

ESTTA Tracking number: **ESTTA98486**

Filing date: **09/08/2006**

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

Proceeding	91162330
Party	Plaintiff L.C. LICENSING, INC
Correspondence Address	Kieran G. Doyle Cowan, Liebowitz & Latman, P.C. 1133 Avenue of the Americas NEW YORK, NY 10036-6799 UNITED STATES asc@cll.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Eric J. Shimanoff
Filer's e-mail	ejs@cll.com, trademark@cll.com
Signature	/Eric J. Shimanoff/
Date	09/08/2006
Attachments	Motion to Amend - ENYCE.pdf (120 pages)(5691864 bytes)

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

In the Matter of Application Serial No. 78/320,850
For the Mark ENYCE
Filed: October 30, 2003

----- x,	:	
L.C. LICENSING, INC.,	:	
	:	
Opposer,	:	Opposition No. 91/162,330
	:	
v.	:	
	:	
CARY BERMAN,	:	
	:	
Applicant.	:	
----- x		

**OPPOSER’S MOTION FOR LEAVE
TO AMEND NOTICE OF OPPOSITION**

Upon the annexed Declaration of Eric J. Shimanoff, dated September 8, 2006 (“Shimanoff Decl.”), and the exhibits thereto, including the proposed Amended Notice of Opposition attached as Exhibit A to the Shimanoff Decl., Opposer L.C. Licensing, Inc. (“Opposer”) hereby moves for an order, pursuant to 37 C.F.R. § 2.107, T.B.M.P. § 507 and Fed. R. Civ. P. 15(a), granting Opposer leave to amend its Notice of Opposition to assert as an additional ground of opposition that Applicant lacked a bona fide intent to use his claimed mark in commerce at the time he filed his intent to use application with the United States Patent and Trademark Office.

As a result of discovery, Opposer now has reason to believe that as of the time that Applicant filed his intent to use application opposed herein, he did not have a bona fide intent to use the ENYCE mark in commerce.

Furthermore, pursuant to 37 CFR § 2.117(c) and T.B.M.P. § 510, Opposer has filed a separate motion requesting the instant proceedings be suspended until such time as the Board renders a decision on Opposer's motion to amend.

MEMORANDUM IN SUPPORT OF MOTION

STATEMENT OF FACTS

Opposer initiated this proceeding by filing a notice of opposition on or about September 24, 2004, against the intent to use application of Applicant Cary Berman ("Applicant"), to register the mark "ENYCE" for "custom automotive accessories, namely, fitted car covers, shift knobs, brake pads and wheels for land vehicles, license plate holders and spoilers for vehicles." (Shimanoff Decl. ¶ 3).

On or about December 23, 2004, Opposer served upon Applicant its First Request for the Production of Documents (id., Exh. B), and its First Set of Interrogatories. (Id., Exh. C).

Applicant produced no documents in response to discovery requests relating to his intended use of the "ENYCE" mark. Indeed, in his response to these requests (id., Exh. D), Applicant specifically and repeatedly stated, "No documents exist that are responsive to this request." (See, e.g., id., Exh. D, pp. 16-33).

Similarly, in response to all interrogatories relating to Applicant's intended use of the ENYCE mark (id., Exh. E), Applicant provided no substantive answers, merely reiterating, inter alia, that "Applicant does not feel that it's future plans with respect to it's Mark are relevant to the parties dispute." (See, e.g., id., Exh. E, pp. 14-18, 20-22).

Having received no documents or substantive responses to its document requests and interrogatories, on or about April 7, 2005, Opposer filed a motion to compel discovery from Applicant. (Id., ¶ 7).

Subsequently, on or about September 12, 2005, Applicant submitted new responses to Opposer's discovery requests. (Id., Exhs. F & G). However, with respect to discovery concerning Applicant's intent to use the ENYCE mark in commerce, Applicant did not alter his prior responses, indicating, inter alia, that no such documents existed and no such information was available. (See, e.g., id.).

On June 29, 2006, Opposer took the deposition of Applicant, which confirmed that there were no documents concerning Applicant's intent to use in his possession, custody or control. (Id., Exh. H). Specifically, Applicant testified that:

- he has no business model for the use of the ENYCE mark (id., Exh. H, pp. 39, 106);
- he has no documents pertaining to his idea to use the ENYCE mark; all plans were only in his mind (id., Exh. H, p. 128); and
- he has no artwork in connection with the use of the ENYCE mark (id., Exh. H, p. 129).

Most egregiously, when specifically asked whether he had an intent to use the ENYCE mark in commerce when he filed his intent to use application with the PTO, Applicant responded,

- with respect to fitted car covers, "Perhaps . . . there's no specific intention at this time" (id., Exh. H, pp. 106-07);
- with respect to brake pads, "Probably not . . . no" (id., Exh. H, pp. 107);
- with respect to license plate holder, "Probably" (id., Exh. H, pp. 107); and
- with respect to spoilers, "Probably" (id., Exh. H, pp. 107).

Argument

**OPPOSER'S MOTION TO
AMEND SHOULD BE GRANTED**

“Pleadings in an opposition proceeding may be amended in the same manner and to the same extent as in a civil action in a United States district court.” 37 C.F.R. § 2.107. Pursuant to Fed. R. Civ. P. 15(a), leave to amend “shall be freely given when justice so requires.” Consistent with this standard, the Board “has recognized that ‘amendments to pleadings should be allowed with great liberality at any stage of the proceeding where necessary to bring about a furtherance of justice unless it is shown that entry of the amendment would violate settled law or be prejudicial to the rights of any opposing parties.’” Commodore Electronics Ltd. v. CBM Kabushiki Kaisha, 26 U.S.P.Q.2d 1503, 1505 (T.T.A.B. 1993) (quoting American Optical Corp. v. American Olean Tile Co., Inc., 168 U.S.P.Q. 471, 473 (T.T.A.B. 1971)). See also Polaris Indus. v. DC Comics, 59 U.S.P.Q.2d 1798, 1799 (T.T.A.B. 2001).

Opposer need not prove his case on this motion to amend nor prove a likelihood of success on the merits. Opposer need only satisfy the liberal pleading standards of Rule 12(b)(6) of the Federal Rules of Civil Procedure. “If the underlying facts or circumstances relied upon by a[n Opposer] may be a proper subject of relief, he ought to be afforded an opportunity to test his claims on the merits.” Foman v. Davis, 331 U.S. 178, 182 (1962).

In the present case, the amendment is plainly in keeping with existing law, which recognizes that “the absence of any documentary evidence on the part of the applicant regarding [its claimed intent to use] is sufficient to prove the applicant lacks a bona fide intention to use its mark in commerce [at the time it filed its intent to use application] as

required by Section 1(b)” of the Trademark Act, 15 U.S.C. 1051(b). Commodore Electronics Ltd., 26 U.S.P.Q.2d at 1507. See also Lane Ltd. v. Int’l Trading Co., 33 U.S.P.Q.2d 1351, 1355 (T.T.A.B. 1994) (“applicant’s mere statement of subjective intention, without more, would be insufficient to establish applicant’s bona fide intention to use the mark in commerce”). Indeed, the facts here fall squarely within the decision issued by the Board in Commodore Electronics Ltd.

In Commodore Electronics Ltd., the opposer sought leave to amend its notice of opposition after it learned through discovery that the applicant “did not have a single document to establish a bona fide intention to use [its mark] in commerce.” 26 U.S.P.Q.2d at 1504. Rejecting the applicant’s argument that such an allegation failed to state a claim upon which relief could be granted, the Board ruled that, in accord with an “objective good-faith test to establish that an applicant’s intent is genuine,” the opposer stated a valid claim that would survive scrutiny under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Id. at 1506-07. The Board held that if the opposer could show that the applicant possessed no documentary evidence of a bona fide intent to use, absent a compelling justification by the applicant, the opposer would succeed on its claim. Id. at 1507.

Similar facts warrant the same outcome here. Despite specific document requests, Applicant has produced no documents demonstrating a bona fide intent to use the “ENYCE” mark in commerce nor would he disclose any information about such intent in his interrogatory responses. Applicant has even admitted under oath that he does not possess any documents demonstrating a bona fide intent to use the “ENYCE” mark in commerce. Most egregiously, during his deposition, Applicant admitted he had no intention to use the ENYCE

mark in connection with almost all the goods listed in his application. These facts more than meet the standard for allowing Opposer to amend its notice of opposition.

While Applicant may attempt to justify its lack of bona fide intent by responding that it has not done many of these things because it is waiting for the resolution of this opposition proceeding, this purported excuse is irrelevant. Evidence of intent must be apparent at the time Applicant filed its ITU application with the PTO, not at some later date. See Lane Ltd. v. International Trading Co., 33 U.S.P.Q.2d 1351, 1351 (T.T.A.B. 1994).

