Mark.

Thank you for considering this Motion.

SUBMITTED this 11th day of October, 2005.

CARY BRETT BERMAN



Cary Brett Berman
1917 Lafayette Road
Gladwyne, PA 19035
Phone-610-227-5600
Fax- 610-667-9517
autocary@aol.com

Exhibit
①

KRAMER LEVIN NAFTALIS & FRANKEL LLP
919 THIRD AVENUE
NEW YORK, N.Y. 10022 - 3852

CAROLE E. KLINGER
ASSOCIATE
TEL (212) 715- 9357
FAX (212) 715-8000
cklinger@kramerlevin.com

PARIS
47, AVENUE HOCHÉ 75008
TEL (33-1) 44 09 46 00
FAX (33-1) 44 09 46 01

December 23, 2004

BY FIRST CLASS MAIL

Mr. Cary Berman
1917 Lafayette Road
Gladwyne, PA 19035

Re: L.C. Licensing, Inc. v. Berman
Opposition No. 91162330
Our Ref. No. 25101

Dear Mr. Berman:

This responds to your November 18, 2004 letter.

With respect to your request to depose the individual or persons that applied for the ENYCE trademarks referenced in the Notice of Opposition, the ENYCE trademark application was originally filed by Fila U.S.A, Inc. Since our client no longer has any affiliation with Fila, we are unable to accommodate this portion of your request.

With regard to the applications for ENYCE & Design and LADY ENYCE, such applications were filed in the name of Enyce, Inc. while it was owned by Fila U.S.A., Inc. Therefore we also refer you to Fila with regard to these applications. Similarly the ENYCE logo was designed by an individual hired by Fila USA. Consequently, we must again refer you to Fila with regard to the ENYCE & Design mark.

Regarding your inquiry as the creator of the ENYCE mark, such mark was conceived by Evan Davis, Tony Shellman and Rolando Felix while they were working at Fila. Since Mr. Davis and Mr. Felix are in our client's employ, we would be willing to produce Mr. Davis or Mr. Felix for a deposition at our offices in New York, subject to availability. Therefore,

KRAMER LEVIN NAFTALIS & FRANKEL LLP

Mr. Cary Berman
December 23, 2004
Page 2

please supply us with some possible dates on which you are available, and we will see if Mr. Davis or Mr. Felix is free to testify on such dates.

Sincerely,

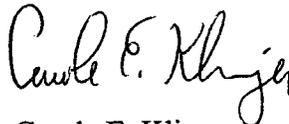

Carole E. Klinger

Exhibit
②

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

cv

Mailed: May 13, 2005

Opposition No. 91162330

L.C. LICENSING, INC

v.

BERMAN, CARY

Clara Vela, Paralegal Specialist

Proceedings herein are suspended pending disposition of the motion to compel, except as discussed below. The parties should not file any paper which is not germane to the motion to compel. See Trademark Rule 2.120(e)(2), as amended effective October 9, 1998.¹

This suspension order does **not** toll the time for either party to respond to discovery requests which had been duly served prior to the filing of the motion to compel, nor does it toll the time for a party to appear for a discovery deposition which had been duly noticed prior to the filing of the motion to

¹ See Notice of Final Rulemaking published in the *Federal Register* on September 9, 1998 at 63 FR 48081 and in the *Official Gazette* on September 29, 1998 at 1214 TMOG 145. A copy of the recent amendments to the Trademark Rules, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), is available at <http://www.uspto.gov>.

compel. See Id. The motion to compel will be decided in due course.

Exhibit
3

Cary Brett Berman
1917 Lafayette Road
Gladwyne, PA 19035
(610) 227-5600

United States Department of Commerce
Patent and Trademark Office
Trademark Trial and Appeal Board
PO Box 1451
Arlington, Va. 22313-1451

May 31, 2005

Attn: Clara Vela, Paralegal Specialist

In re Application Serial No. : 78/320850
Mark : ENYCE
International Class : 12
Applicant : Cary Berman
Filed : October 30, 2003
Published : August 24, 2004

Dear Ms. Vela:

I am writing to you today with respect to your Suspension Order of May 13, 2005 (copy enclosed). I would respectfully suggest that an easy solution exists to solve the discovery dispute. If I could have an in-person audience with you and your office in a confidential environment, I will offer the information requested and I am certain that all will agree that this information is not relevant to the parties dispute.

In addition your Suspension Order states that no other papers should be filed at this time. I have just received transcripts from two depositions taken in this case. The two individuals were named by Opposer's council as originators of the Mark. Evidence obtained clearly shows that Opposer is withholding information that is relevant to the parties dispute. I would therefore respectfully request an exception so that I may file a Motion to Compel discovery on Opposer. Perhaps both discovery issues could be dealt with together.

Respectfully submitted,

Cary Berman

CC: Carole E. Klinger, Esquire

Exhibit
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In the United States Patent and Trademark
Office Before the Trademark Trial and
Appeal Board,
L.C. LICENSING, INC.

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Opposer,

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-against-

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CARY B. BERMAN

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DEPOSITION of ROLANDO FELIX, taken pursuant
to Opposition number 91162330/Serial number
7832085D, held at the offices of Kramer Levin
Naftalis & Frankel, LLP, 919 Third Avenue, New
York, New York, on April 6, 2005, at 1:10 p.m.,
before a Notary Public of the State of New York.

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BARRISTER REPORTING SERVICE, INC.

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120 Broadway

New York, N.Y. 10271

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212-732-8066

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A P P E A R A N C E S:

KRAMER LEVIN NAFTALIS & FRANKEL, LLP
Attorneys for Opposer
919 Third Avenue
New York, New York 10022

BY: CAROLE E. KLINGER, ESQ.

CARY BRETT BERMAN
Pro Se
1917 Lafayette Road
Gladwine, Pennsylvania 19055

XXXXXX

1

2 R O L A N D O F E L I X,

3 having been first duly sworn before a
4 Notary Public of the State of New York,
5 was examined and testified as follows:

6

7 EXAMINATION BY

8 MR. BERMAN:

9 Q My name is Cary Berman. I am
10 representing myself pro se in a matter where
11 I have received a trademark from the United
12 States Patent and Trademark Office, and the
13 opposer in the case has opposed my use of
14 the trademark.

15 I am going to ask you a few
16 questions, but I am going to actually get
17 some of this basic stuff out of the way. I
18 am going to ask some questions to learn some
19 information that might be relevant to this
20 case. My questions and your answers will be
21 taken down by the court reporter that's
22 sitting here in front of you. The court
23 reporter can't take down nods or shakes of
24 the head, so it is necessary for you to
25 answer my questions audibly. Okay?

1 Felix

2 A Yes.

3 Q When I begin a question, you may know
4 what I am going to ask before I finish my
5 question, but it is easier for the court
6 reporter to get everything down correctly,
7 so if you let me finish my question before
8 you start to answer, will you do that?

9 A Yes.

10 Q Have you ever been deposed before?

11 A I won't cut you off.

12 Q Have you ever been deposed before?

13 A No.

14 Q Do you understand that you were
15 administered an oath by the court reporter
16 and you will testify today under penalty of
17 perjury?

18 A Yes.

19 Q Do you understand your testimony has
20 the same importance and significance as it
21 would have if you were testifying in court
22 before a judge and jury?

23 A Yes.

24 Q You will do your best to tell the
25 complete truth at this deposition, won't

1 Felix

2 you, Mr. Felix?

3 A Yes.

4 Q If you don't understand a question
5 that I ask you, you shouldn't answer it.

6 Instead of answering a question you don't
7 understand, you should just tell me that you
8 don't understand. Will you agree to do that
9 before you answer a question, please?

10 A Yes.

11 Q If you do answer the question, I will
12 assume that you understood the question and
13 gave me your best possible answer. Do you
14 understand that?

15 A Yes.

16 Q Sometimes you will understand my
17 question, which is fine, but you won't be
18 sure you really know the answer because the
19 answer that comes to mind is a guess or an
20 estimate. When your answer is a guess or an
21 estimate, you should tell me that you are
22 guessing or giving an estimate. Will you
23 agree to tell me when your answer is a guess
24 or an estimate?

25 MS. KLINGER: Objection to the

1 Felix

2 form of the question.

3 MR. BERMAN: Fine.

4 MS. KLINGER: He can still
5 answer the question, if he
6 understands what you meant. I am not
7 directing him not to answer the
8 question. I am objecting to your
9 form of the question. It was
10 compound because you had "or." If
11 you said, "Yes," it wasn't clear
12 whether or not he was answering one
13 part of it or the other.

14 Q If your answer to a question that I
15 ask is a guess, would you please tell me
16 that it is a guess?

17 A Yes.

18 Q If your answer to a question that I
19 ask is an estimate, would you please tell me
20 that it is an estimate?

21 MS. KLINGER: I will have to
22 object to that question as well.

23 I don't think you want to
24 encourage the witness to guess his
25 answer. I think if he doesn't know

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Felix

the answer, he should tell you he
doesn't know the answer.

MR. BERMAN: Agreed.

Q If you find yourself getting tired at
any time during the deposition, please let
me know and we will talk about taking a
break. Is that okay?

A Yes.

Q After you have given your best
complete answer to a question, you may later
in the deposition remember additional
information that responds to the question.
If this happens, you should just tell me
that you remembered additional information
that relates to an earlier question and you
can tell me about the additional
information. Is that okay with you?

A Yes.

Q Sometimes when you are answering a
question you may realize that looking at
some documents would help you refresh your
memory. When that happens, you may tell me
that the documents would help you answer my
question better and we will talk about what

1 Felix

2 to do. Is that okay with you?

3 MS. KLINGER: Objection to the
4 form of the question.

5 You can answer it if you
6 understand it.

7 A It seems very vague.

8 Q If I ask you a question that requires
9 the use of viewing certain documents prior
10 to answering it, would you at least identify
11 that that's the problem with answering the
12 question?

13 MS. KLINGER: I still object
14 to the form of the question.

15 You can answer it if you can
16 understand what he is talking about.

17 A I don't quite understand it.

18 Q After the deposition is over, the
19 court reporter will type up my questions and
20 your answers into a transcript. If you
21 request, you can review the transcript and
22 sign it under penalty of perjury. When you
23 are reviewing your transcript, you may
24 change answers that are inaccurate. You
25 should know, however, that if you make any

1 Felix
2 changes in your sworn testimony in your
3 transcript after you review it, I and others
4 in this case will be entitled to point out
5 to the judge, jury or the Patent Trademark
6 Office that you have made these changes.
7 That's why I would like you to give me your
8 most complete answers to my questions today.

9 Do you understand that you may be
10 able to comment on any changes you make in
11 the transcript of your deposition testimony?

12 MS. KLINGER: Objection.

13 Vague and ambiguous.

14 I guess if you understand what
15 he is asking, you may answer it.

16 A I don't understand.

17 Q When the deposition is over, the
18 court reporter will have a transcript of the
19 deposition. You may sign it or you may not
20 sign it. If you do not sign it, we will be
21 able to use the fact that you did not sign
22 it, did not agree to the fact that you
23 answered these questions today in this case.
24 Do you understand that, it is up to you
25 whether you want to sign it or not?

1 Felix

2 MS. KLINGER: Objection. I
3 think you are asking him for a legal
4 conclusion about what it means
5 whether or not he signs his
6 deposition.

7 If you have an understanding
8 of what the legal ramifications are
9 for signing or not signing a
10 deposition transcript, you can
11 answer. I think it calls for a legal
12 conclusion.

13 Q Do you wish to answer the question?

14 MS. KLINGER: Maybe you could
15 rephrase the question.

16 Q I would like to make sure that you
17 are answering the questions honestly today.
18 We will have a transcript prepared. The
19 court reporter will have prepared the
20 transcript after this deposition is
21 complete.

22 If you do not sign the transcript for
23 accuracy and you state that it is
24 inaccurate, we would like to make sure that
25 you understand that we would like to be able

1 Felix
2 to present that in this case, that you
3 refused to agree that you told the truth
4 today based on what you stated in the
5 transcript. Do you understand the question
6 now?

7 MS. KLINGER: I object to
8 that.

9 Can we go off the record?

10 (Whereupon a discussion was
11 held off the record.)

12 Q We would like to be certain that what
13 you stated today can be used as this case
14 moves forward. You have the right to change
15 your mind about something you may have said,
16 and we would like to make sure that you
17 understand that if you do that, you have to
18 tell us that what you said in the deposition
19 is incorrect, whether you do it in writing
20 or not.

21 MS. KLINGER: I have to object
22 to that.

23 MR. BERMAN: Off the record.

24 (Whereupon a discussion was
25 held off the record.)

1 Felix

2 Q If you testify at trial differently
3 than you testify here today, we may have an
4 opportunity to ask you why there were
5 changes in your sworn testimony. Do you
6 understand that?

7 A Yes.

8 Q I am going to ask you a few questions
9 about how you are feeling today. I am not
10 trying to pry into your medical situation.
11 I need to make sure you are okay, feeling
12 fine to be able to answer questions today.

13 Are you ill today?

14 A No.

15 Q Do you feel fine physically?

16 A Yes.

17 Q Are you under any medication?

18 A No.

19 Q Are you currently under a doctor's
20 care for any illness?

21 A No.

22 Q Have you had any alcohol today?

23 A No.

24 Q Is there anything at all preventing
25 you in any way from giving accurate

1 Felix

2 testimony today?