Finally, Applicant can point to no prejudice resulting from any slight delay in the proceedings caused by the amendment, particularly where Opposer acted diligently in seeking such amendment within a reasonable time after the facts upon which this motion is based were brought to Opposer's attention. The mere passage of time is generally not considered prejudicial in the absence of some other facts, such as loss of potential witnesses. See, e.g., HKG Indus. Inc. v. Perma-Pipe Inc., 49 U.S.P.Q.2d 1156, 1157-58 (T.T.A.B. 1998). See also Regatta Sport, Ltd. v. Telux-Pioneer, Inc., 20 U.S.P.Q.2d 1154 (T.T.A.B. 1991) ("delay alone is not a sufficient basis for establishing prejudice"). Moreover, since the proposed amendment relates solely to Applicant's own actions and involves facts within his sole knowledge, there is no additional discovery required on his part or other undue burden imposed by the amendment. See CashFlow Technologies v. NetDecide, No. 30,3632002, T.T.A.B. LEXIS 147, at *6 (T.T.A.B. Feb. 7, 2002) ("respondent should not need much, if any, discovery" where amendment relates to respondent's own activity or inactivity).

Accordingly, consistent with the Federal Rules' liberal policy requiring that leave to amend be "freely given," Fed. R. Civ. P. 15(a), the amendment should be permitted.¹

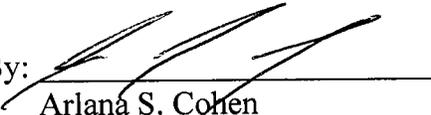
Conclusion

For the foregoing reasons, Opposer respectfully requests that the Board issue an order granting Opposer leave to amend its notice of opposition in the form annexed as Exhibit A to the accompanying Shimanoff Decl.

Dated: New York, New York
September 8, 2006

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.

By: 

Arlana S. Cohen
Kieran G. Doyle
Eric J. Shimanoff

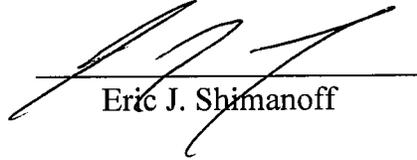
1133 Avenue of the Americas
New York, NY 10036-6799
(212) 790-9200

Attorneys for Opposer

¹ In addition to moving to amend its Notice of Opposition to assert a claim the Applicant did not possess a bona fide intent to use the "ENYCE" mark in commerce at the time he filed his intent to use application, Opposer seeks leave to further amend to make corrections in the pleading that will not change the substance of the facts alleged or the claims asserted in the original Notice of Opposition. Opposer's original Notice of Opposition was drafted and prepared by Opposer's former counsel and Opposer's newly-retained counsel seeks to, in effect, "clean up" the original Notice of Opposition.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that foregoing OPPOSER'S MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION, with supporting declaration and exhibits, was served on Applicant via first class mail to Applicant pro se Cary Berman at 1917 Lafayette Road, Gladwyne, PA 19305, on September 8, 2006.


Eric J. Shimanoff

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

In the Matter of Application Serial No. 78/320,850
For the Mark ENYCE
Filed: October 30, 2003

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

Opposition No. 91/162,330

DECLARATION OF ERIC J. SHIMANOFF

I, **Eric J. Shimanoff**, hereby declare:

1. I am an associate at the law firm of Cowan, Liebowitz & Latman, P.C., attorneys for Opposer L.C. Licensing, Inc. ("Opposer"). I respectfully submit this declaration in support of Opposer's motion for an order, pursuant to 37 C.F.R. § 2.107, T.B.M.P. § 507 and Fed. R. Civ. P. 15(a), granting Opposer leave to amend its Notice of Opposition to assert as an additional ground of opposition that Applicant lacked a bona fide intent to use the mark in commerce at the time it filed its intent to use application with the United States Patent and Trademark Office. A true and correct copy of Opposer's Proposed Amended Notice of Opposition is attached hereto as **Exhibit A**.

2. I have personal knowledge of all facts set forth in this declaration and/or knowledge of same from review of our firm's files and am competent to testify to the truth thereof if called as a witness.

3. Opposer initiated this proceeding by filing a Notice of Opposition on or about September 22, 2004, against the intent to use application of Applicant Cary Berman ("Applicant"), to register the mark "ENYCE" for "custom automotive accessories, namely, fitted car covers, shift knobs, brake pads and wheels for land vehicles, license plate holders and spoilers for vehicles."

4. On or about December 23, 2004, Opposer served upon Applicant its First Request for the Production of Documents, a true and correct copy of which is attached hereto as **Exhibit B**, and its First Set of Interrogatories, a true and correct copy of which is attached hereto as **Exhibit C**.

5. Applicant produced no documents in response to discovery requests relating to his intended use of the "ENYCE" mark. Indeed, in his response to these requests, a true and correct copy of which is attached hereto as **Exhibit D**, Applicant specifically and repeatedly stated, "No documents exist that are responsive to this request."

6. Similarly, in response to all interrogatories relating to Applicant's intended use of the "ENYCE" mark, a true and correct copy of which is attached hereto as **Exhibit E**, Applicant provided no substantive answers, merely reiterating, *inter alia*, that "Applicant does not feel that it's future plans with respect to it's Mark are relevant to the parties dispute."

7. Having received no documents or substantive responses to its document requests and interrogatories, on or about April 7, 2005, Opposer filed a motion to compel discovery.

8. Subsequently, on or about September 12, 2005, Applicant submitted new responses to Opposer's discovery requests, true and correct copies of which are attached hereto as **Exhibits F & G**. However, with respect to discovery concerning Applicant's intent to use the "ENYCE" mark in commerce, Applicant did not alter his prior responses, indicating, inter alia, that no such documents existed and no such information was available.

9. On June 29, 2006, Opposer took the deposition of Applicant, which confirmed that there were no documents concerning Applicant's intent to use in his possession, custody or control. A true and correct copy of the transcript of Applicant's deposition is attached hereto as **Exhibit H**.

10. Specifically, Applicant testified that:

- He has no business model for the use of the ENYCE mark (Exh. H hereto, pp. 39, 106);
- He has no documents pertaining to his idea to use the ENYCE mark; all plans were only in his mind (Id., p. 128); and
- He has no artwork in connection with the use of the ENYCE mark (Id., p. 129).

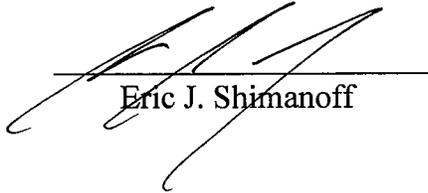
11. When specifically asked whether he had an intent to use the ENYCE mark in commerce when he filed his intent to use application with the PTO, Applicant responded,

- with respect to fitted car covers, "Perhaps . . . there's no specific intention at this time" (Id., pp. 106-07);
- with respect to brake pads, "Probably not . . . no" (Id., pp. 107);
- with respect to license plate holder, "Probably" (Id., pp. 107); and

- with respect to spoilers, “Probably” (Id., pp. 107).

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

Executed this 8th day of September, 2006



Eric J. Shimanoff

EXHIBIT A

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

In the Matter of Application Serial No. 78/320,850
For the Mark ENYCE
Filed: October 30, 2003

----- x,	:	
L.C. LICENSING, INC.,	:	
Opposer,	:	Opposition No. 91/162,330
v.	:	
CARY BERMAN,	:	
Applicant.	:	
----- x		

Commissioner for Trademarks
ATTN: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

[PROPOSED] AMENDED NOTICE OF OPPOSITION

Opposer L.C. Licensing, Inc., a corporation organized under the laws of the State of Delaware, located and doing business at 1441 Broadway, New York, New York 10018 (hereinafter "Opposer"), believes it will be damaged by registration by Cary Berman, an individual residing at 1917 Lafayette Road, Gladwyne, PA 19035 (hereinafter "Applicant"), for the services shown in Application Serial No. 78/320,850 for the mark "ENYCE" filed in International Class 12 on October 30, 2003 and published for opposition on August 24, 2004 (hereinafter the "Application") and hereby opposes same.

The grounds for opposition are:

1. Commencing long prior to any first use date upon which Applicant can rely, Opposer, and its predecessors-in-interest, have actively used, advertised and promoted its

goods using the mark ENYCE, alone or in combination with other words or devices, in commerce, in connection with “apparel and headwear for men, women and children, namely hats, caps, visors, headbands, shirts, jackets, jogging suits, pants, coats, T-shirts, shorts, tanktops, skirts, warm-up suits, sweatshirts and sweatpants,” and “women’s clothing, namely, shirts, tops, bottoms, pants, jackets, coats, jogging suits, warm-up suits, T-shirts, polo shirts, tank tops, skirts, shorts, denim shirts, denim pants, denim tops, denim bottoms, denim shorts, denim skirts, sweat shirts, sweat pants, sweat shorts, headwear, caps, hats.”

2. Opposer is the owner of the federal trademark registrations set forth below, all valid and subsisting, issued by the United States Patent and Trademark Office (“PTO”):

MARK	REG. NO.	CLASS	FIRST USE DATE
ENYCE	2093751	25	August 31, 1996
ENYCE & Design	2351411	25	August 1996
LADY ENYCE	2338404	25	July 1998

3. The above-referenced marks, namely, ENYCE, ENYCE & Design and LADY ENYCE, and the federal registrations thereof, are hereinafter referred to collectively as “Opposer’s Marks.” Registration Nos. 2351411 and 2093751 for Opposer’s Marks are incontestable.

4. As a result of Opposer’s active use, advertisement and promotion, as well as through extensive press and media coverage, Opposer has developed highly valuable goodwill in Opposer’s Marks as well as a reputation for excellence and high quality. Opposer’s Marks have also achieved a following among consumers, who have come to associate Opposer’s Marks in the urban streetwear fashion consumer goods area with Opposer. Moreover, due to extraordinary press and promotion surrounding Opposer’s goods, Opposer’s marks have become and are famous.

5. On October 30, 2003, despite Opposer's longstanding use and prior rights, Applicant filed an application in the U.S. Patent and Trademark Office to register the mark "ENYCE" on the Principal Register for "custom automotive accessories, namely, fitted car covers, shift knobs, brake pads and wheels for land vehicles, license plate holders and spoilers for vehicles," in International Class 12 on an intent-to-use basis ("Applicant's Application"). Applicant's Application has been assigned Serial No. 78/320,850. Upon information and belief, the mark in Applicant's Application has not yet been used by Applicant in connection with the goods set forth therein.

6. The goods set forth in Applicant's Application are closely related to or a natural area of expansion of the goods of Opposer, sold in connection with Opposer's Marks.

7. The mark in Applicant's Application is identical to Opposer's Marks so as to be likely, when applied to the goods set forth in Applicant's Application, to cause confusion, to cause mistake and to deceive the trade and the public, because consumers will be likely to believe that the goods of Applicant originate with Opposer and/or that such goods are approved, endorsed or sponsored by Opposer or associated in some way with Opposer. Opposer would thereby be injured by the granting to Applicant of a certificate of registration for the mark set forth in Applicant's Application.

8. Opposer would be further injured by the granting of such registration because it may damage Opposer's valuable goodwill and reputation for excellence and high quality in Opposer's Marks.

9. Opposer also would be injured by the granting of such registration because it may lead to the dilution of the distinctive quality of Opposer's famous marks.

10. Moreover, if Applicant is permitted to obtain a certificate of registration for the mark set forth in Applicant's Application, and thereby retain the prima facie exclusive right to the mark "ENYCE" for goods highly related to the goods and services of Opposer sold or otherwise provided under Opposer's Marks, Applicant's registration will cloud: (a) Opposer's title in and to Opposer's Marks and (b) Opposer's right to enjoy the free and exclusive use of Opposer's Marks, all to the great injury of Opposer.

11. Finally, as for a separate and additional ground, Applicant's registration should be denied for the additional reason that, upon information and belief, Applicant did not have a bona fide intention to use the ENYCE mark in commerce for the specified goods when he filed his intent to use application.

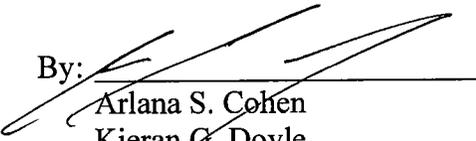
WHEREFORE, Opposer prays that this opposition be sustained and that Application Serial No. 78/320,850 for the proposed mark ENYCE be refused registration.

Please direct all communications regarding this Opposition proceeding to Opposer's counsel at the address shown below.

Dated: New York, New York
September 8, 2006

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.

By: 

Arlana S. Cohen

Kieran G. Doyle

Eric J. Shimanoff

1133 Avenue of the Americas

New York, NY 10036-6799

(212) 790-9200

Attorneys for Opposer

EXHIBIT B

B. “Applicant” means the above applicant, Cary Berman and/or the business through which Mr. Berman sells, has sold, or intends to sell products under Applicant’s ENYCE mark.

C. “Opposer” means the above Opposer, L.C. Licensing, and any predecessor or successor corporation or entity, any licensee, parent, subsidiary or affiliated company, any entity in which L.C. Licensing or a subsidiary holds or has held any interest, and any attorney, officer, director, agent, representative or employee of L.C. Licensing or any of the other foregoing entities.

D. “Applicant’s Mark” means the mark shown in Application Serial No. 78/320,850 for ENYCE.

E. “Opposer’s ENYCE Marks” means each mark and/or registration which is relied upon by Opposer in the Notice of Opposition in this proceeding to challenge Applicant’s Mark and/or Application Serial No. 78/320,850 directed thereto.

F. The term “Opposer’s Goods” shall mean the goods identified in Reg. No. 2,093,751, namely, “apparel and headwear for men, women and children, namely, hats, caps, visors, headbands, shirts, jackets, jogging suits, pants, coats, T-shirts, shorts, tanktops, skirts, warm-up suits, sweatshirt and sweatpants”, in International Class 25, and the goods identified in Reg. No. 2,351,411, namely, “apparel and headwear for men, women and children, namely, hats, caps, visors, headbands, shirts, jackets, jogging suits, pants, coats, T-shirts, shorts, tank tops, skirts, warm-up suits, sweatshirt and sweatpants”, in International Class 25, and the goods identified in Reg. No. 2,338,404, namely, “women’s clothing, namely, shirts, tops, bottoms, pants, jackets, coats, jogging suits, warm-up suits, T-shirts, polo shirts, tank tops, skirts, shorts,

denim shirts, denim pants, denim tops, denim bottoms, denim shorts, denim skirts, sweat shirts, sweat pants, sweat shorts, headwear, caps, hats”, in International Class 25.

G. The term “concerning” shall mean relating to, referring to, describing, evidencing, or constituting.

H. The term “any” also means “each and every.”

I. The term “refer to, relate to” shall mean comprise, refer to, relate to or in any way relevant to.

J. “Intermediary” means a company or person through which Applicant has provided its products or services to the ultimate customers therefor.

K. “Trade Show” means any trade show, convention, seminar or exhibition at which Applicant’s products or services provided under Applicant’s marks were sold, displayed, featured or presented.

L. “Classes of customers” means types or categories of customers which relate to the nature of the business of said customers, such as based upon SIC codes.

M. Use which “has not been constant” means use for which there has been a hiatus in use of one (1) month or longer.

N. The term “identify as used in connection with a communication (other than a document) shall mean to set forth the parties thereto, the date, the type of the communication, and the general subject matter.

O. “Document” shall include, without limitation, the following items, whether printed or reproduced or stored or recorded by any process, or written, or produced by hand, and whether or not claimed to be privileged or otherwise excludable from discovery: notes, letters, correspondence, books, periodicals, printed publications, communications, interoffice

communications, telexes, telegrams, memoranda, summaries and records of telephone conversations, summaries, and research reports and notebooks, charts, lists, schedules, plans, drawings, photographs, diaries, studies, evaluations, worksheets, minutes or records of meetings including directors' meetings, reports and/or summaries of interviews, reports and/or summaries of investigations, opinions or reports of consultants, reports or opinions regarding trademark, service mark, trade name, or corporate name registrations, consumer surveys, pilot studies, opinions of counsel, agreements, contracts, reports or summaries of negotiations, court papers, administrative agency papers, transcripts, brochures, pamphlets, advertisements, circulars, promotional material, trade letters, press releases, packaging, videotapes, audio tapes, CD-Roms, electronic messages and data, story boards, recordings, drafts of documents and revisions of drafts of documents and all other written or recorded material of whatever kind known to or in the possession or control of Applicant including copies or reproductions of all of the foregoing items upon which notations in writing have been made which do not appear on the original, and anything within the scope of Rules 26(b) and 34 of the Federal Rules of Civil Procedure, including things.

P. The words "and" and "and/or" shall each be deemed to refer to both their conjunctive and disjunctive meanings. The word "any" shall mean "each and every" as well as "any one." The masculine gender shall be deemed to include the feminine where appropriate, and the singular shall be deemed to include the plural, and vice versa.

Q. The following requests seek documents as of the date hereof, but shall be deemed to be continuing, and any additional information relating in any way to these requests which is acquired by or becomes known to Applicant up to and including the time of trial shall be furnished to Opposer promptly after such information is acquired or becomes known.

R. Those requests which call for the identification of documents will be deemed answered if Applicant provides copies of such documents to Opposer's attorneys within the period in which timely response can be made, including proper extensions of time, if any. Every document called for by these requests which Applicant does not make so available to Opposer's attorneys shall be properly identified in a timely response to the appropriate interrogatory.

S. Each request to produce refers to Applicant's ENYCE Mark and Applicant's business activities within the United States.

T. Only one copy of each document need be produced; however, any document that varies in any way so that it is not identical to one produced is to be considered a separate document and must be produced.

U. In the event that any requested document has been destroyed, lost, discarded, or otherwise disposed of, any such document is to be identified as completely as possible, including, without limitation, the following information: date of disposal, manner of disposal, reason for disposal, person authorizing the disposal, and person disposing of the document.

V. All documents that respond, in whole or in part, to any portion of any Request shall be produced in their entirety, including all attachments and enclosures.