3 A No.

4 Q Is your memory working today as it
5 usually does?

6 A Yes, as well.

7 Q I would like to ask you a little bit
8 about your education. Did you attend
9 college?

10 A Yes.

11 Q Please state the college you went to
12 and any degree you may have.

13 A I attended Parson's School of Design
14 in New York.

15 Q Did you receive a degree?

16 A No.

17 Q Is that the last formal education
18 that you received?

19 A Yes.

20 Q What year was the last year you
21 attended?

22 A 1991.

23 Q What was your major?

24 A Fine art.

25 Q Were you employed during college?

1 Felix

2 A Yes.

3 Q In what capacity, might I ask?

4 A I had a part-time job.

5 Q In what field?

6 A In retail.

7 Q Retail, Home Depot, retail clothing?

8 Can you be more specific as to what type of
9 retail?

10 A In retail apparel.

11 Q Clothing?

12 A Yes, apparel retail.

13 Q In what location?

14 A In New York.

15 Q What did you do after college? What
16 was your next employment?

17 A I was working for -- I did various
18 things. I worked in apparel retail, I went
19 into retail buying. I eventually went into
20 apparel design.

21 Q Could you name any companies with any
22 dates associated with them, just
23 approximately?

24 A Yes.

25 MS. KLINGER: Objection as to

1 Felix

2 vague.

3 Do you want to give him a
4 period of time to pin down?

5 Q I will jump ahead, then jump back so
6 you understand where I am going.

7 When was the first time that you saw
8 or developed the letters ENYCE grouped
9 together in that order?

10 A When did I first see that?

11 Q Yes, a date.

12 MS. KLINGER: Objection to the
13 form of the question. I don't
14 understand. I think the question is
15 ambiguous as to the term "see."

16 You can answer it if you
17 understand it.

18 MR. BERMAN: Let me help
19 everybody out. This has previously
20 been entered. Opposing counsel has
21 put it in one of her documents. I
22 will make this Exhibit Applicant 1.

23 (Whereupon a copy of a
24 trademark principal register for
25 letters ENYCE, registration number

1 Felix
2 2093751, dated September 2, 1997, was
3 marked as Applicant's Exhibit 1 for
4 identification, as of this date.)

5 MR. BERMAN: Let the record
6 reflect that I am showing Mr. Felix a
7 copy of a trademark principal
8 register for the letters ENYCE
9 registration number 2093751 dated
10 September 2nd, 1997.

11 Q Have you ever seen this document
12 before?

13 A No.

14 Q Are you familiar with the trademark
15 that's listed in this document?

16 A I am familiar with the trademark.

17 Q When was the first time that you ever
18 saw this group of letters together in this
19 fashion as listed in this trademark? Please
20 provide a date.

21 MS. KLINGER: Objection. Lack
22 of foundation.

23 You can answer the question.

24 A See, like -- I don't know. It
25 implies that it existed before when it

1 Felix

2 wasn't in existence until I thought of it.

3 Q Please continue. You thought of
4 this? Are you stating that you thought of
5 this, Mr. Felix?

6 A Yes, it was a term that we developed.

7 Q What was the date?

8 A I don't know the specific date, but
9 it was.

10 MS. KLINGER: Objection to the
11 form of the question.

12 Are you asking what was the
13 date that it was developed?

14 MR. BERMAN: Mr. Felix has
15 just stated that he thought of this.
16 I would like to know when he thought
17 of this.

18 THE WITNESS: We thought of a
19 name. It had to have been 1996,
20 in -- I would say anywhere from April
21 or May 1996.

22 Q You previously stated that you
23 attended college in 1991. I will get back
24 to this, sir. I want to try to get in the
25 time frame.

1 Felix

2 You attended college in 1991. You
3 had some retail jobs. When was the first
4 time that you had a full-time job prior to
5 1996, and what was that job, please?

6 A The first time I had a full-time job
7 prior to 1996?

8 Q Yes, after college.

9 A After college?

10 Q Prior to 1996, the date and the sum
11 and substance of what that job consisted of
12 and for who.

13 A It was 1991. I had a full-time job
14 as a retail buyer for Canal Jean Company.

15 Q Located?

16 A In New York City.

17 Q That lasted until when, sir?

18 A 1992..

19 Q Then what did you do, sir?

20 A Then I became a sales representative
21 for a clothing company.

22 Q The name of the company, the
23 location?

24 A The clothing company was called Fresh
25 Threads, and the offices were located in New

1 Felix

2 York City.

3 Q That lasted until when, sir?

4 A Until '93. Then I went to another --

5 I became a graphic designer for a company

6 called Rec Clothing, that was also in New

7 York City, the following year. That was

8 '93, and that lasted for another year until

9 1994.

10 Then I started a clothing company

11 with two partners, Tony Shellman and Evan

12 Davis, in 1994 called Mecca U.S.A.

13 Q You stated that you started a

14 clothing company?

15 A Yes.

16 Q These two partners, were you equal

17 partners, the three of you?

18 A We all had different titles.

19 Q Was it a corporation that you

20 gentlemen had?

21 A We all worked for the corporation.

22 Q Was there an existing corporation

23 that you joined?

24 A There was an existing corporation

25 that we joined.

1 Felix

2 Q The name of that corporation, sir?

3 A MA Corporation.

4 Q MA Corporation?

5 A Yes.

6 Q Who were the owners of MA
7 Corporation?

8 A I believe it was Mike Alesko, and
9 that's about it. That's about all I know of
10 the corporation.

11 Q Could you please describe what you
12 meant when you said you started a company?

13 A We started a label, a clothing
14 company under another clothing -- there was
15 a parent clothing company and we started a
16 clothing company under that clothing
17 company, but we started a new name, a new
18 trademark, a new label under that clothing
19 company. That's pretty much what we did.

20 Q Was there a trademark associated with
21 that clothing company?

22 A Was there a trademark associated with
23 that? I believe they filed a trademark for
24 that.

25 Q You understand that this case

1 Felix

2 involves a trademark?

3 A Right. I didn't really have any
4 involvement with the trademarking of the
5 previous brand's name.

6 Q Can you tell me what your day-to-day
7 activities consisted of in 1994?

8 A Yes. I oversaw the design and
9 production of the product for Mecca U.S.A.

10 Q Just a brief description, please, of
11 those types of products.

12 A It was sportswear, jeanswear, knits,
13 woven shirts, outerwear. Just general
14 sportswear, apparel for young men.

15 Q This lasted until when, sir?

16 A This lasted until 1996.

17 Q During that period of time with this
18 Mecca brand, did you produce any automobile
19 products under that name?

20 A No, we didn't.

21 Q Did you ever think about producing
22 any automobile products under that name?

23 A No.

24 Q As far as a time frame, we are now up
25 to 1996 in this discussion?

1 Felix

2 A Yes.

3 Q Up until that time in your career,
4 have you ever thought about producing any
5 automobile products?

6 A Up until 1996?

7 Q Yes.

8 MS. KLINGER: Objection to the
9 form of the question. Vague and
10 ambiguous.

11 Q What happened in 1996? Did your
12 association with Mecca end in 1996?

13 A Yes.

14 MS. KLINGER: Off the record.
15 (Whereupon a discussion was
16 held off the record.)

17 MR. BERMAN: Can you read back
18 the last question and answer?

19 (Whereupon the record was read
20 back by the reporter.)

21 Q Can you please describe how that
22 association ended?

23 A We had a difference in opinions on
24 how to run the company after the company
25 started becoming successful, and we agreed

1 Felix

2 to leave. We decided to leave. I left on
3 my own choice. I resigned.

4 Q Did you have any ownership in the
5 company at the time that you left?

6 A No, I did not have an ownership, no.

7 Q Did you receive any payment at the
8 time you left, severance pay, anything of
9 the kind, to entice you to leave?

10 A I wasn't paid to leave, no. I left
11 on my own. I was only paid pretty much what
12 my agreement was at the time.

13 Q Now we are up to 1996. What did you
14 state with respect to this trademark? How
15 did the trademark come about? You
16 previously stated in the deposition
17 something about how this trademark came
18 about, I believe you said it was 1996?

19 A You asked me when did I first see
20 this combination of letters, and I was
21 unsure about what you meant by saw. How can
22 I see something when it hasn't even been --
23 when it didn't exist?

24 Q I am trying to understand what
25 occurred next. You made a statement as to

1 Felix
2 how this became in existence. I forget what
3 your words were. It is not that important,
4 I guess.

5 What happened next? I believe you
6 said "we," so who is "we," and what were the
7 circumstances associated with this
8 occurrence?

9 MS. KLINGER: Objection to the
10 form of the question. Compound
11 question.

12 MR. BERMAN: I am going to ask
13 if the court reporter can please look
14 back to where Mr. Felix answered the
15 question, the words that he used.
16 Could you --

17 (Whereupon the record was read
18 back by the reporter.)

19 Q You heard the court reporter repeat
20 what you said earlier, "We thought of a
21 name." Again, I don't know exactly the way
22 you answered it previously. It is in the
23 record now. It was April or May of 1996,
24 you stated.

25 Can you please describe what

1 Felix

2 occurred? Who was there? What did you say?

3 MS. KLINGER: Objection to the
4 form of the question.

5 You can answer if you
6 understand it. It is a compound
7 question.

8 A I started -- two of my partners, Evan
9 Davis and Tony Shellman, we had all left our
10 previous company, the previous company we
11 worked for, Mecca U.S. We started a new
12 company with Fila U.S.A. Fila U.S.A. wanted
13 to back a new project with us and we agreed,
14 and we started working on a new apparel
15 collection for Fila U.S.A. It was not going
16 to be named Fila U.S.A. We wanted to create
17 a whole separate project, so we were trying
18 to develop a new name for this project.

19 That's how we came across developing ENYCE.

20 Q The association with Fila, did it
21 occur before this name came about or after
22 this name came about?

23 A It came about before.

24 Q If I am to understand this correctly,
25 the three of you joined forces with Fila.

1 Felix

2 Then Fila said come up with something; is
3 that correct, sir?

4 MS. KLINGER: Objection to the
5 form.

6 A Yes.

7 Q Please describe to me what occurred.
8 Who was there? What happened when this name
9 first came into existence, according to your
10 story?

11 MS. KLINGER: Objection to the
12 form of the question. It is several
13 questions all in one. Objection.

14 Q The three gentlemen that you referred
15 to, you and the other two gentlemen that you
16 have referred to, Evan and Tony, were the
17 three of you in a room together when this
18 name first came into existence according to
19 your testimony?

20 A I thought of the name, and I
21 presented it to them the following day. No,
22 we weren't all in a room when I thought of
23 it.

24 Q Was anybody else with you the day
25 that you thought of this name -- excuse me.

1 Felix

2 I will back up.

3 Is this a name, as far as you are
4 concerned?

5 A It is the name of a clothing company.

6 Q The day that you thought of it, did
7 you think of it as a name, according to your
8 testimony?

9 MS. KLINGER: Objection.

10 Vague and ambiguous.

11 Q Does this have a meaning?

12 A There is no meaning in the dictionary
13 for this word, no.

14 Q Is this a word?

15 A Technically it is not a word. It is
16 a term we have coined.

17 Q Is there a way to say this? Is there
18 a pronunciation? I know it will be hard for
19 the court reporter to deal with it. Is
20 there a pronunciation associated with this?

21 A I have heard this combination of
22 letters pronounced many different ways.

23 Q You were in a room and you thought of
24 this without these other two gentlemen. Was
25 anybody else in this room with you the day

1 Felix

2 that you thought of this, according to your
3 testimony?

4 A The day I thought of this I was by
5 myself.

6 Q Can you please describe the events
7 leading up to the discovery of this?

8 MS. KLINGER: Objection to the
9 form of the question. It is vague
10 and ambiguous.

11 You may answer it.

12 Q Were you watching television? Were
13 you sitting with a piece of paper and a
14 pencil? Were you trying to think of this
15 name? Please describe the events leading up
16 to the day that you thought of this name,
17 according to your testimony.

18 MS. KLINGER: Same objection
19 to the form of the question.

20 You can answer it if you
21 understand it.

22 A Your first question was could I
23 describe -- I am a little lost here.

24 Q Do you have any other trademarks that
25 you have thought of, sir?

1 Felix

2 A Do I have trademarks that I have
3 thought of?

4 Q Is there any other brand name that
5 you have thought of the name that has become
6 a brand name for any consumer product?

7 A No.

8 Q Have you ever come up with a name
9 that has been trademarked for any product at
10 all?

11 MS. KLINGER: Objection to the
12 form of the question. It is vague
13 and ambiguous as to the term
14 "trademark."

15 MR. BERMAN: The gentleman is
16 making a statement that he thought of
17 this name, and it has now become a
18 trademark that is now Exhibit 1. He
19 is making a statement under oath that
20 he has a name that has been
21 trademarked that he thought of.

22 Q Have you ever thought of any other
23 name that has eventually been trademarked
24 that you are aware of?

25 A Any other name? That's not clear.

1 Felix

2 Q Is there any other product, service,
3 name, any other trademark that you have any
4 involvement in that you are aware of?

5 A Any, including ENYCE?

6 Q Yes.

7 A You are asking me if I have thought
8 of any names that have been trademarked?

9 Q That you are aware of.

10 A Yes, I have thought of names that
11 have been trademarked.

12 Q Please state those names, sir.

13 A This trademark, the trademark ENYCE.

14 Q Other than this trademark?

15 A Other than ENYCE, no, I haven't
16 thought of anything that has been
17 trademarked, other than ENYCE.

18 Q The question is asked not up until
19 the date we have been talking about. That
20 question was asked through today's date,
21 sir. Did you understand that was the
22 question that I asked?