W. These discovery requests cover all information and documents in the possess, custody, or control of Applicant, whether they are located in Applicant's offices or residences or any other place maintained by Applicant, or in the possession of its agents, accountants, attorneys, or of a trade association or other organization to whose documents Applicant has access.

X. If Applicant knows of the existence, past or present, or any documents and things described below, but is unable to produce such documents and things because they are not presently in its possession, custody or control, it shall so state and shall identify such documents and the name and address of the person who has possession, custody or control of the documents and things.

Y. As to the identification of any natural person, please give, to the extent known, the person's full name, present or last known address, and the present or last known place of employment.

Z. To the extent that Applicant is not willing to voluntarily produce documents requested herein, state, with respect to each document that Applicant is not willing to voluntarily produce, the basis on which the same is being withheld from voluntary production. If any document is deemed privileged or confidential, furnish a list identifying each document or thing for which privilege or confidentiality is claimed, together with the following information as to each such document or thing:

- (1) a brief description of its nature and subject matter, including the title and type of document;
- (2) its date;
- (3) the name and title of the author(s);
- (4) the name and title of the person(s) to whom the document is addressed including all persons who received copies;
- (5) the name and title of the person(s) to whom the document or thing was sent;
- (6) the number of pages;
- (7) the request to which the document, thing or withheld information is otherwise responsive; and

- (8) in the case of a document for which privilege is claimed, set forth the privilege claimed and the facts on which Applicant relies to support the claimed privilege.

Also state whether the document was marked with any restricted access language, such as “confidential” or “attorney client privilege”, at the time it was prepared, and identify each actual recipient of each such document or of copies thereof and all persons who have seen or who have access to the same and the steps taken to prevent its communication to unauthorized persons.

REQUESTS

Request No. 1

Produce all documents sufficient to identify each and every business with which Applicant is affiliated or involved.

Request No. 2

Produce all documents sufficient to identify the products and/or services offered by Applicant or the businesses with which he is affiliated or involved.

Request No. 3

Produce all documents sufficient to identify the three products offered by Applicant which achieved the highest gross sales over the past three years with respect to each and every business identified in Applicant’s Response to Interrogatory No. 1 of Opposer’s First Set of Interrogatories to Applicant served in this proceeding.

Request No. 4

Produce all documents sufficient to identify the three services offered by Applicant which achieved the highest gross sales over the past three years with respect to each and every business identified in Applicant’s Response to Interrogatory No. 1 of Opposer’s First Set of Interrogatories to Applicant served in this proceeding.

Request No. 5

With respect to those products identified in Applicant's Response to Interrogatory No. 3 of Opposer's First Set of Interrogatories to Applicant served in this proceeding, documents sufficient to identify the gross sales figures for such products over the past three years.

Request No. 6

With respect to those products identified in Applicant's Response to Interrogatory No. 4 of Opposer's First Set of Interrogatories to Applicant served in this proceeding, documents sufficient to identify the gross sales figures for such services over the past three years.

Request No. 7

Produce all documents and things that refer or relate to or reflect the creation and adoption of Applicant's Mark.

Request No. 8

Produce all documents and things that refer or relate to or reflect the decision by Applicant to adopt and use Applicant's Mark.

Request No. 9

Produce all documents and things that refer or relate to or reflect any investigation conducted by or on behalf of Applicant regarding the availability of Applicant's Mark for use and registration, including, but not limited to, trademark searches.

Request No. 10

Produce all documents and things (including all analyses, opinions and commentary, legal or otherwise, of any type in written form), regarding the right to use or register Applicant's Mark, and any documents reflective thereof or which refer or relate thereto.

Request No. 11

Produce all documents and things (including all analyses, opinions and commentary, legal or otherwise, of any type in written form) regarding Opposer's right to use or register Opposer's ENYCE Mark(s), and any documents reflective thereof or which refer or relate thereto.

Request No. 12

Produce all documents and things that refer or relate to or reflect any survey (including pilot, preliminary and informal surveys), poll, questionnaires or other or inquiry regarding Applicant's Mark.

Request No. 13

Produce all documents and things that refer or relate to or reflect any survey (including pilot, preliminary and informal surveys), poll, questionnaires or other or inquiry regarding Opposer's ENYCE Mark(s).

Request No. 14

Produce all documents and things that support the allegations contained in paragraph 9 of the Answer to Opposer's Notice of Opposition in this proceeding.

Request No. 15

Produce all documents and things that refer or relate to or reflect any marks for which Applicant has obtained, has sought to obtain, or is seeking to obtain federal or state trademark registrations or domain name registrations, which incorporate the term "ENYCE".

Request No. 16

Produce any trademark manual, trademark policy guide or other document which sets forth guidelines for trademark usage by Applicant and/or its views of trademark usage by others.

Request No. 17

Produce all documents and things sufficient to identify each kind of product on which, or service in connection with which, Applicant has used, currently uses or intends to use Applicant's Mark in interstate commerce.

Request No. 18

For each different product or service designated by Applicant under Applicant's Mark, provide representative samples of hang tags, labels, packaging, advertising and other items bearing Applicant's Mark.

Request No. 19

Produce all documents and things that refer or relate to or reflect the first use in interstate commerce by Applicant of Applicant's Mark on each product or service as to which it has been or is used.

Request No. 20

If Applicant's Mark is or was in use in commerce, produce all documents and things sufficient to reflect continuous use on each product and/or service on which the Applicant's Mark was used until the present.

Request No. 21

Produce all documents and things that refer or relate to or reflect any actual or considered discontinuance of Applicant's Mark.

Request No. 22

Produce all documents and things that refer or relate to or reflect any actual or considered suspension of use of Applicant's Mark by Applicant.

Request No. 23

Produce all documents and things that refer or relate to Applicant's contention that "If an individual consumer was aware of Opposer's Mark, said consumer would not be confused with applicants [sic] Mark as the goods, services and products of International Class 25 have nothing in common with the goods, services and products of International Class 12" in paragraph 9 of the Answer to Opposer's Notice of Opposition filed by Applicant in this proceeding.

Request No. 24

Produce all documents and things that refer or relate to or reflect any objection by anyone to any use or registration (whether state or federal) of Applicant's Mark.

Request No. 25

Produce all documents and things which refer or relate to or reflect any actual or considered restriction, limitation or modification on Applicant's use of Applicant's Mark.

Request No. 26

Produce all documents and things that support or rebut the assertion contained in paragraph 9 of the Answer to Opposer's Notice of Opposition in this proceeding that "Applicant does not believe that consumers are aware of [Opposer's] Mark as applicant was not aware of said Mark."

Request No. 27

Produce all documents and things that refer or relate to or reflect any objection by Applicant to any third party use of a trademark or service mark based upon Applicant's Mark.

Request No. 28

With regard to each product on which, or service in connection with which Applicant's Mark has been or is being used and for which a price has been charged, provide documents sufficient to identify each such price and the volume distributed at such price for each year in which each said product or service was provided.

Request No. 29

With regard to each product on which, or service in connection with which Applicant's Mark has been or is being used which is provided on a complimentary basis, produce documents and things sufficient to identify the volume distributed for each year in which each said product or service was provided.

Request No. 30

Produce all press releases or other informational statements prepared by, or on behalf of, Applicant with the intention of being disseminated to consumers, the public or press, that refer or relate to or reflect any products or services marketed and/or sold or proposed to be marketed and/or sold by Applicant under Applicant's Mark.

Request No. 31

Produce all documents and things sufficient to identify the publications in which Applicant has advertised or has plans to advertise any of the products or services designated or which Applicant intends to designate by Applicant's Mark.

Request No. 32

For each different product or service designated by Applicant under Applicant's ENYCE Mark, provide samples of all print advertising for each year from the date of the first advertisement to the current date along with any documents that refer or relate to or reflect where and when said advertising appeared and the cost thereof.

Request No. 33

Produce all documents and things sufficient to identify all geographical areas, by city and state, in which Applicant has sold or distributed, is selling or distributing, and/or intends to sell or distribute Applicant's goods and/or services using Applicant's Mark.

Request No. 34

Produce all documents and things sufficient to identify the address and telephone number of each location at which Applicant has maintained or maintains an office or other place of business, and the functions carried out at such office(s) or other place of business.

Request No. 35

For each type of product and/or service identified in Applicant's response to Interrogatory Nos. 14 and 15 of Opposer's First Set of Interrogatories to Applicant served in this proceeding, produce all documents and things sufficient to identify the channels of trade and distribution through which Applicant has sold or distributed, is selling or distributing, and/or intends to sell or distribute such products and/or services in connection with Applicant's Mark.

Request No. 36

For each type of product and/or service identified in Applicant's response to Interrogatory Nos. 14 and 15 of Opposer's First Set of Interrogatories to Applicant served in this

proceeding, produce all documents and things sufficient to identify the class of ultimate consumers of each product and/or service for Applicant's Mark.

Request No. 37

Produce all documents and things concerning the consideration by or on behalf of Applicant of any alternatives to use of Applicant's Mark.

Request No. 38

Produce all documents and things concerning whether other persons had used any mark(s) similar to Applicant's Mark.

Request No. 39

Produce all documents and things concerning the likelihood of confusion between Opposer's Marks and Applicant's Mark.

Request No. 40

Produce all documents and things sufficient to reflect the annual dollar amount spent or intended to be spent by Applicant in connection with advertising and promotion of each different product or service intended to be sold under Applicant's Mark in interstate commerce from the date of the first advertisement to the current date.

Request No. 41

Produce all documents and things sufficient to identify Applicant's ten largest customers and/or potential customers and the means of distribution and channels of trade related thereto regarding any product or service offered or intended to be offered under Applicant's Mark.

Request No. 42

Produce all documents and things that refer or relate to or reflect the attributes, profiles, preferences, purchasing habits or level of sophistication of the customers for each of Applicant's products and services offered or intended to be offered under Applicant's Mark.

Request No. 43

Produce all documents and things sufficient to identify, and all documents that comment upon, the means of distribution and channels of trade for each product or service marketed and/or sold, or proposed to be marketed or sold, by Applicant under Applicant's Mark.

Request No. 44

Produce all documents and things sufficient to identify any Trade Show at which Applicant's products or services provided under Applicant's Mark was used, offered for sale or displayed, and all documents identifying or relating to actual or prospective customers thereat.

Request No. 45

Produce all documents and things sufficient to identify all Intermediaries used or employed by Applicant with respect to the sale, distribution or provision or proposed sale, distribution or provision of products or services in interstate commerce provided under Applicant's Mark.

Request No. 46

Produce all documents and things that refer or relate to, reflect or embody Applicant's contracts with Intermediaries for the distribution of products or services under Applicant's Mark.

Request No. 47

Produce all documents and things regarding any court or administrative proceeding (including any opposition or cancellation actions) involving Applicant's Mark.

Request No. 48

Produce all documents and things that refer or relate to or reflect the first time Applicant became aware of Opposer's ENYCE Mark(s).

Request No. 49

Produce all documents and things in Applicant's possession which refer or relate to Opposer or Opposer's ENYCE Marks.

Request No. 50

Produce all minutes and notes from any meetings of Applicant or meetings attended by Applicant relating to Applicant's use of Applicant's Mark and/or Opposer's Marks.

Request No. 51

Produce all documents and things identified, requested to be identified, consulted, referred to or relied upon in response to Opposer's First Set of Interrogatories to Applicant.

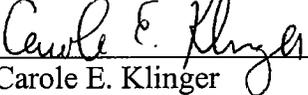
Request No. 52

Produce all documents and things concerning Applicant's policy concerning document retention and destruction.

Request No. 53

Produce all documents and things upon which Applicant intends to rely in support of its position in this Opposition and/or for purposes of this Opposition.

Dated: New York, New York
December 23, 2004

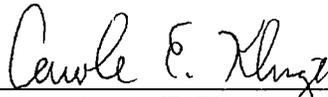
KRAMER LEVIN NAFTALIS
& FRANKEL LLP
By: 
Carole E. Klinger
Kramer Levin Naftalis & Frankel LLP
919 Third Avenue
New York, New York 10022
(212) 715-9100
Attorneys for Applicant
L.C. Licensing, Inc.

CERTIFICATE OF SERVICE

Opposition No. 91162330

I hereby certify that on December 23, 2004, I caused one true and correct copy of the foregoing OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS to be served by first class mail upon Applicant Cary Berman by causing a true and correct copy thereof to be deposited in the United States mail, postage prepaid, addressed to Applicant as follows:

Cary Brett Berman
1917 Lafayette Road
Gladwyne, PA 19035



Carole E. Klinger

EXHIBIT C

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

-----X
L.C. Licensing, Inc. :
 :
 : Opposer, :
 : :
 v. : : Opposition No. 91162330
 : : Application Serial No. 78/320,850
Cary Berman, :
 :
 : Applicant. :
-----X

OPPOSER’S FIRST SET OF INTERROGATORIES TO APPLICANT

Opposer L.C. Licensing, Inc. (“L.C. Licensing” or “Opposer”), pursuant to Rule 2.120 of the Trademark Rules of Practice, and Rules 26 and 33 of the Federal Rules of Civil Procedure, requests that Applicant Cary Berman (“Berman” or “Applicant”) answer under oath the following Interrogatories, by serving written responses to the offices of Kramer Levin Naftalis & Frankel LLP, 919 Third Avenue, 38th Floor, New York, New York, 10022 within thirty (30) days after service of this request, pursuant to the attached instructions and definitions.

DEFINITIONS AND INSTRUCTIONS

As used herein, the following definitions and instructions apply:

- A. “Person” means any natural person, corporation, limited liability company, association, firm, partnership, or other business or legal entity.
- B. “Applicant” means the above applicant, Cary Berman and/or the business through which Mr. Berman sells, has sold, or intends to sell products under Applicant’s ENYCE mark.

C. “Opposer” means the above Opposer, L.C. Licensing, Inc., and any predecessor or successor corporation or entity, any licensee, parent, subsidiary or affiliated company, any entity in which L.C. Licensing or a subsidiary holds or has held any interest, and any attorney, officer, director, agent, representative or employee of L.C. Licensing or any of the other foregoing entities.

D. “Applicant’s Mark” means the mark shown in Application Serial No. 78/320,850 for ENYCE.

E. “Opposer’s ENYCE Marks” means each mark and/or registration which is relied upon by Opposer in the Notice of Opposition in this proceeding to challenge Applicant’s Mark and/or Application Serial No. 78/320,850 directed thereto.

F. The term “Opposer’s Goods” shall mean the goods identified in Reg. No. 2,093,751, namely, “apparel and headwear for men, women and children, namely, hats, caps, visors, headbands, shirts, jackets, jogging suits, pants, coats, T-shirts, shorts, tanktops, skirts, warm-up suits, sweatshirts and sweatpants”, in International Class 25, and the goods identified in Reg. No. 2,351,411, namely, “apparel and headwear for men, women and children, namely, hats, caps, visors, headbands, shirts, jackets, jogging suits, pants, coats, T-shirts, shorts, tank tops, skirts, warm-up suits, sweatshirts and sweatpants”, in International Class 25, and the goods identified in Reg. No. 2,338,404, namely, “women’s clothing, namely, shirts, tops, bottoms, pants, jackets, coats, jogging suits, warm-up suits, T-shirts, polo shirts, tank tops, skirts, shorts, denim shirts, denim pants, denim tops, denim bottoms, denim shorts, denim skirts, sweat shirts, sweat pants, sweat shorts, headwear, caps, hats”, in International Class 25.

G. “Intermediary” means a company or person through which Applicant has provided its products or services to the ultimate customers therefor.

H. "Trade Show" means any trade show, convention, seminar or exhibition at which Applicant's products or services provided under Applicant's marks were sold, displayed, featured or presented.

I. "Classes of customers" means types or categories of customers which relate to the nature of the business of said customers, such as based upon SIC codes.

J. Use which "has not been constant" means use for which there has been a hiatus in use of one (1) month or longer.

K. "Document" shall include, without limitation, the following items, whether printed or reproduced or stored or recorded by any process, or written, or produced by hand, and whether or not claimed to be privileged or otherwise excludable from discovery: notes, letters, correspondence, books, periodicals, printed publications, communications, interoffice communications, telexes, telegrams, memoranda, summaries and records of telephone conversations, summaries, and research reports and notebooks, charts, lists, schedules, plans, drawings, photographs, diaries, studies, evaluations, worksheets, minutes or records of meetings including directors' meetings, reports and/or summaries of interviews, reports and/or summaries of investigations, opinions or reports of consultants, reports or opinions regarding trademark, service mark, trade name, or corporate name registrations, consumer surveys, pilot studies, opinions of counsel, agreements, contracts, reports or summaries of negotiations, court papers, administrative agency papers, transcripts, brochures, pamphlets, advertisements, circulars, promotional material, trade letters, press releases, packaging, videotapes, audio tapes, CD-Roms, electronic messages and data, story boards, recordings, drafts of documents and revisions of drafts of documents and all other written or recorded material of whatever kind known to or in the possession or control of Opposer including copies or reproductions of all of the foregoing

items upon which notations in writing have been made which do not appear on the original, and anything within the scope of Rules 26(b) and 34 of the Federal Rules of Civil Procedure, including things.