23 Previously we were talking about
24 different dates. I want to make sure that
25 when you just answered this question, it was

1 Felix

2 with respect to whether you had thought of
3 any other names that had been trademarked,
4 that is up through today, today's date.

5 Has there been anything since this
6 trademark that you have thought of that has
7 since been trademarked, or maybe there is a
8 trademark application that you know of?

9 A I think I might have --

10 MS. KLINGER: Objection. Lack
11 of foundation.

12 MR. BERMAN: The man is
13 stating that he is, in fact, an
14 inventor of some sort by coming up
15 with this name. I am trying to find
16 out if he has done anything else.

17 MS. KLINGER: Of which he is
18 aware?

19 MR. BERMAN: Yes, of which you
20 are aware.

21 THE WITNESS: Can I speak to
22 you?

23 MR. BERMAN: Feel free.
24 Off the record.

25 MS. KLINGER: Let's not take a

1 Felix
2 break because the question is
3 pending.

4 Yes, we will have to consult.
5 (Whereupon a discussion was
6 held off the record.)

7 MS. KLINGER: I consulted with
8 our witness because of an
9 attorney-client privilege concern
10 which I will instruct the witness not
11 to answer on attorney-client
12 privilege for certain discussions
13 with counsel pertaining to certain
14 marks that he might have been
15 interested in but didn't pursue.

16 Let's go off the record for a
17 second.

18 (Whereupon a discussion was
19 held off the record.)

20 Q The question relates to trademarks
21 that actually had a trademark application or
22 have actually become a trademark or brands
23 that actually became a consumer product.
24 Have you ever come up with any of those?

25 A Other than ENYCE?

1 Felix

2 Q Other than.

3 A No.

4 Q I would like to get back to the
5 previous question. You were sitting by
6 yourself, according to your previous
7 statement, when you say you thought of this
8 name or word or whatever it is, group of
9 letters.

10 Please tell me the events surrounding
11 this discovery.

12 A We were trying to come up with a name
13 for the new project, and a lot of the
14 previous names that we had thought of were
15 not coming up clear on a trademark search.

16 I was advised by the president of
17 Fila, "Maybe you should make up a name
18 rather than trying to find -- trying to use
19 an existing word in the English language."
20 We came up with this name because it is not
21 a real word for a brand.

22 Q Again, you are stating "we" when
23 previously you said you were by yourself.

24 A In the process it was our
25 responsibility to come up with a name,

1 Felix
2 meaning Tony Shellman and Evan Davis. I
3 just happened to come up with this
4 combination of letters and came up with this
5 name and I wrote it down, and I thought,
6 "Okay," I thought it was a novel way to
7 trademark NYC.

8 I came up with the idea. I wrote it
9 down, showed it to my other partners. I
10 showed it to Evan and Tony. They both
11 pronounced it different ways.

12 I showed it to the president of Fila
13 and he had pronounced it, "ENYCE," and even
14 though we had -- even though it derived from
15 trying to trademark NYC, we liked it and we
16 proceeded. From then it was pronounced
17 within the company as "ENYCE."

18 Q Did you have any other combination of
19 letters that you were looking at prior to
20 this?

21 A No.

22 Q You have just stated that you were
23 starting with NYC. Does that stand for New
24 York City?

25 A That was the start of -- it was a

1 Felix

2 concept that we had been thinking of, but we
3 figured that NYC was probably not
4 trademarkable.

5 Like we said, we were taking the
6 advice of the president of Fila at the time.
7 He said, "Let's make up a word." We thought
8 that would be a great chance that it would
9 be clear since we just made it up.

10 Q You then in effect stated that you
11 started with NYC. Is that standing for New
12 York City that you were starting with? You
13 were trying to trademark NYC because it
14 stands for New York City or because it
15 stands for something else, sir?

16 MS. KLINGER: Objection to the
17 form of the question.

18 A It had sentimental meaning, but we
19 were trying find a name that we could
20 actually use for apparel. We were trying to
21 develop a name that was unique and could be
22 clear for our trademark.

23 Q The NYC that you referred to a couple
24 of questions ago in response to my question,
25 is that an NYC that is the same NYC that we

1 Felix

2 are all familiar with that stands for New
3 York City or is it some other NYC?

4 A Yes, it is inspired by New York City.

5 Q When you were trying to attempt to
6 trademark, as you stated, NYC, you were
7 trying to attempt to trademark the
8 abbreviation for New York City? You knew
9 you couldn't do that; is that correct?

10 A We assumed that and developed a name,
11 ENYCE.

12 Q In essence you put E's on each side
13 of New York City, is that correct? That
14 seems to be the end result, sir; is that
15 what you did?

16 MS. KLINGER: Objection to the
17 form of the question.

18 A We came up with a name, ENYCE.

19 Q You previously stated that you tried
20 to trademark the abbreviation for New York
21 City?

22 A No, we didn't try to trademark NYC
23 solely.

24 Q You wanted to trademark if you could?

25 MS. KLINGER: Objection to the

1 Felix

2 form of the question.

3 A No.

4 Q I am trying to determine a thought
5 process that you had when you developed the
6 name or the word or group of letters. For
7 the purposes of this deposition, can we
8 simply call this a name? Can we agree to
9 call it a name?

10 MS. KLINGER: It is a mark.

11 MR. BERMAN: I apologize. It
12 is a mark.

13 Q I agree that we will call ENYCE the
14 mark for the rest of this deposition.

15 You stated that you thought of this
16 mark. Please describe in more detail the
17 events that took place that led you to think
18 of this mark.

19 A We developed a name --

20 Q You have stated that you were by
21 yourself when you thought of this mark?

22 A I thought of ENYCE, the mark ENYCE,
23 because it was not a real word. I thought
24 of it specifically as a mark for our new
25 clothing brand.

1 Felix

2 MS. KLINGER: Can we take a
3 break for a moment? I will be right
4 back.

5 (Recess taken.)

6 (Whereupon the record was read
7 back by the reporter.)

8 Q I would like to know the events that
9 led up to you thinking of this mark.

10 A We were trying to come up with a
11 unique name, and when I thought of it, yes,
12 it was a plan, NYC, and when I showed the
13 combination of letters, when I showed ENYCE
14 to my other partners, one person pronounced
15 it, "A-Niece," another person pronounced it,
16 "E Nice."

17 The president of Fila, who was
18 Italian, said, "ENYCE," and that's what
19 really stuck with us, because we thought we
20 made up a coined term that was a play on NYC
21 but it was pronounced many different ways,
22 so it had an international exotic feel about
23 it.

24 Q Thank you. However, again you are
25 not answering my question. You are going

1 Felix

2 into the next day.

3 You previously stated that you
4 thought of this, then you presented it to
5 the other individuals the following day, the
6 day that you thought of this. Let me at
7 least ask some specific questions about the
8 day that you thought of this. Is it okay if
9 I ask some questions about that day?

10 A Yes.

11 Q Were you starting with the NYC to
12 begin your thought process?

13 A Initially I was thinking of NYC, New
14 York City.

15 Q When you were thinking of that NYC
16 for New York City, the first time that you
17 thought of beginning with that NYC for New
18 York City, did it first occur on that day
19 that you thought of this or had that been
20 days and weeks leading up to it that you had
21 been trying to do something with the NYC?

22 A I can't remember how long it was, but
23 eventually ENYCE popped up in my head. I
24 wasn't pronouncing it, "ENYCE," that time
25 that day, but visually it looked like it

1 Felix

2 would be a good mark.

3 Q Again, sir, you started with NYC; is
4 that correct?

5 MS. KLINGER: Objection.

6 Asked and answered.

7 Q When did you first start with the NYC
8 in the development of the eventual mark?
9 Was it the same day that you thought of the
10 mark?

11 A No.

12 Q Was it the day before?

13 A It was previous, but it wasn't --

14 Q Was it a week, a month?

15 A It had to have been within those same
16 two months, April and May. We were starting
17 a whole company, so my time wasn't just
18 spent on thinking of a name. It was
19 actually starting the company as well.

20 Q The starting point for the mark being
21 the NYC, was that solely your idea or the
22 other individuals you mentioned? Were they
23 part of the genesis of the starting with the
24 NYC to eventually develop the mark?

25 MS. KLINGER: Objection to the

1 Felix

2 form of the question.

3 You can answer.

4 A They were part of it once I showed it
5 to them. The day I thought of it was the
6 day before. The day I showed it to them was
7 the day after, and then we presented it. We
8 talked about it.

9 Q Are you stating that these other
10 gentlemen that you have referred to had no
11 piece of the thought process that eventually
12 came the mark?

13 MS. KLINGER: Objection to the
14 form of the question. Vague and
15 ambiguous.

16 Q First of all, the first question is
17 are there other individuals that we should
18 be discussing here other than this Evan and
19 this Tony with respect to this mark?

20 MS. KLINGER: Objection to the
21 form of the question.

22 Q You had mentioned the president of
23 Fila. Did the president of Fila have
24 anything to do with the development of this
25 mark?

1 Felix

2 MS. KLINGER: Objection to the
3 form of the question.

4 You can answer it if you
5 understand it.

6 A We knew other previous words weren't
7 passing, so we knew to come up with a mark
8 that we created on our own.

9 Q I believe that you have clearly
10 stated that this mark started with the
11 letters NYC; is that correct?

12 A It was a play on NYC.

13 Q Did anybody else other than yourself
14 agree to come up with a mark that was a
15 play, to use your words, on NYC?

16 A The day I thought of it and I brought
17 it up to my other partners that same day, so
18 you are being specific about the day I
19 thought of it and the day I first brought it
20 up.

21 Q When you brought this up to your
22 partners, was it the complete five letters
23 as it appears here today?

24 A Yes. I never presented them NYC. I
25 presented them ENYCE and asked them how to

1 Felix

2 pronounce it.

3 Q Very good. So, therefore, Evan and
4 Tony were presented with the final mark the
5 day after you thought of it; is that
6 correct?

7 A Does the final mark mean the logo
8 itself?

9 MS. KLINGER: Objection to the
10 form of the question.

11 Q No, I am not referring to the logo.
12 I am referring specifically to this group of
13 five letters together that are shown on
14 Applicant Exhibit number 1.

15 THE WITNESS: What was your
16 question again?

17 (Whereupon the record was read
18 back by the reporter.)

19 A Yes.

20 Q Have you ever accessed money, cash at
21 a cash machine in New York City?

22 A Yes.

23 MR. BERMAN: I will show you a
24 little blurb about something called
25 NYCE, which I want to put as

1 Felix
2 Applicant's 2.

3 (Whereupon a document was
4 marked as Applicant's Exhibit 2 for
5 identification, as of this date.)

6 (Whereupon the record was read
7 back by the reporter.)

8 Q Are you familiar with the NYCE
9 Corporation that provides electronic
10 payments? Have you ever seen this on a cash
11 machine, sir, in New York City?

12 A I have seen the NYCE signs on cash
13 machines.

14 Q Would you say that you saw this prior
15 to, say, 1996?

16 A Yes.

17 Q Would you say that the knowledge of
18 this name added to your development of the
19 mark that we are talking about today?

20 MS. KLINGER: Objection to the
21 form of the question. It is vague
22 and ambiguous.

23 You can answer it if you
24 understand it.

25 A No.

1 Felix

2 Q Have you ever heard of a company or a
3 brand putting the letter E in front of a
4 name to reflect E-commerce?

5 A Yes.

6 Q Would you say that you have heard of
7 that sort of branding prior to 1996?

8 MS. KLINGER: Objection to the
9 form of the question.

10 A Not really.

11 MR. BERMAN: I want to make
12 this Applicant's Exhibit 3, please.

13 (Whereupon a copy of a web
14 site for New York Carolina Express
15 Premium Transportation services was
16 marked as Applicant's Exhibit 3 for
17 identification, as of this date.)

18 MR. BERMAN: Let the record
19 reflect that I am showing Mr. Felix
20 Applicant's Exhibit number 3, which
21 is a picture of a web site for New
22 York Carolina Express premium
23 transportation services since 1984.

24 Q Have you ever heard of this company,
25 sir?

1 Felix

2 A I have seen it.

3 Q Would you say that you had seen this
4 company prior to 1996?

5 A No.

6 Q Are you certain that you have never
7 seen this company prior to 1996?

8 MS. KLINGER: Objection.

9 Asked and answered.

10 MR. BERMAN: I just want to
11 understand if this is a guess or an
12 estimate, as we talked about before,
13 or if this is something that
14 Mr. Felix is certain of.

15 Q Are you certain that you did not see
16 this trucking company which clearly shows
17 the big letters NYCE on them prior to 1996?

18 MS. KLINGER: Objection to
19 your characterizations. Objection to
20 form.

21 A I don't know.

22 Q You're not sure?

23 A I believe I started noticing it after
24 we started ENYCE.

25 Q Just to back up one second, does this

1 Felix

2 mark have a meaning that you are aware of?

3 MS. KLINGER: Objection to the
4 form of the question as vague and
5 ambiguous.

6 Are you talking about the mark
7 ENYCE or are you referring to
8 Applicant's Exhibit 3?

9 MR. BERMAN: I am no longer
10 referring to Applicant's Exhibit 3.
11 I am referring to the mark that -- we
12 have agreed the mark for the purposes
13 of this entire deposition is the
14 ENYCE letters together, correct?