- L. “Identify” means to provide, when in reference to a natural person:
- (a) his or her full name;
 - (b) his or her present or last known home address (including street name and number, city or town, state and country);
 - (c) his or her present or last known business address;
 - (d) his or her present position, business affiliation, and job description (if the present position, business affiliation, and job description are not known, so state and state the corresponding last known such information);
 - (e) his or her position, business affiliation, and job description at the time in question inquired about by the interrogatory or other request involved;
 - (f) the date each such person began employment with Applicant and, if no longer employed, the date such employment terminated;
 - (g) an identification of each position held by such person while in the employment of Applicant or an affiliate, subsidiary or predecessor thereof, including:
 - 1) the beginning and ending dates during which each such position was held;
 - 2) the title of each position;
 - 3) a description of the duties and responsibilities in each such position.
- M. “Identify” means to provide, when in reference to a company, corporation, association, partnership or other legal entity not a natural person:
- (a) its correct and complete name;
 - (b) the address of its principal place of business;
 - (c) its state of incorporation or association;

- (d) a description of the type of entity;
 - (e) a description of the principal type of business in which it is engaged.
- N. “Identify” means to provide, when in reference to a product, its:
- (a) description;
 - (b) manufacturer;
 - (c) designation by the manufacturer thereof (e.g., style, model, proprietary name, established name, product classification number and/or catalog number);
 - (d) purpose and function.
- O. “Identify” means to provide, when in reference to a service, its:
- (a) description;
 - (b) provider;
 - (c) designation by the provider thereof (e.g., proprietary name, established name, identification number, and/or catalog number).
 - (d) purpose and function.
- P. “Identify” means to provide, when in reference to a document:
- (a) its description (e.g., letter, memorandum, report, etc.);
 - (b) its title and date, and the number of pages thereof;
 - (c) its subject matter in summary;
 - (d) its author’s identity;
 - (e) its addressee’s identity;
 - (f) the identity of each person by whom copies were received;
 - (g) its present location and its custodian’s identity (if any such document was, but is no longer, in the possession of or subject to the control of Applicant, state where and when disposition was made of it).
- Q. “Identify” means to provide, when in reference to an oral communication:

- (a) the date and place where it occurred;
 - (b) its substance;
 - (c) information as requested in Definition G above as to the identity of each person to whom such communication was made, the person from whom the communication was made and each person who was present when such communication was made.
- R. “Identify” means to provide, when in reference to adoption of a mark:
- (a) the date of adoption;
 - (b) the facts and circumstances leading to the adoption;
 - (c) each person involved in such adoption.
- S. “Identify” means to provide, when in reference to Applicant’s use of a mark:
- (a) the date of Applicant’s first use;
 - (b) the date of Applicant’s first use in commerce;
 - (c) a detailed description of the nature of Applicant’s use in the United States on each product or service provided thereunder for each year in which such mark was in use;
 - (d) a detailed description of the circumstances surrounding any changes in the nature of Applicant’s use, including the nature and date of the alteration, and reasons therefor.
- T. “Identify” means to provide, when in reference to classes of customers:
- (a) the name or identity of the class;
 - (b) a description of the class, including the type of business conducted by the class;
 - (c) the reasons the class is defined by Applicant as a class;
 - (d) the identity of the first customer in such class for each of the goods and services provided by Applicant under each of Applicant’s marks.
- U. “Identify” means to provide, when in reference to advertising and promotion:

- (a) a detailed description of each item of advertising and promotion, including the dates and specific media involved.
- (b) a detailed description of the channels of trade and classes of customers to which such advertising and promotion was directed;
- (c) all expenditures for such advertising and promotion broken down on a yearly and product/service/mark basis;
- (d) the identity of each company, entity or person other than Applicant which was involved in said advertising and promotion.

V. "Identify" means to provide, when in reference to an Intermediary:

- (a) the identity of the intermediary;
- (b) the services performed by the Intermediary;
- (c) the extent to which the intermediary is a licensee under any of Applicant's marks for the subject product or service.

W. "Identify" means to provide, when in reference to a Trade Show:

- (a) the name and sponsor of the Trade Show;
- (b) the dates of the Trade Show;
- (c) the location of the Trade Show;
- (d) the products and/or services promoted, provided and/or sold by Applicant at the Trade Show.

X. "Identify" means to provide, when in reference to an instance of actual confusion:

- (a) a detailed description of the facts or events surrounding such instance;
- (b) the reasons or basis such instance evidences confusion;
- (c) a detailed description of all actions Applicant took in response thereto;
- (d) the identity of each person making an inquiry evidencing or expressing confusion;
- (e) the identity of each document reflecting, commenting on or involving such confusion.

Y. “Identify” means to provide, when in reference to litigation and inter partes proceedings:

- (a) the names of the parties thereto;
- (b) the forum or jurisdiction;
- (c) the title of the proceeding and the proceeding number;
- (d) the status and/or outcome of the proceeding;
- (e) the citation of any reported decision;
- (f) the mark in question.

Z. Without affecting the applicability of the foregoing, if Applicant claims privilege or an alleged right to withhold any document, Applicant shall comply with the requirements of Fed. R. Civ. P. 26(b)(5) and set forth the factual or legal basis, if any, for such claim and/or allegations of right with particularity. In addition, a brief indication of the nature of the subject matter of the document sufficient to identify whether the document should be produced should be provided.

AA. In each instance where Applicant denies knowledge or information sufficient to answer the interrogatory, Applicant should set forth the name and address of each person, if any, known to have such knowledge or information; but Applicant shall answer fully to the extent it does have any knowledge or information.

BB. The words “and” and “and/or” shall each be deemed to refer to both their conjunctive and disjunctive meanings. The word “any” shall mean “each and every” as well as “any one.” The masculine gender shall be deemed to include the feminine where appropriate, and the singular shall be deemed to include the plural, and vice versa.

CC. The following interrogatories seek answers as of the date hereof, but shall be deemed to be continuing, and any additional information relating in any way to these

interrogatories which is acquired by or becomes known to Applicant up to and including the time of trial shall be furnished to Opposer promptly after such information is acquired or becomes known.

DD. Those interrogatories which call for the identification of documents will be deemed answered if Applicant provides copies of such documents to Opposer's attorneys within the period in which timely response to the interrogatories can be made, including proper extensions of time, if any. Every document called for by these interrogatories which Applicant does not make so available to Opposer's attorneys shall be properly identified in a timely response to the appropriate interrogatory.

EE. Each interrogatory and request to produce refers to Applicant's ENYCE Mark and Applicant's business activities within the United States.

FF. Only one copy of each document need be produced; however, any document that varies in any way so that it is not identical to one produced is to be considered a separate document and must be produced.

GG. In the event that any requested document has been destroyed, lost, discarded, or otherwise disposed of, any such document is to be identified as completely as possible, including, without limitation, the following information: date of disposal, manner of disposal, reason for disposal, person authorizing the disposal, and person disposing of the document.

HH. All documents that respond, in whole or in part, to any portion of any Interrogatory shall be produced in their entirety, including all attachments and enclosures.

II. These discovery requests cover all information and documents in the possess, custody, or control of Applicant, whether they are located in Applicant's offices or

residences or any other place maintained by Applicant, or in the possession of its agents, accountants, attorneys, or of a trade association or other organization to whose documents Applicant has access.

INTERROGATORIES

Interrogatory No. 1

Identify each and every business with which Applicant is affiliated and/or involved.

Interrogatory No. 2

With respect to each and every business identified in Applicant's Response to Interrogatory No. 1, identify every product and/or service offered by Applicant and/or such business identified in response to Interrogatory No. 1.

Interrogatory No. 3

With respect to the products identified in Applicant's Response to Interrogatory No. 2, identify the three products having the highest gross sales over the past three years for each and every business identified in Applicant's Response to Interrogatory No. 1.

Interrogatory No. 4

With respect to the each of the products identified in Applicant's Response to Interrogatory No. 3, identify the actual gross sales figures for each product identified for the past three years.

Interrogatory No. 5

With respect to the services identified in Applicant's Response to Interrogatory No. 2, identify the three services having the highest gross sales over the past three years with respect to each and every business identified in Response to Interrogatory No. 1

Interrogatory No. 6

With respect to each of the services identified in Applicant's Response to Interrogatory No. 5, identify the actual gross sales figures for each service identified for the past three years.

Interrogatory No. 7

Identify the three largest customers with respect to each and every business identified in Applicant's Response to Interrogatory No. 1.

Interrogatory No. 8

Identify and describe the adoption of Applicant's ENYCE Mark.

Interrogatory No. 9

Identify the date of first use and the date of first use in interstate commerce of Applicant's Mark.

Interrogatory No. 10

Identify each of the goods and/or services on or in connection with which Applicant's Mark has ever been used, and for each such goods and/or services state the character of the use of Applicant's ENYCE Mark.

Interrogatory No. 11

Identify the manner in which Applicant's ENYCE Mark was used, is used and/or is intended to be used in interstate commerce (e.g., hang tags, labels, etc.).

Interrogatory No. 12

If Applicant's use of Applicant's Mark in interstate commerce has not been constant since its respective date of first use, state the periods of non-use with respect to Applicant's Mark for each good, and the reason Applicant's ENYCE Mark was not used.

Interrogatory No. 13

For each calendar year since the date of first use of Applicant's ENYCE Mark in the United States, state separately by specific goods and services, the quantity of sales in units and the dollar amounts of the goods or services sold or provided by or on behalf of Applicant thereunder in interstate commerce.

Interrogatory No. 14

Identify each and every good in connection with which Applicant has used, is using, or intends to use Applicant's Mark.

Interrogatory No. 15

Identify each and every service in connection with which Applicant has used, is using, or intends to use Applicant's ENYCE Mark.

Interrogatory No. 16

Separately identify and describe the past, current and future prospective means of distribution and the channels of trade for each and every good or service provided by or for Applicant under Applicant's Mark.