15 MS. KLINGER: Correct.

16 A There is no meaning to ENYCE because
17 it is not a word.

18 Q What do you know about this case,
19 this matter that we are dealing with today?

20 MS. KLINGER: Objection to the
21 form. Vague and ambiguous.

22 Q Have you been told anything about the
23 reason that you are here today?

24 MS. KLINGER: Objection.
25 Attorney-client privilege.

1 Felix

2 Q Let's get back to your employment.

3 Are you currently employed?

4 A Yes.

5 Q What do your daily activities consist
6 of?

7 A I am executive vice president of
8 ENYCE.

9 MS. KLINGER: Can we go off
10 the record for a second?

11 (Whereupon a discussion was
12 held off the record.)

13 MR. BERMAN: Opposing counsel
14 has said I can't ask certain
15 questions about what Mr. Felix knows
16 about why he is here today.

17 Q Tell me anything that you know about
18 why you are here today.

19 A It is still pretty vague. You asked
20 me if I knew why I was here. Yes, I know
21 why I am here.

22 Q Can you please tell me the
23 understanding that you have as to why you
24 are here?

25 A I believe someone is trying to use

1 Felix

2 our mark for automobile accessories.

3 Q I would like to be able to get back
4 to that in a little bit, but I want to move
5 on.

6 Your current position as executive VP
7 of ENYCE, is ENYCE a corporation?

8 A Yes.

9 Q Is it a subsidiary of another
10 corporation, perhaps?

11 A ENYCE is, I believe, an LLC owned by
12 Liz Claiborne, and it is a mark owned by Liz
13 Claiborne.

14 Q What do your daily activities
15 generally consist of, your current
16 employment?

17 A I am an executive vice president for
18 ENYCE, an employee of ENYCE which is owned
19 by Liz Claiborne.

20 Q What does that involve on a
21 day-to-day basis? Is there decision making
22 on your part?

23 A It involves the managing of a
24 clothing company. There are many different
25 aspects, from designing, producing,

1 Felix

2 shipping, advertising, marketing.

3 Q Are you responsible for all of those
4 functions or do you have more specific
5 responsibilities in some of those areas of
6 responsibility?

7 A I focus on a few things, but in
8 general -- of course, I don't do everything
9 there. As an executive, I oversee the
10 general operations of ENYCE.

11 Q Do you arrive at work a certain time
12 every day generally?

13 A My schedule can change. Yes, when I
14 am in New York, it is roughly 10:00 a.m.,
15 usually.

16 Q How often would you say that you are
17 in New York?

18 A Fairly frequently.

19 Q One day a week, five days a week,
20 three days a week?

21 A It depends. For the most part I am
22 based in New York unless there are events.

23 Q I don't mean to pry. Do you live in
24 New York?

25 A I live in New Jersey, and I work out

1 Felix

2 of the New York office.

3 Q You live in the New York metropolitan
4 area; is that correct?

5 A Yes, but running a clothing company
6 requires me to do extensive travel.

7 Q Aside from your travel, the time that
8 you are in New York, was that two days a
9 week, five days a week, three days a week?

10 A When I am not traveling, I am working
11 in New York.

12 Q Five days a week?

13 A At least.

14 Q You arrive at work. What occurs
15 during the day? What are your general
16 activities that you have to deal with? Are
17 you dealing with production?

18 Let's go back to what you said
19 before. You deal with production?

20 A On a day-to-day basis I am not
21 dealing with production at this time.

22 Q Are you dealing with marketing?

23 A On a day-to-day basis.

24 Q Just to make this a little shorter,
25 you stated a lot of different things happen

1 Felix

2 in a clothing company. You rattled them
3 off. Marketing you are involved with;
4 production you are not?

5 A On a day-to-day basis I am not.

6 Q On a day-to-day basis are there other
7 areas of the things that you rattled off
8 previously that you are involved with?

9 A During the early history of the
10 company for the first seven or eight years I
11 was completely in charge of the designing of
12 the apparel of the product line.

13 Q When did that change?

14 A A couple of years ago.

15 Q 2003, 2002?

16 A 2003.

17 Q In 2003 your daily job description
18 changed; is that correct?

19 A My day-to-day responsibilities
20 changed.

21 Q Your day-to-day responsibilities in
22 2003 to today is in charge of marketing. Is
23 there anything on a day-to-day basis?

24 A That was my major day-to-day
25 responsibility. I do have other

1 Felix

2 responsibilities as being an executive.

3 Q You are referring to major decisions
4 for the company; is that what you are
5 referring to?

6 A Usually that's what executives do,
7 yes.

8 Q On a day-to-day basis, marketing now,
9 let's get into the marketing. What does
10 marketing mean? Are you advertising?

11 A Advertising does fall into marketing.

12 Q What else? Trade shows, do trade
13 shows fall into marketing?

14 A Trade shows do not fall into
15 marketing.

16 Q Anything else?

17 A Yes, there are all different types of
18 things in marketing. There is advertising.
19 There is event related-projects that we
20 produce. It is a wide spectrum. It could
21 be our web site development.

22 Q You have a daily involvement in your
23 web site development; is that correct?

24 A I manage the web site, yes. It is
25 one of my responsibilities.

1 Felix

2 Q Advertising event projects, web site
3 development, anything else in particular?

4 A Retail-related events.

5 Q Events?

6 A Events, shop development.

7 Q Advertising? Let's go back to
8 advertising, if we may. Are you primarily
9 responsible for the advertising direction of
10 the mark?

11 MS. KLINGER: Objection to the
12 form of the question.

13 Q Are you primarily responsible for the
14 direction that your company takes with
15 respect to advertising the mark?

16 A I share that responsibility with Tony
17 Shellman. Tony manages all the media buys.
18 I pretty much handle all of the creative
19 aspects of it.

20 MR. BERMAN: Off the record.

21 (Whereupon a discussion was
22 held off the record.)

23 (Whereupon the record was read
24 back by the reporter.)

25 Q Where do you advertise? Where does

1 Felix

2 your company advertise?

3 A We advertise in print media and
4 outdoor media. We advertise on the
5 internet, and there are certain events with
6 sponsorships.

7 Q Any television ads?

8 A Actually, there is a television ad,
9 but it is running in Europe.

10 Q Let's keep it to the United States.

11 A There are no television ads in
12 America.

13 Q Any radio ads?

14 A Occasionally, yes.

15 Q Where do you advertise on the radio?
16 Is there a program that you may be able to
17 refer to?

18 A It depends. It varies from region to
19 region.

20 Q Let's go to the print. Where do you
21 advertise? Are you referring to magazines
22 when you say prints?

23 A Yes.

24 Q Is there anything else other than
25 magazines when you refer to prints? Are

1 Felix

2 there newspaper ads?

3 A Outdoor.

4 Q Start with print. You are referring
5 to magazines when you say print?

6 A Correct, yes.

7 Q Can you name a few magazines that
8 would be the largest places that you
9 advertise?

10 A Vibe Magazine, The Source Magazine.
11 Are you asking about Lady ENYCE as well?

12 Q Yes, we can ask about Lady ENYCE, if
13 it is okay with you. Unless you feel the
14 need to separate, please do.

15 A I don't advertise ENYCE in Elle Girl.
16 We advertise in Elle Girl for ENYCE, Double
17 XL Magazine, Dub Magazine.

18 Q Anything else in particular? I am
19 not looking if you did one little ad.

20 A Those were pretty substantial. We
21 advertise in other magazines.

22 Q Did you say something about music?

23 A Vibe and Source Magazine are fairly
24 substantial. They are one of the largest
25 circulated magazines in the world.

1 Felix

2 Q Forgive me, but I have not heard of
3 any of these magazines, so I personally
4 would like to understand.

5 A To let you know, Vibe and Source have
6 a circulation larger than Rolling Stone and
7 Spin.

8 Q I don't read Rolling Stone, either.
9 I would like to understand. Again, forgive
10 me, but I would like to understand perhaps a
11 little bit.

12 A Nearly a million in circ.

13 Q For what?

14 A Copies a month for a couple of those
15 magazines that I mentioned.

16 Q I visit lawyers' offices and doctors'
17 offices and I receive some subscriptions to
18 magazines myself. I don't know. I have
19 never heard of these magazines. If that's
20 the case, I have no reason to question you,
21 sir.

22 Who is the type of person that is
23 looking at that type of magazine? Is there
24 a demographic age, sex, a race? Is there
25 something that you can give me a bit of

1 Felix

2 description?

3 MS. KLINGER: Objection to the
4 form of the question.

5 Q You stated you were involved in
6 advertising?

7 A Yes.

8 Q Would you agree that advertising
9 would be geared towards a certain
10 demographic based on the way you would
11 advertise; is that correct? You are more of
12 an advertising expert than I would be.

13 A Yes.

14 Q I watch the rating for television
15 shows. I see where they are talking about
16 this 18 to 40; it is more important than
17 anybody else. They say that's where the
18 advertisers want to be. Even though the
19 ratings are higher for older people, they
20 don't buy stuff. I am not into advertising,
21 you are. Is there an age, sex, race, income
22 level, something associated with the
23 demographic that you are trying to reach
24 with the advertising direction that you are
25 taking?

1 Felix

2 MS. KLINGER: Objection to the
3 form of the question.

4 You can answer it if you
5 understand.

6 A We try to advertise where we believe
7 our consumer -- the magazines that our
8 consumer reads.

9 Q I would like to ask for some help
10 here. I don't understand who that consumer
11 is. I know that I am a 44-year-old guy and
12 I don't know of these publications. Is it
13 because I am too old to understand these
14 publications? Is it something about what I
15 do for a living or what is it? Who is
16 reading these magazines? Is it a younger
17 person? Is there an age group that you can
18 define?

19 A Their readership changes on a
20 month-to-month basis. It all depends,
21 depending on their issues. It is pretty
22 vague. We don't specifically target. We
23 feel those are the magazines that consumers
24 read.

25 Q You referred to the lady version of

1 Felix

2 the mark as opposed to the general mark as
3 in Elle Girl, you separate it out. You said
4 that would be something, I assume, am I
5 correct to assume that that's geared towards
6 women versus men?

7 A Elle Girl is probably geared toward a
8 younger woman as opposed to men or the older
9 readership, the parent magazine, Elle.

10 Q Is there a race associated with who
11 might be more likely to read these
12 magazines? Would it be a Spanish decent or
13 an African American? I happen to be Jewish.
14 I don't know. Is there someone that's more
15 likely to read these magazines?

16 A Vibe Magazine, as an example, has a
17 wide readership that transcends any one
18 race, and it is also geared towards both men
19 and women. I think it is safe to say it is
20 geared towards a younger audience.

21 Q It is a younger audience and it is
22 men and women you are saying, other than
23 that one that you referred to?

24 A Their last readership, they were
25 saying it is pretty much even, 50/50.

1 Felix

2 Q You are targeting something here. I
3 am trying to get an understanding about what
4 you are targeting. Can you be a little more
5 specific?

6 A It is hard to say, we specifically
7 target. ENYCE as a brand has an audience
8 that's fairly wide. Although we may target
9 a little bit younger, more kids may be
10 buying our stuff doesn't mean that we try to
11 exclude older people as well.

12 Q I am not suggesting that you are
13 trying to exclude anybody, but you are
14 obviously trying to target somebody. I just
15 want to understand if it is a better
16 description of who you might be trying to
17 target.

18 A Our general demographic that we
19 target is anywhere from 15 to 30, and these
20 magazines seem pretty much appropriate to
21 try to target those. We target both men and
22 women in that same demographic. Some
23 magazines, like an Elle Girl, is targeted
24 more towards women.

25 Q I prior to this tried to do a little

1 Felix
2 homework on what this is all about. As I
3 had previously stated, I wasn't aware all of
4 this existed. I am trying to understand if
5 others understood what this was about with
6 respect to your clothing. I assumed it
7 might be something younger.

8 I asked a couple of my nephews and
9 friends and my niece and a couple her
10 friends. They are in their twenties and
11 they never heard of it, either.

12 Again, I don't know why we have not
13 heard of it. Obviously you are doing a lot
14 of business. I have read that in different
15 things that I will pull out. There are
16 other exhibits.

17 Who is buying this product? Just
18 younger doesn't seem to be the answer. Is
19 there a more specific target that you are
20 after that buys this product?

21 MS. KLINGER: Objection to the
22 form of the question.

23 A There are a lot of people that are
24 buying this product.

25 Q Is it more likely to be one of the

1 Felix
2 minority groups that we have in this country
3 that would be buying this product?

4 A It could be. We don't specifically
5 market towards any one particular race.

6 Q The previous brand that you referred
7 to that you said you started, this Mecca
8 clearly seems to target a certain race;
9 wouldn't you agree?

10 MS. KLINGER: Objection.

11 A No, not necessarily. Mecca is an
12 aspirational word to obtain the epitome. We
13 just wanted to be the best.

14 Q What was done with the brand with
15 respect to clothing? Would you agree that
16 the brand was put out there to target a
17 certain race?

18 A No.

19 MR. BERMAN: The gentleman
20 that we will have tomorrow, is that
21 Evan Davis?

22 MS. KLINGER: Yes.

23 Q Was Evan Davis involved with you,
24 with Mecca?

25 A Yes.

1 Felix

2 Q Was he involved with you from the
3 start of Mecca?

4 A Yes.

5 Q You previously stated that Evan
6 Davis, you and Tony were the three gentlemen
7 that you said started this mark; am I
8 correct?

9 A Yes.

10 Q You left Mecca to start a venture for
11 Fila; is this correct? I believe you
12 previously stated that you left Mecca?

13 A We left Mecca, and then we started
14 another brand after that.

15 Q I believe you said that. Did you
16 state that whoever was in charge of Fila
17 wanted you --

18 A I left Mecca in March of '96, and I
19 went to start a new project in April of '96
20 that became ENYCE.

21 Q Who asked you to join Fila?

22 A The president of Fila U.S.A.

23 Q What is his or her name?

24 A There were two people. The president
25 of Fila U.S.A. was A-L-D-E-N, S-H-E-E-T-S,

1 Felix

2 and Alberto V-E-R-D-I. Alden was the
3 president of Fila U.S.A.

4 I wasn't sure exactly what Alberto's
5 specific title was. I am not sure whether
6 technically he was, whether Fila SPA, the
7 Italian company, was -- I don't know his
8 deal, whether he was an executive of Fila
9 SPA or Fila Hong Kong or Fila U.S.A., but
10 Alden Sheets was the president of Fila
11 U.S.A., and Alberto was a higher up in the
12 Fila world.

13 Q Did either one of these gentlemen
14 particularly ask you to join Fila or did
15 they do it together?

16 A We joined as a group, meaning Tony
17 Shellman, Evan Davis and myself. We started
18 a new project.

19 Q At the request of both of these
20 gentlemen together, was one of them more
21 instrumental in that request?

22 MS. KLINGER: Objection to the
23 form of the question.

24 A Those were the two that represented
25 Fila, and it was the three of us as the

1 Felix

2 group, meaning Tony Shellman, Evan Davis and
3 myself. We started a project in 1996.

4 Q Why did they want you and these other
5 two gentlemen to start this project?

6 A From our prior success in the
7 clothing industry.

8 Q With?

9 A Mecca U.S.A.

10 Q The day that you said you came up
11 with the mark that you presented to the
12 others, who are the others that you
13 presented it to on that next day after you
14 thought of the mark?

15 MS. KLINGER: Objection to the
16 form of the question.

17 You can answer it if you
18 understand it.

19 A It was Evan Davis and Tony Shellman,
20 and later on that day we showed Alberto
21 Verdi.

22 Q Did you not show Alden Sheets?

23 A He eventually saw it and it was
24 communicated. Conversations were going back
25 and forth.

1 Felix

2 Q Just to understand, Alberto Verdi on
3 behalf of Fila was the first to see the
4 mark?

5 A From what I remember, yes.

6 Q That occurred the day after you
7 thought of the mark; is that correct?

8 A I believe so, yes.

9 MR. BERMAN: To clarify, I
10 will make this Applicant's 4.

11 (Whereupon a press release was
12 marked as Applicant's Exhibit 4 for
13 identification, as of this date.)

14 Q I will do a little housekeeping here
15 to get this right.

16 You said you are the executive vice
17 president of ENYCE?

18 A Yes.

19 Q Is that correct?

20 A Yes.

21 Q I am showing you Applicant's Exhibit
22 number 4, where it is an announcement about
23 Liz Claiborne completing its acquisition of
24 ENYCE Holding, LLC.

25 Have you ever seen this document

1 Felix

2 before?

3 A It looks like the press release that
4 Liz Claiborne sent out.

5 Q Without being completely familiar
6 with it, you are familiar with the substance
7 of it; is that correct?

8 A I have read this before.

9 Q The corporation that you are the
10 executive vice president of is what, sir?

11 A ENYCE, LLC, I believe, yes.

12 Q Is it the ENYCE Holding, LLC that is
13 referred to in this announcement, is that
14 the corporation that you are the executive
15 vice president for?

16 A ENYCE, LLC.

17 Q Do you currently have any ownership
18 in ENYCE Holding, LLC?

19 A No.

20 Q Have you ever had any ownership in
21 ENYCE Holding, LLC?

22 A No.

23 Q When ENYCE Holding, LLC was
24 purchased --

25 MS. KLINGER: I have to

1 Felix
2 object. I don't think Mr. Felix has
3 testified. Do you know what ENYCE
4 Holding, LLC is? I know he testified
5 about ENYCE, LLC. I don't know that
6 he said anything about ENYCE Holding,
7 LLC.

8 MR. BERMAN: I asked Mr. Felix
9 if it is the same company that's
10 referred to.

11 MS. KLINGER: I don't think he
12 directly answered your question.

13 THE WITNESS: I said it is
14 ENYCE, LLC.

15 MS. KLINGER: Are you saying
16 they are the same, if you know?

17 THE WITNESS: I am not sure,
18 to tell you the truth.

19 Q Is there another corporate entity
20 then that might be in existence so we know
21 what we are looking at here?

22 A I don't know. That could be between
23 Liz Claiborne and Fila.

24 MR. BERMAN: Off the record.
25 (Whereupon a discussion was

1 Felix
2 held off the record.)

3 MR. BERMAN: There is some
4 confusion with respect to some of
5 these different corporate entities,
6 and we will clear some of that up.

7 MS. KLINGER: We will clarify
8 whether or not ENYCE Holding, LLC and
9 ENYCE, LLC are the same entity.

10 Q Mr. Felix, with respect to the
11 purchase that's reflected here, do you
12 understand what was purchased when this
13 purchase was made?

14 A Yes, I understand.

15 Q Could you please tell me what was
16 purchased for \$114 million?

17 MS. KLINGER: As you
18 understand it.

19 A The company that was owned by Fila
20 U.S.A. was ENYCE, LLC, from what I know.

21 Q Its assets, what were those assets?

22 A At that time the mark was one of the
23 assets.

24 Q Were there other assets?

25 MS. KLINGER: Objection. Lack

1 Felix
2 of foundation. You have not
3 established the witness has any basis
4 for the answers to these questions.

5 Q Do you have any knowledge of the fact
6 whether there was any inventory, machinery,
7 equipment, any other assets involved with
8 this purchase?

9 MS. KLINGER: Objection.

10 Compound question.

11 A As far as I know, yes, there were
12 assets.

13 Q Have I described those assets, actual
14 inventory?

15 A I'm sure you have described a part of
16 it.

17 Q Is there anything that you can think
18 of that would be part of the assets that is
19 not machinery, equipment, inventory or the
20 marks in question?

21 A I'm sure I could if I thought about
22 it.

23 Q Does it come to mind right now?

24 MS. KLINGER: I have to object
25 to it as well. I don't think that

1

Felix

2

you have established that there is

3

any foundation for this witness to

4

know the answer to these questions

5

that you are talking about. It was a

6

complicated, multi-million-dollar

7

purchase. I don't think that you

8

have established that this individual

9

had any involvement in or knowledge

10

of what the terms of the acquisition

11

are.

12

Q Is there anything else that you have

13

knowledge of with respect to this

14

acquisition that's referred to in

15

Applicant's Exhibit number 4, sir?

16

MS. KLINGER: Can you read

17

that back?

18

(Whereupon the record was read

19

back by the reporter.)

20

Q Any other information that you can

21

provide?

22

MS. KLINGER: Objection to the

23

form of the question as vague and

24

ambiguous.

25

A As an executive, I have information.

1 Felix

2 Q Was there due diligence that
3 occurred?

4 A There was due diligence that
5 occurred.

6 Q How long did that due diligence take?

7 A I would say about -- I think it was a
8 ninety-day period.

9 Q Were there accountants and attorneys
10 involved in this due diligence?

11 A Yes.

12 Q Did you have interaction with these
13 accountants or attorneys?

14 A In some cases, yes.

15 Q What were those?

16 A At the time it was discussing --

17 MS. KLINGER: I will have to
18 caution the witness not to divulge
19 any attorney-client communications in
20 your answer.

21 THE WITNESS: I was just
22 pretty much asked standard questions
23 about the company, inventory, things
24 like that, process of how we do
25 things.

1 Felix

2 Q You stated you were previously
3 involved in design and production prior to
4 this acquisition.

5 A Right.

6 Q Correct?

7 A Yes, as my day-to-day.

8 Q When the due diligence occurred, did
9 you respond to questions with respect to
10 value of any inventory that you may have had
11 as a corporation?

12 A I was never asked that.

13 Q Were you asked any questions about
14 the cost to produce any of the clothing that
15 you had in inventory?

16 A No.

17 Q Were you asked any questions about
18 the length of time that any of this
19 inventory may have been in the inventory of
20 the company?

21 A No.

22 Q I need to ask you some questions
23 about what your day-to-day activities were
24 with respect to this production.

25 When you were handling production,

1 Felix

2 what does that mean, sir, when you were
3 handling production? What did you do on a
4 daily basis when you were handling
5 production for the company prior to this
6 acquisition?

7 A I made sure that the designs were
8 transferred into production and production
9 orders were made. It doesn't necessarily
10 mean I was the one that they asked when they
11 were doing their due diligence. There were
12 other people that could answer those
13 questions as well.

14 Q Is it correct to say that you were
15 involved in the cost?

16 A You were asking me whether I answered
17 those questions. I said no, I was never
18 asked those questions.

19 Q Was there somebody that you reported
20 to with respect to the production of the
21 products prior to this acquisition?

22 A Yes, there were people that I
23 reported to.

24 Q Who might that have been?

25 A Evan Davis was my direct report.

1 Felix

2 Q Have you ever been involved in any
3 litigation of any kind?

4 A Yes.

5 Q Have you ever had any judgments? Has
6 anybody ever been awarded a judgment against
7 you?

8 A Me personally?

9 Q Yes.

10 A No.

11 Q Have you ever been convicted of a
12 crime?

13 A No.

14 Q Are you currently a party to any
15 litigation of any kind that you know of?

16 A No.

17 Q I will apologize initially if I am
18 looking at the wrong Rolando Felix. Your
19 name is Rolando Felix, correct?

20 A Yes.

21 MR. BERMAN: I would like to
22 present Applicant number 5.

23 (Whereupon a document
24 containing information regarding the
25 United States Court of Appeals was

1 Felix
2 marked as Applicant's Exhibit 5 for
3 identification, as of this date.)

4 THE WITNESS: Let the record
5 show that I am showing Mr. Felix
6 Applicant Exhibit number 5 which is
7 information about a case in the
8 United States Court of Appeals for
9 the Third Circuit dated October 22,
10 1997, and there is a Rolando Felix
11 listed.

12 Q And I am asking you, sir, is that the
13 same Rolando Felix that sits here today?

14 A This is not me.

15 Q How do your daily activities relate
16 to the corporate entity, Liz Claiborne?

17 MS. KLINGER: Objection. Lack
18 of foundation.

19 You can answer the question.

20 A As I previously stated, I handle the
21 day-to-day marketing and when there are
22 issues regarding the company as far as the
23 direction or the management, I am called
24 upon at times to discuss that, discuss.
25 ENYCE.

1 Felix

2 Q As far as you know, did Liz Claiborne
3 ever produce any automobile products, as far
4 as you know?

5 MS. KLINGER: Objection. Lack
6 of foundation. Are you talking about
7 Liz Claiborne as a corporate entity?

8 MR. BERMAN: As a corporate
9 entity.

10 A I don't know.

11 Q Will you state that you have been
12 involved with the marketing of this mark
13 from its inception, as you speak of, as you
14 spoke of today in, I believe, 1996? Are you
15 familiar with everything that's been done to
16 this mark since its inception in 1996?

17 MS. KLINGER: Objection.

18 Vague and ambiguous.

19 You can answer the question.

20 Q Do you understand the question? If
21 you don't, I will try to reword it.

22 A You asked if I was involved since its
23 inception of the marketing of this. When I
24 was overseeing designer production, it
25 wasn't my responsibility. Now that my

1 Felix
2 day-to-day is marketing, it is my
3 responsibility.

4 Q What types of products currently
5 carry the mark?

6 MS. KLINGER: Objection to the
7 form of the question.

8 Q Are there shirts that have the mark
9 on them as a result of --

10 A Yes.

11 Q Name some other types of products
12 that might also have the mark on them as a
13 result of your company's activities and the
14 previous company's activities.

15 A Apparel, apparel accessories,
16 specifically knit tops, knit bottoms, woven
17 tops, woven bottoms, outerwear, sweaters,
18 accessories, hats, belts, footwear.

19 Q Would you say, though, that if
20 something other than those types of products
21 were produced with the mark on it, on behalf
22 of your company or the previous company that
23 you also say you were involved with, would
24 you know about those products?

25 MS. KLINGER: Objection to the

1 Felix

2 form of the question.

3 You can answer it if you
4 understand.

5 A I am familiar with everything that
6 ENYCE, the company, produces. I am not
7 familiar with what counterfeiters produce.

8 Q I am not referring to counterfeiters.
9 I am referring to the current company under
10 Liz Claiborne's control or the previous
11 company that you stated was controlled by
12 Fila. Were there ever any other types of
13 products produced that you are aware of that
14 had the mark on them at any time?

15 A Yes.

16 Q Other than what you have referred to?

17 A Yes, we produced promotional items
18 for marketing purposes.

19 Q Like what?

20 A Such as bags, pencils, pen,
21 stationery, cups, anything that could be
22 used in a promotional sense.

23 Q Did you see everything?

24 MS. KLINGER: Objection to the
25 form of the question.

1 Felix

2 Q Do you believe you have seen
3 everything?

4 MS. KLINGER: Objection to the
5 form of the question.

6 A The items that I have just previously
7 stated, I've seen those. I have overseen
8 production of actually making those.