Interrogatory No. 17

Describe the ultimate consumer of Applicant's goods and/or services sold and/or intended to be sold under Applicant's Mark (e.g., age, gender, education level, annual household income).

Interrogatory No. 18

Separately identify the class(es) of customers (e.g., retailers, wholesalers, department stores, boutiques, general public, etc.) to whom Applicant has sold or distributed, is

selling or distributing, and/or intends to sell or distribute its products and/or services in connection with Applicant's Mark.

Interrogatory No. 19

Separately for each of the goods and services provided under Applicant's Mark, identify and describe any and all advertising and promotion thereof for each month since the commencement of use of Applicant's Mark in interstate commerce.

Interrogatory No. 20

With respect to Applicant's ENYCE Mark, to the extent Applicant does not provide its products and/or services thereunder directly to the ultimate customers thereof but provides them through an Intermediary, identify separately for Applicant's Mark and products and services each Intermediary used by Applicant in the provision thereof.

Interrogatory No. 21

Identify the name and address of any affiliate of Applicant who has used, uses or intend to use Applicant's Mark.

Interrogatory No. 22

Identify each and every Trade Show at which the products and services promoted, provided and/or sold by or for Applicant, or authorized, permitted or encouraged to be provided or sold by Applicant, under Applicant's Mark, was offered or exhibited.

Interrogatory No. 23

Identify all litigation or any other inter partes proceedings in which Applicant's Mark was involved or is currently involved.

Interrogatory No. 24

Identify any third parties who sent correspondence to Applicant regarding Applicant's use of Applicant's Mark based upon such third party's determination that Applicant's Mark was similar to such third party's mark(s) or trade name.

Interrogatory No. 25

Identify any third parties to whom Applicant sent correspondence regarding its use of a mark or trade name based upon Applicant's determination that such third party's mark was similar to Applicant's Mark.

Interrogatory No. 26

Describe in detail the date and circumstances by which Applicant first became aware of Opposer's ENYCE Mark(s) and any actions it took with respect thereto.

Interrogatory No. 27

Identify and describe each and every instance of actual confusion between any of Applicant's Mark and Opposer's ENYCE Mark(s).

Interrogatory No. 28

With regard to Applicant's Mark, set forth and fully describe each and every basis for Applicant's contention in Paragraph 9 of Applicant's Notice of Opposition that there is not or will not be a likelihood of confusion between Applicant's Mark and Opposer's ENYCE Marks.

Interrogatory No. 29

With regard to Applicant's Mark, set forth and fully describe each and every basis for Applicant's contention that Applicant's registration of Applicant's Mark will not cause injury and damage to Opposer, and to Opposer's right in Opposer's ENYCE Mark(s) and to the use thereof.

Interrogatory No. 30

Separately for each of the foregoing Interrogatories, identify the two (2) most knowledgeable persons with respect to the subject matter inquired about therein and specify which response or portion thereof each such person, or some other person, provided or prepared.

Interrogatory No. 31

Identify the person(s) most familiar with Applicant's use of Applicant's Mark.

Interrogatory No. 32

Identify the person(s) who was primarily responsible for selecting Applicant's ENYCE Mark.

Interrogatory No. 33

Identify each and every reason why Applicant selected Applicant's Mark as its trademark and/or service mark.

Interrogatory No. 34

Identify each and every basis for Applicant's contention that "Applicant does not believe that consumers are aware of [Opposer's] Mark as applicant was not aware of said Mark." contained in paragraph 9 of the Answer to the Notice of Opposition filed in this proceeding.

Interrogatory No. 35

Identify the person who has primary responsibility or will have primary responsibility for the advertising and sale of products under Applicant's Mark by or on behalf of Applicant.

Interrogatory No. 36

Identify any opinions received by Applicant concerning the likelihood of confusion between Applicant's Mark and Opposer's ENYCE Mark(s).

Interrogatory No. 37

Identify each person who supplied information in any of the responses to this set of interrogatories, or who has consulted or whose documents or files were consulted in connection with the preparation of the responses.

Interrogatory No. 38

Identify every person whom Applicant expects to call as a witness during its testimony period.

Dated: New York, New York
December 23, 2004

KRAMER LEVIN NAFTALIS
& FRANKEL LLP
By: Carole E. Klinger
Carole E. Klinger
Kramer Levin Naftalis & Frankel LLP
919 Third Avenue
New York, New York 10022
(212) 715-9100
Attorneys for Opposer
L.C. Licensing, Inc.

CERTIFICATE OF SERVICE

Opposition No. 91162330

I hereby certify that on December 23, 2004, I caused one true and correct copy of the foregoing OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT to be served by first class mail upon Applicant Cary Berman by causing a true and correct copy thereof to be deposited in the United States mail, postage prepaid, addressed to Applicant as follows:

Cary Brett Berman
1917 Lafayette Road
Gladwyne, PA 19035

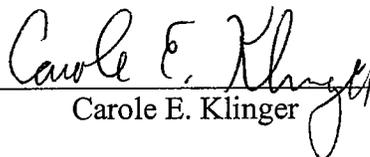

Carole E. Klinger

EXHIBIT D

**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

**ANSWER TO OPPOSER'S FIRST SET
OF REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS**

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 ANSWER TO OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS which was dated December 23, 2004 but received on January 26, 2005. Applicant assumes that the Opposer listed an incorrect date however Applicant respectfully requests that all future correspondence have some type of delivery date confirmation.

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 respectfully asks that all parties please correspond directly with Applicant at the address listed.

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.

Applicant independently thought to use ENYCE on automobile products and was not aware that ENYCE was ever used on anything if it actually has been used. ENYCE is simply an abbreviation for New York City with the letter "E" on each side to represent electronic commerce. Applicant has a history in the automotive product industry. Specifically Applicant has utilized the internet to show a consumer what the automotive product will look like if installed on an automobile. Applicant respectfully asks that the parties review U. S. Patent Application 09/400.600 and U.S. Patent Application serial No. 09/625,950.

Answers to OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS by numbered paragraph. "Document" shall mean documents and things. "Exist" shall mean in exist at all or exist in Applicants possession.

1. Applicant has applied for 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 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this request is relevant to the parties dispute.

2. Applicant has applied for 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 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this request is relevant to the parties dispute.

3. Applicant has applied for 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 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this request is relevant to the parties dispute.

4. Applicant has applied for 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 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this request is relevant to the parties dispute.

5. Applicant has applied for 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 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this request is relevant to the parties dispute.

6. Applicant has applied for 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 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this request is relevant to the parties dispute.

7. No documents other than those submitted to the United States Department of Commerce Patent and Trademark Office exist.

8. No documents other than those submitted to the United States Department of Commerce Patent and Trademark Office exist.

9. No documents exist that are responsive to this request.

10. No documents other than those received from the United States Department of Commerce Patent and Trademark Office exist.

11. No documents other than those received from opposer exist.

12. No documents exist that are responsive to this request.

13. No documents exist that are responsive to this request.

14. No documents exist that are responsive to this request.

15. No documents other than those submitted to or received from the United States Department of Commerce Patent and Trademark Office exist.

16. No documents exist that are responsive to this request.

17. No documents exist that are responsive to this request.

18. No documents exist that are responsive to this request.

19. No documents exist that are responsive to this request.

20. No documents exist that are responsive to this request.

21. No documents exist that are responsive to this request.

22. No documents exist that are responsive to this request.

23. No documents exist that are responsive to this request.

24. No documents other than those received from opposer exist.

25. No documents exist that are responsive to this request.

26. No documents exist that are responsive to this request.

27. No documents exist that are responsive to this request.

28. No documents exist that are responsive to this request.

29. No documents exist that are responsive to this request.

30. No documents exist that are responsive to this request.

31. No documents exist that are responsive to this request.

32. No documents exist that are responsive to this request.

33. No documents exist that are responsive to this request.

34. Applicant has applied for 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 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this request is relevant to the parties dispute.

35.No documents exist that are responsive to this request.

36.No documents exist that are responsive to this request.

37.No documents exist that are responsive to this request.

38.No documents exist that are responsive to this request.

39. Applicant reserves the right to bring automobile products (wheels, brake pads,etc.) to the testimony period and hold said products up next to Opposer's clothing products to determine if confusion would exist between the products.

40.No documents exist that are responsive to this request.

41.No documents exist that are responsive to this request.

42.No documents exist that are responsive to this request.

43.No documents exist that are responsive to this request.

44.No documents exist that are responsive to this request.

45.No documents exist that are responsive to this request.

46.No documents exist that are responsive to this request.

47.No documents other than those received from the United States Department of Commerce Patent and Trademark Office exist.

48. Applicant received a letter from Opposer's council in July of 2004. Applicant did not keep a copy of said letter.

49.No documents other than those received from opposer exist.

50. No documents exist that are responsive to this request.

51.No documents exist that are responsive to this request.