9 Q Again, if there was something else
10 produced that became a consumer product,
11 would you be aware of it?

12 MS. KLINGER: Objection to the
13 form of the question.

14 You can answer it if you
15 understand it.

16 A Yes, I am pretty sure I would be
17 aware of it. Since I don't oversee design
18 or production, they could be developing new
19 things.

20 Q Today?

21 A Today. There could be things that
22 are in development right now that I might
23 not be fully aware of right now.

24 Q Did you ever see any automotive
25 products produced with the mark on them?

1 Felix

2 A No.

3 Q Did anybody at your company or the
4 previous company ever have any discussion
5 with you about producing any products with
6 the mark on them that were automobile
7 products?

8 MS. KLINGER: Objection to the
9 form of the question.

10 THE WITNESS: Can you repeat
11 that?

12 (Whereupon the record was read
13 back by the reporter.)

14 A No.

15 MR. BERMAN: I am going to put
16 in Applicant's number 6.

17 (Whereupon an article from
18 Look Magazine written by Cecil Cross
19 was marked as Applicant's Exhibit 6
20 for identification, as of this date.)

21 Q To refresh your memory, if I may, you
22 stated previously that you on your own
23 thought of the mark, the ENYCE mark, and
24 that the thought process of starting with
25 the NYC was all your thought process, and we

1 Felix

2 While chilling with a group of friends,
3 someone bet Shellman that he couldn't
4 copyright the abbreviation NYC. After
5 brainstorming, Shellman won the bet by
6 wisely deciding to place an E at the front
7 and end of NYC. What started off as a bet
8 amongst friends has since morphed into
9 ENYCE, a \$100 million company."

10 MS. KLINGER: Would you like
11 to review this article before you
12 answer the questions?

13 Q My first question: This is an
14 article?

15 A Right.

16 Q Based on your previous testimony, is
17 it correct to say that your testimony would
18 be that this is not correct what is shown in
19 this article? Would you state that?

20 A I am not sure. I know that I am not
21 one of the friends in this. I wasn't part
22 of this. I don't think it is true. Tony
23 may have other friends that he bet someone,
24 so I don't know.

25 Q I guess I don't understand something,

1 Felix

2 sir. You have specifically said no one else
3 thought of this NYC, that you were the only
4 one to think of it and that you presented it
5 to Mr. Shellman the day after you thought of
6 it?

7 A Right.

8 MS. KLINGER: Objection to the
9 characterization.

10 MR. BERMAN: We have not taken
11 the deposition of Mr. Shellman.
12 Mr. Shellman is not present. This
13 article certainly contradicts what
14 the witness has stated earlier. I
15 just want to understand from the
16 witness what his position is with
17 respect to what this article states.

18 THE WITNESS: I don't believe
19 that's a true account of it.

20 Q I'm sorry. You don't believe or do
21 you know for a fact what occurred?

22 A I am not sure when the discrepancies
23 happened, whether Tony said it or whether it
24 was recorded by Cecil Cross.

25 Q Do you want to change any of your

1 Felix

2 previous statements with respect to how this
3 mark originated?

4 A No. I believe that portion of the
5 article that you cited is not true.

6 Q Do you know that it is not true or do
7 you believe that it is not true, sir?

8 MS. KLINGER: Objection to the
9 form of the question.

10 Q The gentleman previously stated that
11 he was alone when he thought of this mark.
12 Do you continue to make that statement, sir?

13 A Yes.

14 Q If I say to you that this article
15 says that Mr. Shellman thought of this and
16 started with the NYC, are you making a
17 statement that this is incorrect?

18 A I believe it is incorrect.

19 Q I'm sorry. You believe it is
20 incorrect or do you know that it is
21 incorrect?

22 MS. KLINGER: Asked and
23 answered. Objection.

24 A I believe it is incorrect.

25 Q Do you currently have an employment

1 Felix
2 contract with Liz Claiborne or ENYCE,
3 whatever the corporation may be that you
4 actually work for?

5 Again, we have this corporation
6 situation question here which is why I ask
7 it that way. Remember we discussed whether
8 it is Holding or what have you, it is
9 actually the entity that you work for; do
10 you have an employment contract?

11 A I do have a contract. I am actually
12 in the process of renegotiating.

13 Q Who was that contract with?

14 A With either ENYCE, LLC or Liz
15 Claiborne, but I think it is ENYCE, LLC.

16 Q Do you receive a weekly paycheck?

17 A I receive a salary, yes.

18 Q Do you receive a monthly paycheck, a
19 biweekly paycheck?

20 A It is a bimonthly paycheck.

21 Q What corporate entity is listed on
22 that paycheck that you receive, sir?

23 A ENYCE, LLC.

24 Q It strictly says, "ENYCE, LLC"?

25 A Yes, I believe so, yes.

1 Felix

2 Q Are you aware of the future plans
3 that your company has with respect to the
4 mark? Am I being too vague? Do you need me
5 to be more specific than this? Do you
6 understand the question?

7 MS. KLINGER: I object to the
8 question as vague and ambiguous.

9 Off the record.

10 (Whereupon a discussion was
11 held off the record.)

12 MS. KLINGER: After
13 discussions off the record we decided
14 to designate this portion of the
15 record as confidential and under seal
16 in that it will include certain
17 confidential company information of
18 the opposer.

19 (The following portions of the
20 testimony are confidential.)

21

22

23

24

25

1 Felix
2 (Beginning of confidential
3 testimony.)

4 Q I am interested in the future plans
5 that you have with respect to various
6 different aspects of what you are going to
7 do with the mark. Let's start with future
8 plans with respect to the current range of
9 products.

10 Are you going to continue with the
11 various types of products that you listed a
12 little while ago?

13 A Yes, we plan to continue making
14 clothing, if that's what you are asking,
15 yes.

16 Q Specifically the types of clothing
17 that you referred to when we got real
18 specific a little while ago?

19 A Those things are being considered.

20 Q With respect to the original group of
21 types of clothing that you referred to --
22 and if you would like, do you want her to
23 read you the question? Do you remember what
24 you said?

25 A No, I am familiar.

1 Felix

2 Q I understand new fashions, what have
3 you. Do your plans continue with those same
4 type of items as far as carrying the mark?
5 Is that what your plans are?

6 A That is part of our plans. I'm sure
7 we don't want to limit our plans to just
8 that.

9 Q I want to get into other products in
10 a second.

11 Are there specific changes in the
12 direction that your company going to take
13 with respect to the type of products that
14 you have been currently marketing and
15 producing?

16 A We are going to continue producing
17 clothing and clothing accessories.

18 Q Let me give you an example. You are
19 producing suits for a man. I am referring
20 to a suit that I am wearing. You have been
21 producing them for regular-size men. Now
22 your company is going to produce for big and
23 tall, for very large men. That's the type
24 of question that I am asking you.

25 With respect to the types of products

1 Felix

2 that you currently have, those same types of
3 products, do you have plans to expand or
4 change or add to the direction --

5 MS. KLINGER: Objection to the
6 form of the question. It is a
7 compound question.

8 A I'm sure we are looking into finding
9 new areas of expansion for ENYCE.

10 Q Are you aware of what those plans
11 are? Again, we are under confidentiality
12 here. It is okay to answer it.

13 MS. KLINGER: If you know the
14 answer.

15 A I know we are exploring different
16 things, probably children's, exploring
17 different licensee products where we can
18 license the mark. We are experimenting with
19 accessories. We primarily make clothing,
20 but we are exploring different accessories.

21 Q I'm sorry. Please tell me what
22 accessories mean.

23 A Apparel accessories is what we are
24 focusing on right now, meaning belts, hats,
25 bags, that type of stuff.

1 Felix

2 We are also looking at different --
3 always entertaining other possibilities.

4 Q My next question is about other
5 products. Would that answer the question
6 then with respect to other products? Are
7 there other products that you are looking to
8 have carry the mark?

9 A We get approached every day by people
10 trying to put together licensing deals. I'm
11 sure -- we don't have anything set in stone
12 right now. We may be working on a couple of
13 things right now primarily with children's
14 wear. Other than that, we don't have any
15 set in stone plans right now.

16 MR. BERMAN: Can we go off the
17 record?

18 (Whereupon a discussion was
19 held off the record.)

20 Q When was the last time that you saw
21 Tony Shellman?

22 MS. KLINGER: Objection. Lack
23 of foundation.

24 A This morning.

25 Q How often do you see Tony Shellman?

1 Felix

2 A Pretty much every day, every business
3 day.

4 Q He arrives at the same office that
5 you arrive at?

6 A Yes.

7 Q Does he have an office?

8 A He has an office.

9 Q Does he have day-to-day activities?

10 A He has day-to-day activities.

11 Q Do you know what those day-to-day
12 activities are?

13 A Yes.

14 Q Would you describe those?

15 A Tony Shellman is an independent
16 contractor, and his day-to-day within ENYCE,
17 he handles a lot of the marketing. His
18 primary responsibilities are the media buy,
19 and he is involved with me in putting
20 together the ad campaigns, and he does just
21 general marketing events. That's pretty
22 much what he does.

23 Q When he handles these media buys,
24 does he actually sign on behalf of the
25 company?

1 Felix

2 MS. KLINGER: Objection. Lack
3 of foundation.

4 A I sign all the invoices as far as
5 work goes, either myself or Evan.

6 Q Are there any regular meetings that
7 occur?

8 A We have meetings.

9 Q Does Tony Shellman attend these
10 meetings on a regular basis?

11 A Tony attends meetings.

12 Q Do you know where Tony Shellman
13 lives?

14 A Yes.

15 Q Do you happen to know his address?

16 A Not offhand.

17 Q Does he live in New York City?

18 A As far as I know, yes.

19 Q I will refer back to Applicant's
20 Exhibit number 4.

21 When this purchase was made, do you
22 have any knowledge of whether Tony Shellman
23 received any of these proceeds or not?

24 A I don't have any knowledge, but I
25 believe he didn't. Tony does not own ENYCE.

1 Felix

2 Q When Tony attends these meetings, is
3 Evan Davis in these meetings as well?

4 A Sometimes.

5 Q How would you describe the chain of
6 command with respect to Evan Davis, Tony
7 Shellman and yourself? Are you all equal in
8 command? Does one of you have more of a say
9 in what goes on?

10 A Evan Davis is president. I am
11 executive vice president, and Tony is an
12 independent contractor.

13 MR. BERMAN: I have no further
14 questions.

15 (Recess taken.)

16 MS. KLINGER: I have nothing.

17 (Time noted: 3:50 p.m.)

18

19

ROLANDO FELIX

20 Subscribed and sworn to before me
21 this day of 2005

22

23 -----

24

NOTARY PUBLIC

25

1

2

EXHIBITS

3

APPLICANT'S

FOR IDENTIFICATION DESCRIPTION PAGE

4

1	1	A copy of a trademark principal register for letters ENYCE, registration number 2093751 dated September 2, 1997	15
5	2	A document	44
6	3	A copy of a web site for New York Carolina Express Premium Transportation Services	45
7	4	A press release	67
8	5	A document containing information regarding the United States Court of Appeals	76
9	6	An article from Look Magazine written by Cecil Cross	82

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C E R T I F I C A T E

3

I, LORI CERRANO, hereby certify that the
4 Deposition of ROLANDO FELIX was held before me on
5 the 6th day of April, 2005; that said witness was
6 duly sworn before the commencement of testimony;
7 that the testimony was taken stenographically by
8 myself and then transcribed by myself; that the
9 party was represented by counsel as appears
10 herein;

11

That the within transcript is a true
12 record of the Deposition of said witness;

13

That I am not connected by blood or
14 marriage with any of the parties; that I am not
15 interested directly or indirectly in the outcome
16 of this matter; that I am not in the employ of
17 any of the counsel.

18

IN WITNESS WHEREOF, I have hereunto set
19 my hand this 13th day of April, 2005.

20

21

Lori Cerrano

LORI CERRANO

22

23

24

25

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

-----X
L.C. LICENSING, INC.,
Opposer,
-against-
CARY BRETT BERMAN,
Applicant.
-----X

EXAMINATION BEFORE TRIAL of a
nonparty witness, Evan T. Davis, taken by
the Applicant, taken pursuant to Agreement,
held at KRAMER LEVIN NAFTALIS & FRANKEL,
LLP, 919 Third Avenue, New York, New York,
on April 7, 2005, at 1:20 p.m., before
Leslie M. Pagan, a Notary Public of the
State of New York.

BARRISTER REPORTING SERVICE, INC.

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New York, N.Y. 10271

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A P P E A R A N C E S :

KRAMER LEVIN NAFTALIS & FRANKEL, LLP
Attorneys for Opposer
919 Third Avenue
New York, New York 10022

BY: CAROLE E. KLINGER, ESQ.

CARY B. BERMAN
Applicant, Pro Se
1917 Lafayette Road
Gladwyne, Pennsylvania 19035

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E V A N T. D A V I S,
having been first duly sworn by a
Notary Public of the State of
New York, was examined and testified
as follows:

EXAMINATION BY
MR. BERMAN:

Q. Please state your name for the
record.

A. Evan T. Davis.

Q. What is your address?

A. 710 Peach Tree Lane, Franklin
Lakes, New Jersey 07417.

Q. Mr. Davis, my name is Cary
Berman. I am representing myself Pro Se in
the matter that we're dealing with today.

I'll be asking you some questions
and some information that may be relevant
to this case. My questions and your
answers will be taken down by the court
reporter that you see in front of you. The
court reporter can't take down nods or
shakes of the head, so it is necessary that
you answer my questions audibly.

1 E. Davis 4

2 Is that okay?

3 A. Certainly.

4 Q. When I begin a question, you may
5 know what I'm going to ask before I finish
6 my question. You must wait until I finish
7 so the court reporter can get everything
8 down correctly.

9 Would you try to do that?

10 A. Certainly.

11 Q. Have you ever been deposed
12 before?

13 A. No.

14 Q. Do you understand that you were
15 administered an oath by the court reporter
16 and are testifying today under the penalty
17 of perjury?

18 A. Yes.

19 Q. You understand the testimony is
20 of the same importance and significance as
21 if you were testifying in a court before a
22 judge and/or jury?

23 MS. KLINGER: Objection.

24 The legal aspects of this
25 case, we'll explain to our client.

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He's a fact witness.

Q. You will do your best to tell the complete truth at this deposition, won't you, sir?

A. Yes.

Q. If you don't understand a question that I ask you, you shouldn't answer it. Instead of answering a question that you don't understand, you should just tell me that you don't understand the question.

Would you agree to do that?

A. Certainly.

Q. If you do answer a question, I'll assume that you've understood the question and that you are giving me your best possible answer.

Do you understand that?

A. Yes.

Q. Sometimes you won't understand my question or you won't be sure you really know the answer because the answer comes to mind just as a guess or an estimate. When your answer is a guess or an estimate, you

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should tell me you're guessing or giving
an estimate.

Would you agree to tell me when
your answer is a guess or estimate?

MS. KLINGER: I am going to
object.

I am sure you don't want the
witness to answer if he doesn't know
the answer. He should only state what
he knows.

Q. If you are giving an estimate
with respect to perhaps monetary issues,
and you wish to give an estimate, would you
please acknowledge it is an estimate, sir?

A. Yes.

Q. If you find yourself getting
tired at anytime during the deposition,
please let me know and we'll talk about
taking a break.

Is that okay?

A. Yes.

Q. After you've given your best
complete answer to a question, you may
later in the deposition remember additional

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E. Davis

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information in response to the question.
If this happens, you should tell me that
you've remembered additional information
that relates to an earlier question and you
can tell me what that additional
information is.

Is that okay with you?

A. Yes.

Q. Sometimes when you're answering a
question, you may realize looking at some
documents would help refresh your memory.
When that happens, you may tell me that
certain documents would be required to
answer the question.

Would you agree to do that, sir?

A. I'm sorry, I don't understand the
question.

Q. If you are not able to answer a
question because you require the use of
documents, to review certain documents, to
answer that question, would you please tell
me that's the case, sir?

A. Yes.

Q. I am going to ask you a few

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questions about how you're feeling today.
I am not trying to pry into your medical
situation, but I want to make sure you are
okay to answer questions today.

Are you ill today?

A. No.

Q. Do you feel fine physically?

A. Yes.

Q. Are you under any medication?

A. Yes. I take twenty milligrams of
Lipitor for high cholesterol.

Q. Are you taking any other
medications?

A. No.

Q. Do you experience any symptoms as
a result of taking this medication?

A. No.

Q. Does it affect your memory?

A. No.

Q. So you feel at the moment you're
having no difficulties remembering and that
you can testify accurately and completely
today; is that correct, sir?

MS. KLINGER: Objection to the

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form of the question.

Q. You could still answer the question if you understand the question

A. I forgot the question already I'm sorry, if you can repeat it again, I'll --

MS. KLINGER: Do you want to read it back?

(Requested portion was read back.)

A. At the present time, yes.

Q. If that should change, if you develop problems concentrating or develop any other symptoms, would you let me know, sir?

A. I will ask for the break.

Q. Other than this Lipitor, are you currently under a doctor's care for any other illness?

A. No.

Q. Have you had any alcohol today?

A. No.

Q. Is there anything at all preventing you in any way from giving

1 E. Davis 10

2 accurate testimony today?

3 A. No.

4 Q. Is your memory working as well
5 today as it usually does?

6 A. Yes.

7 Q. I don't mean to pry, but I would
8 like to get a little background information
9 about you.

10 Is that okay, sir?

11 A. Not a problem.

12 Q. Did you have any formal
13 education?

14 A. Yes. I graduated high school,
15 and I graduated -- would you like the name
16 of the high school?

17 Q. Was the high school your highest
18 form of education?

19 A. No.

20 Q. Did you go to a college,
21 university?

22 A. I graduated the University of
23 Arizona with a finance and real estate
24 degree in 1986.

25 Q. I'd just like to run through some

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of your former jobs.

A. Not a problem.

Q. So after you graduated in 1986, did you find immediate employment or fairly immediate employment?

A. I worked as a bartender for the first year and couple of months out of college.

Q. So if the timeline is correct, would that bring us to, say, until 1987?

A. '87, yes.

Q. At which time you did what, sir?

A. I took a job with International News Corporation.

Q. Where are they located?

A. They were based out of Seattle, Washington.

Q. Who long did you work there?

A. I worked there for -- International News, I think from '87 and a half to '88 to '96. But at '94 and a half, somewhere in there, I was then working for MA Associates, which was a subsidiary corporation derived from International News

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Corporation when we started the brand
Mecca.

Q. So from 1987 to 1996 --

A. I worked for International News
Corporation and MA Associates, which was
the same building, same thing. We started
a new project for them which was Mecca. I
believe they set up a new corporation
inside their own, and I think MA Associates
was a derivative of International News
Corporation. From a payroll perspective,
it became a different division.

Q. So it was a --

A. Same building, same people, just
different corporation.

Q. Was MA Associates owned by
International News?

A. Yes.

Q. Would you say that they were
totally a hundred percent owned by
International News, as far as you know?

A. As far as I know.

Q. And the MA Associates employment
began in 1994; is that correct? Is that

2 what you said?

3 A. '94 and a half, '95.

4 Q. Okay, so let's just back up a
5 second to 1987 until I believe you said
6 1994 --

7 A. Right.

8 Q. Could you just briefly describe
9 your employment?

10 A. I worked for International News
11 as a salesperson. I sold men's and young
12 men's clothing.

13 Q. Would you say that was your
14 position when you first started?

15 A. I started as a salesperson and I
16 ended as a salesperson, although I became a
17 regional manager, so I had more management
18 responsibilities towards the last two
19 years.

20 Q. And what did that involve as far
21 as sales? Were you dealing with
22 individuals, stores?

23 A. Yes.

24 MS. KLINGER: Objection to the
25 form of the question.

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Compound question.

Q. Who were you dealing with? Who were your customers?

A. Our customers were individual M and Pa operations, as well as department stores and specialty chain stores.

Q. Forgive me, are we talking about retail --

A. Yes.

Q. -- clothing retails? Is that correct?

A. Clothing retails, yes.

Q. What do you mean by "Ma and Pa"?

A. Individual stores owned -- one business unit owner. That's the term for it in my industry.

Q. Okay. So could you describe the events that occurred when you started with this MA Associates?

A. MA Associates?

Q. Yes.

MS. KLINGER: Objection to the form of the question as vague and ambiguous.

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You can answer the question
you understand it.

Q. Do you understand the question?

A. I want to make sure that I do
understand the question. I think you're
asking me how I began making the switch
from International News to MA Associates
and what was the occurrences.

Q. Yes, one day you're a salesman --

A. Yes, one day I'm a salesperson,
and I'm working for International News
Corporation. I have an intern named Tony
Shellman, and we saw an opportunity in the
marketplace that we wanted to try and put a
business plan together. Young and naive, I
might add.

So we came up with a concept,
which we started to shop around, and
arranged various meetings to try and get
some people to finance and help us further
develop our concept. We brought it to the
people that I was currently working for,
which was International News Corporation.
They thought that we had a lot of passion

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and thought that our concept was worthy of them making an investment in for them to back us and give us support to realize our concept.

We started the company called Mecca USA along with -- one of our first people that we joined with was Rolando Felix who took a role on and responsibilities with us and the three of us formed a partnership with MA Associates.

Q. Go ahead, anything else you want to add to that?

A. No.

Q. You just stated, correct me if I'm wrong, that people at International News were going to back you?

A. (No verbal response.)

Q. Previously you stated that MA Associates was one hundred percent owned by International News.

Did you have any ownership?

A. (No verbal response.)

Q. I don't understand.

MS. KLINGER: I am just going

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to interrupt to remind the witness to
please answer in full words. You're
saying uh-hmm, but you should say yes
or no.

THE WITNESS: Yes. I'm
sorry.

Q. Please clarify what you meant by
backing you in this new venture.

A. They would give us the financial
support and the operational support to
establish a company together, although they
would own the mark and we would be paid in
a certain agreement. We were going to try
and put together a clothing line that we
were going to try and distribute to
retailers.

Q. Again, you're terminology may be
different than my terminology, so I
apologize.

A. Not a problem.

Q. When I hear the term backing you,
I generally assume that you would have some
ownership, so what did you --

A. We didn't have ownership. We

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didn't have ownership.

What I mean by "backing" is just somebody who has your back. I guess it may be a colloquial term and maybe I should be clearer. Basically, they gave us an opportunity to establish a brand name under their ownership at that particular time.

Q. So, again, you had no corporate ownership?

MS. KLINGER: Objection.

Asked and answered.

Q. Did you have other financial incentives?

A. I was financially incentified, yes.

Q. Were you to receive a percentage of the profits?

A. No.

Q. Other than salary, were there other financial incentives?

A. Yes.

Q. Could you please describe what they were, sir?

A. They were commissions based on

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E. Davis

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2 sales.

3 Q. Just for clarification,
4 commission is based on sales whether or not
5 there was a profit involved in said sale?

6 A. Yes.

7 Q. Could you describe your
8 day-to-day activities from 1994 and a half,
9 as you say, until 1996 with this MA
10 Associates?

11 A. It's tough to remember your
12 day-to-day. I can give you a more
13 general --

14 Q. Okay.

15 A. I was responsible for the
16 merchandizing and sales and distribution
17 for the product line Mecca USA.

18 Q. Merchandizing?

19 A. Yes.

20 Q. What is involved in
21 merchandizing?

22 A. Merchandizing is deciding what
23 actual clothes you are going to make,
24 coming out with a SKU plan, deciding what
25 you're going to make, style direction,

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E. Davis

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2 color direction, overall theme, graphic
3 application, what price points.

4 Actually, if I could give you --
5 I think I can give you an example that
6 might help you understand it better, if you
7 don't mind being colloquial. I would
8 basically -- I am the guy who writes the
9 menu. Somebody would actually do the
10 cooking if it was a restaurant.

11 Q. Is production included in
12 merchandizing?

13 A. No. But, you have to have
14 knowledge of production to see if something
15 can actually be feasibly made and how much
16 something would actually cost. That's part
17 of being a good merchandiser.

18 Q. Okay. And I assume you're a good
19 merchandiser. I just want to understand
20 who then caused the goods, the products, to
21 be produced.

22 A. International News Corporation,
23 MA Associates has a Hong Kong office. The
24 products that we designed in New York were
25 sent to Seattle. They had production

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people there who then forwarded our products to Asia where we manufactured over eighty to ninety percent of our products. They arrived in Hong Kong, they were sourced throughout Asia and then brought here back to the United States and then were distributed from here out of Seattle, Washington.

New York became the base -- the home base for Mecca, and we were responsible for the sales, the design and the marketing. And all of this, the operations and finance and most of the back room stuff were based out of the Seattle, Washington.

Q. I'm sorry, you said "we," and the court reporter didn't get a piece of what you said.

Who are you referring to when you say "we"? I know you tried to say it, but --

A. Myself and Tony and Lando.

Q. Tony is Tony Shellman; is that correct?

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A. That's correct.

Q. Rolando is Rolando Felix; is that correct?

A. Yes.

Q. The three of you were together during this entire Mecca venture; is that correct?

A. Yes.

Q. When did you first meet Tony Shellman?

A. While I was working for International News Corporation, Tony Shellman was going to school at Parsons and he worked in a retail operation at International News Corporation owned by a company called the Zebra Club. And they asked if I would hire him as an intern while he's going to school to use him for various projects and stuff like that, if he could help out. And basically, we paid him a little bit, and while we worked, we got to know each other and established a relationship.

Q. What year was that, if you

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recall?

A. No, I don't.

Q. Was it prior to this 1994 and a half that you referred to of when you started with this MA Associates?

A. Yeah, 'cause I met him, say, from '98 -- you're saying for an exact year. It would be '92 to '93. I don't recall offhand --

Q. Okay.

A. -- the exact year, but anywhere from '91 to '93 would be an accurate statement.

Q. Certainly it was at least a year or more prior to --

A. Right.

Q. -- the beginning of this other venture?

A. Right.

Q. I would like to ask you the same question about Rolando Felix.

A. Rolando didn't work for us. He moved from Seattle with Tony, and they were going to school together. And I met Lando

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2 by him coming to the office and visiting
3 Tony. He'd stop by, say hello and we
4 established a relationship. But, he was in
5 no shape or form employed by International
6 News.

7 Q. You're referring to him as Lando.

8 A. Yeah. His name is Rolando, but
9 I've know him for some years and worked
10 with him. He likes to be called Lando.

11 Q. I just want to clarify.

12 A. Okay.

13 Q. But again, as far as a date that
14 you first met Mr. Felix --

15 A. Probably within sixty days after
16 I met Mr. Shellman. Whatever that date is
17 in between '91 and '93 when Tony was
18 interning for us, Lando would come by or
19 maybe meet him at work or come up and see
20 our showroom, as they were going to school
21 together. At that point, I was introduced
22 to him and established our relationship
23 then.

24 Q. I believe you said that he was
25 not employed --

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A. No. He just was Tony's friend. They came from Seattle together. They were friends. Lando would -- Rolando would visit Tony at work, and, you know, he'd be there, he'd say hi, how are you doing, how's it going. I'm Lando. We met and established a small friendship. That's how I met Lando.

Q. What's the date that Mr. Felix did, in fact, begin to be employed along with you?

A. At International News, he was not employed. When we came over to the Mecca concept, we decided that we were going to need somebody who was a technically skilled designer. At that point, Lando was already working in the industry. Him being Tony's friend and me knowing him and feeling that he was a capable designer and understood what our energy was and what our goals were, we decided that he would be the person that we wanted to come into our plan and our venture.

Q. So would you say that the date

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2 that he started to be employed with you
3 was --

4 A. '94 -- end of '94, early '95. He
5 wasn't employed for me. He was employed
6 with me by MA Associates when we shopped
7 the concept of Mecca USA. We shopped the
8 concept to Michael Lesko of International
9 News Corporation -- I forgot the question
10 already.

11 Q. It's about when he became
12 employed, and I believe I said with you,
13 not for you when I asked the question.

14 A. That's okay. It's a lot of
15 dialogue here.

16 Q. No problem.

17 A. We decided he would be a
18 designer. And at that point, he was
19 employed by International News Corporation
20 for MA Associates at the time, which they
21 established after.

22 Q. What was your next employment
23 after I believe you said 1996?

24 A. We were there until the midyear
25 1996. March of '96, we left Mecca USA, the

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2 company International News Corporation, I
3 Associates, and we joined Fila USA in order
4 to start a new venture.

5 Q. Did this MA go out of business?
6 Is that why you left or is there a reason
7 why you left?

8 A. Is there a reason why we left?

9 We weren't liking the direction
10 that the brand was going, so we needed
11 to -- decided to try this again, a new
12 clothing brand. We were naive enough to
13 think it was easy to do again.

14 Q. Did you receive compensation when
15 you left?

16 A. I received my outstanding
17 commissions.

18 Q. Did you receive any other
19 compensation when you left?

20 A. I don't understand the question.

21 MS. KLINGER: Objection to the
22 form of the question as vague and
23 ambiguous.

24 Q. You stated that you began this
25 venture, that these people backed you, and

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you -- did the venture become successful

A. Yeah. We became \$25 million before we left.

Q. Would you say it was successful because of your efforts?

A. I'd like to think so.

Q. Would you say it was successful because of the efforts of Mr. Shellman?

A. I'd like to think we all contributed.

Q. When you say "we all," is it Mr. Shellman, yourself and Mr. Felix?

A. Yes. I like to think the three of us contributed to the contribution of Mecca USA.

Q. When you left, did all three of you leave together?

A. Yes.

Q. Did you all leave in the same day?

A. I left first.

Q. Then when did the other two gentlemen leave?

A. I think like two weeks later.

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Q. Did you receive any compensation other than your outstanding commissions when you left?

A. When -- we are talking commissions? We're talking about money, right?

I didn't receive anything but money. I received my last check, my last paycheck. I had a salary plus commission arrangement. I received my check. I was due commissions. As they came due, the arrangements that we had, was when they got -- we got paid. It was based upon receivables and they delayed in paying me, but eventually we got paid.

Q. Previously you defined commissions as -- you didn't specifically define -- as a percentage of the sales that were made.

A. Agreed.

Q. Just now you said commissions are money or is that a different type of money or is it strictly commissions that were as a result of the sales of the products that

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2 were made?

3 A. My arrangement was a salary plus
4 commissions based on a certain percentage
5 of the sales. I got paid a percentage of
6 the sales, which is termed commissions from
7 my understanding in my business.

8 Q. Did this MA continue to be in
9 business?

10 A. Yes.

11 Q. Do you know if they're still in
12 business today?

13 A. No. I know they licensed the
14 name. I don't know the corporate structure
15 of how they do that.

16 Q. Are there still products that
17 bear this trademark?

18 A. Of Mecca USA, yes.

19 Q. Would you say it's still
20 considered to be a successful consumer
21 brand today?

22 MS. KLINGER: Objection to the
23 form of the question.

24 Q. Do you understand the question?

25 You can answer it, although I will rephrase

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it.

A. I don't understand. Success is judged in many different ways.

Q. Would you say that there is a considerable amount of consumer product that is still being sold today --

A. Yes.

Q. -- bearing the Mecca trademark?

A. Yes.

Q. Yet you have stated that you started this with these two other gentlemen; is that correct?

A. Yes.

Q. And you left and you received nothing; is that correct?

A. Yes.

Q. Were you upset?

MS. KLINGER: Objection to the form of the question.

A. Can you rephrase?

Q. Tell me what happened in 1996, please.

Did the three of you go on and do something together?

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2 A. Yes.

3 Q. What was that, sir?

4 A. We decided to start a new
5 venture, a new clothing brand.

6 Q. What was that?

7 A. That was the ENYCE brand.

8 Q. I'd like to get specific with the
9 events that led up to this business venture
10 that you speak of.

11 Is that okay?

12 A. Yeah, certainly.

13 Q. Either you can describe it or I
14 can ask you specific questions. Whatever
15 is easier for you, sir.

16 A. I just don't know what you're
17 really getting at, to be honest. It is
18 better if you want ask the question.

19 You want to know what led up to
20 the events? We worked for Mecca USA. We
21 weren't happy with what was going on. We
22 weren't satisfied with the financial
23 arrangements. We weren't satisfied with
24 the direction of it. We decided to -- we
25 thought our skills and talents could be

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2 best suited in doing something different
3 and we tried to establish a new clothing
4 brand.

5 Q. And you did so in conjunction
6 with another entity; is that correct?

7 A. Yes.

8 Q. Who is that entity?

9 A. Fila.

10 Q. How did you come to know this
11 entity?

12 A. They were calling us while we
13 worked at Mecca USA.

14 Q. Is there any common ownership
15 with the individuals with Mecca, MA,
16 International News -- whatever that whole
17 group that you referred to was and this
18 Fila?

19 A. No.

20 Q. Are they totally separate
21 entities as far as you know?

22 A. Yes.

23 Q. How long after you left Mecca,
24 MA, was it until you joined or became
25 associated with Fila?

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A. Two months.

Q. Would you say that the other two gentlemen, Mr. Felix and Mr. --

A. Shellman.

Q. -- Shellman, at the same time, went with you?

A. No. They left a couple of weeks after I did.

Q. I know that. You stated that previously, but did they join Fila --

A. Yeah.

Q. -- at the same time that you did?

A. Yeah.

Q. What happened next?

MS. KLINGER: Objection to the form of the question as vague and ambiguous.

Q. Was there a business plan with Fila?

A. Yes.

Q. What was the sum and substance of the business plan?

A. Fila was very interested in us at this point. They, Fila, realized that we

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2 had a real connection with certain
3 demographics that they were trying to cater
4 to and they thought that we'd be very good
5 for the design of the Fila line that they
6 owned. So they decided to try and get us,
7 myself, Tony and Lando, to design for
8 Fila. And we weren't interested in
9 designing for Fila, but that's how the
10 dialogue started. At the time we became a
11 little unhappy with our arrangement at
12 Mecca USA, we talked about maybe doing
13 another venture for them and they were
14 interested in that in conjunction with us
15 designing for Fila. So, eventually, we
16 determined that there was a business --
17 that we were going to create a business, a
18 new clothing concept, in the same arena
19 that we were in before and we were going to
20 design certain portion of Fila USA's
21 clothing line.

22 Q. You refer to certain
23 demographics. I believe you said you had a
24 connection to certain demographics. We can
25 read it back --

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A. Young men's industry.

Q. Young men's --

A. (No verbal response.)

Q. I sat with your associate yesterday and we had a deposition. We talked about trying to define who the customer is because I am not familiar with these products. I just want to try to understand. Perhaps you can help me understand who the customer is.

Is it more specific than young men? Is it a certain income level, education level?

MS. KLINGER: Objection.

Compound question.

A. It's -- you're trying to -- I understand where you're coming from, but honestly, this is what I live, breathe and do every day. To generalize it with a one-word answer, with quick sentences, I -- to me, it becomes a whole -- if you want to talk about the demographics of what I do, we need to get into it for a long time.

Very general, it is a young men's

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arena, fourteen to twenty-four, people that are influenced by pop culture. I mean, there are a lot of adjectives and descriptions that go along with this. It is not a roll of the tongue, you know, a one or two-sentence statement.

Q. Okay. I'd like to get --

A. To come out of the top of my head with a -- you know, I'm giving you the best I've got.

Q. Right now we're talking timeline and what happened when you started. I'd like to get into the subject matter at hand, and then perhaps get into some of these demographics.

Is that okay?

A. Certainly.

Q. We have Exhibit 1, which we used in yesterday's deposition, which is a trademark for the letters E-N --

MS. KLINGER: I'm going to object to your characterization of the document.

The document speaks for

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itself. If you want him to look at
the document, that's fine.

MR. BERMAN: Agreed.

Q. The letters E-N-Y-C-E are on the
document.

Could you please tell me the
first time that you heard of this, saw this
or however else you want to describe it,
the first time that you saw this group of
letters together.

MS. KLINGER: Objection for a
lack of foundation.

You can answer the question.

A. Mr. Felix -- when we started a
new venture, we were kicking around several
ideas and several names. And Lando came in
one day to work and we were working
preparing our next clothing line, and he
said, "I have something to show you guys."
He wrote those five letters down that you
presented in front of me. He wrote those
five letters down, and he said, "What do
you think that spells?" He asked myself.
You know, I said "Eh-Nees." I think Tony

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2 had another answer. I don't recall
3 offhand. We also -- Fila being owned by an
4 Italian company, we reported to Alberto
5 Verdi. He then asked him what he thought
6 said. He said "Eh-Nee-Chay," like that.
7 So we thought that -- you know, we thought
8 that it sounded kind of good. It was sort
9 of a blank canvass, and we gave it some
10 serious consideration.

11 Q. As far as you know, is it a word?

12 A. No.

13 Q. As far as you know, is it a name?

14 A. No.

15 Q. As far as you know, does it have
16 any meaning?

17 A. To me, yeah. I mean, I've been
18 working for nine years. It has a lot of
19 meaning, but it doesn't have a specific
20 meaning. It's up for interpretation.

21 Q. What meaning does it have to you,
22 sir?

23 A. It's a clothing company that we
24 started that I'm very proud of.

25 MR. BERMAN: This is

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Applicant's Exhibit number 6 that I'm
going to show to the witness.

Q. Within this document, this
author, there is --

MR. BERMAN: Is it okay with
opposing counsel?

MS. KLINGER: You can read the
title, certainly.

Q. This is an article called
Building the E-N-Y-C-E Empire by Cecil
Cross in Look Magazine.

MS. KLINGER: It purports to
be an article, okay.

Q. Whereby this Cecil Cross has
claimed to have interviewed Tony Shellman.
I believe it would be the same Tony
Shellman, but I have no knowledge whether
it is or it isn't, but it's Tony Shellman.

MS. KLINGER: Rather than your
characterization of the document, do
you want to have the witness look at
the document and then you may want to
ask him questions about the document
because that seems to be -- rather

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than have you tell him what the document is.

The document speaks for itself, so I object to your characterization on that ground. Why don't we have the witness look at the document.

MR. BERMAN: That's fine.

MS. KLINGER: Why don't you take a look at Applicant's Exhibit 5.

A. Is there anything you would like me to read in particular?

MS. KLINGER: I'm sorry, Applicant's Exhibit 6.

A. Was there a particular paragraph you'd like me to read or the whole thing?

Q. There's a particular paragraph that starts "Shellman didn't waste any time," however, please feel free to read the entire article, if it's what you'd like.

A. Okay.

Q. Again, the article is what it is. Please comment on what is stated in

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2 the article versus what you've just stated
3 in this deposition.

4 MS. KLINGER: Objection to
5 form as vague and ambiguous.

6 Are you asking him about this
7 specific paragraph to comment on?
8 You know, I'm sorry, you can answer
9 the question if you understand what
10 he's asking.

11 A. I understand, but -- I think I
12 understand, but I would like to be a little
13 clearer. You know, this is -- do I want to
14 speak about Tony locks getting re-twisted
15 while watching South Central, no. I mean,
16 are you talking more specifically about his
17 bet in self-promotion here?

18 Which paragraph would you like me
19 to speak on?

20 Q. If it's okay with counsel, you
21 were not here yesterday --

22 A. Right.

23 Q. -- for the deposition of
24 Mr. Felix. Mr. Felix did state that he
25 brought these letters in and showed it to

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you as you stated here similarly.

A. One hundred percent is my recollection. Tony Shellman I think is --

Q. Yet this article contradicts those occurrences and, therefore, I just would like to try to get some clarification on what actually occurred.

Mr. Shellman in this article said that he came up with this, and I would just like to understand from you to tell us what actually did occur.

A. What I stated before is actually what did occur.

Q. Are you stating that this article is incorrect? With respect to that paragraph, are you stating that this --

A. I don't have knowledge of the -- first, I don't have knowledge of this being the sequence of events that took place for the starting of the brand ENYCE. You know, I don't recollect this being the way it happened.

Q. Would you --

A. Sometimes a journalist, they'll