52. Applicant is an individual representing himself pro se. Applicant does not have a document policy.

53. Applicant intends to hire an expert witness and utilize an expert witness report and testimony.

SUBMITTED this 3rd day of February, 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 E

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

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

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 ANSWER to Opposer's FIRST SET OF INTERROGATORIES which was dated December 23, 2004 but received on January 26, 2005. Applicant assumes that the Opposer listed an incorrect date however Applicant respectfully requests that all future correspondence have some type of delivery date confirmation.

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 respectfully asks that all parties please correspond directly with Applicant at the address listed.

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.

Applicant independently thought to use ENYCE on automobile products and was not aware that ENYCE was ever used on anything if it actually has been used. ENYCE is simply an abbreviation for New York City with the letter "E" on each side to represent electronic commerce. Applicant has a history in the automotive product industry. Specifically Applicant has utilized the internet to show a consumer what the automotive product will look like if installed on an automobile. Applicant respectfully asks that the parties review U. S. Patent Application 09/400.600 and U.S. Patent Application serial No. 09/625,950.

Answers to Opposer's FIRST SET OF INTERROGATORIES by numbered paragraph.

1. Applicant has applied for 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 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this question is relevant to the parties dispute.

2. Applicant has applied for 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 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this question is relevant to the parties dispute.

3. Applicant has applied for 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 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this question is relevant to the parties dispute.

4. Applicant has applied for 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 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this question is relevant to the parties dispute.

5. Applicant has applied for 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 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this question is relevant to the parties dispute.

6. Applicant has applied for 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 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this question is relevant to the parties dispute.

7. Applicant has applied for 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 in his own individual name. Applicant has not assigned it's Mark to any corporate entity. Applicant has not entered into any contract or agreement of any kind regarding it's Mark with any corporate entity. Applicant does not believe that the information requested in this question is relevant to the parties dispute.

8. Applicant does not understand this question.

9. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

10. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

11. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

12. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

13. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

14. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition. Applicant does not feel that it's future plans with respect to it's Mark are relevant to the parties dispute.

15. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition. Applicant does not feel that it's future plans with respect to it's Mark are relevant to the parties dispute.

16. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition. Applicant does not feel that it's future plans with respect to it's Mark are relevant to the parties dispute.

17. Applicant does not feel that it's future plans with respect to it's Mark are relevant to the parties dispute.

18. Applicant does not feel that it's future plans with respect to it's Mark are relevant to the parties dispute.

19. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

20. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition. Applicant does not feel that it's future plans with respect to it's Mark are relevant to the parties dispute

21. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition. Applicant does not feel that it's future plans with respect to it's Mark are relevant to the parties dispute.

22. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

23. Applicant is not aware of any litigation (other than this litigation) involving Applicant's Mark.

24. Applicant has not received any such correspondence.

25. Applicant has not sent any such correspondence.

26. Applicant received a letter from Opposer's council in July of 2004. Applicant took no action.

27. Confusion does not exist as the products are dissimilar.

28. Confusion does not exist as the products are dissimilar. Applicant finds it difficult to understand why a clothing company thinks that automobile products are similar to clothing products.

29. Applicant finds it difficult to understand why automobile products would "cause injury and damage" a clothing company.

30. No response as a question is not asked.

31. Cary Berman.

32. Cary Berman.

33. Applicant independently thought to use ENYCE on automobile products and was not aware that ENYCE was ever used on anything if it actually has been used. ENYCE is simply an abbreviation for New York City with the letter "E" on each side to represent electronic commerce. Applicant has a history in the automotive product industry. Specifically Applicant has utilized the internet to show a consumer what the automotive product will look like if installed on an automobile. Applicant respectfully asks that the parties review U. S. Patent Application 09/400.600 and U.S. Patent Application serial No. 09/625,950.

34. Opposer's council needs to walk out of her office and ask one hundred people if they have ever heard of Opposer's Mark. Perhaps then Opposer will apologize to Applicant and we can all move forward.

35. Cary Berman.

36. None.

37. Cary Berman.

38. Cary Berman and an expert witness.

SUBMITTED this 3rd day of February, 2005.

CARY BRETT BERMAN



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

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

CERTIFICATE OF SERVICE

I, Cary Berman, hereby certify that true and correct copies of the foregoing ANSWER TO OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS and ANSWER TO OPPOSER'S FIRST SET OF INTERROGATORIES were served on Opposer by priority mailing same (with delivery conformation) to Carole E. Klinger, Esq., 919 Third Ave., New York, NY. 10022 this 4th day of February 2005.



Cary Berman

EXHIBIT F

**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,

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

Opposition No. 91162330
Serial No. 78320850

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

Applicant, representing himself pro se submits this revised ANSWER to Opposer's FIRST SET OF INTERROGATORIES.

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 respectfully asks that all parties please correspond directly with Applicant at the address listed.

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.

Answers to Opposer's FIRST SET OF INTERROGATORIES by numbered paragraph.

1. Applicant does not understand the question "affiliated or involved" but has ownership in one corporation. C. Berman Associates inc., incorporated in Pennsylvania and located at 1917 Lafayette Rd. , Gladwyne, Pa 19035.

2. Currently the only product or service offered by C. Berman Associates are Vehicle Service Contracts from General Electric Auto Warranty Services (GEAWS) .

3. GEAWS 5 Star, GEAWS 4 Star and GEAWS 3 Star.

4. A Service Contract may be considered a Product or a Service. Applicant does not maintain individual sales figures for each type of Service Contract. Applicant does not keep specific gross sales figures as Applicant only receives commissions. Applicant will offer estimated gross sales figures per year as follows in an effort to hopefully satisfy the Opposer. 2002- in excess of \$100,000; 2003- in excess of \$1,000,000; 2004- in excess of \$2,000,000.

5. A Service Contract may be considered a Product or a Service. Applicant does not maintain individual sales figures for each type of Service Contract. Applicant does not keep specific gross sales figures as Applicant only receives commissions. Applicant will offer estimated gross sales figures per year as follows in an effort to hopefully satisfy the Opposer. 2002- in excess of \$100,000; 2003- in excess of \$1,000,000; 2004- in excess of \$2,000,000.

6. A Service Contract may be considered a Product or a Service. Applicant does not maintain individual sales figures for each type of Service Contract. Applicant does not keep specific gross sales figures as Applicant only receives commissions. Applicant will offer estimated gross sales figures per year as follows in an effort to hopefully satisfy the Opposer. 2002- in excess of \$100,000; 2003- in excess of \$1,000,000; 2004- in excess of \$2,000,000.

7. Vehicle Service Contracts are sold to an individual buyer of a Vehicle. C Berman Associates has thousands of customers.

8. Applicant does not understand this question.

9. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

10. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

11. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition. Applicant has not decided on the intended use.

12. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition. The reason Applicant has not used it's Mark is due to this pending Opposition.

13. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

14. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition. Applicant has not decided on the intended use..

15. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition. Applicant has not decided on the intended use.

16. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition. Applicant has not decided on the intended use..

17. Applicant has not made any decisions about the issues asked in this question pending resolution of this matter in the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board.

18. Applicant has not used and will not use it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition. Applicant has not made any decisions about the future issues asked in this question pending resolution of this matter in the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board.

19. Applicant has not promoted or advertised it's Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

20. Applicant has not used and will not use its Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

21. Applicant has not used and will not use its Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition. Applicant does not have any affiliates or made any other business arrangements pending resolution of this matter.

22. Applicant has not promoted and will not promote its Mark until the United States Department of Commerce Patent and Trademark Office Trademark Trial and Appeal Board officially denies Opposer's opposition.

23. Applicant is not aware of any litigation (other than this litigation) involving Applicant's Mark.

24. Applicant has not received any such correspondence.

25. Applicant has not sent any such correspondence.

26. Applicant received a letter from Opposer's council in July of 2004. Applicant took no action.

27. Confusion does not exist as the products are dissimilar.

28. Confusion does not exist as the products are dissimilar. Applicant finds it difficult to understand why a clothing company thinks that automobile products are similar to clothing products.

29. Applicant finds it difficult to understand why automobile products would "cause injury and damage" a clothing company.

30. No one other than Applicant.

31. Cary Berman.

32. Cary Berman.

33. Applicant independently thought to use ENYCE on automobile products and was not aware that ENYCE was ever used on anything if it actually has been used. ENYCE is simply an abbreviation for New York City with the letter "E" on each side to represent electronic commerce. Applicant has a history in the automotive product industry. Specifically Applicant has utilized the internet to show a consumer what the automotive product will look like if installed on an automobile. Applicant respectfully asks that the parties review U. S. Patent Application 09/400.600 and U.S. Patent Application serial No. 09/625,950.

34. In an effort to better answer this question Applicant conducted two separate informal studies of 20 individuals each on street corners in Philadelphia, Pa. and in NYC, NY. No one in said studies had ever heard of opposer's clothing company.

35. Cary Berman.

36. None.

37. Cary Berman.

38. Cary Berman, Evan Davis, Rolando Felix, a current or former employee from the Internal Revenue Service and an expert witness.

SUBMITTED this 12th day of September, 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 G

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

**ANSWER TO FIRST SET
OF REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS**

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 revised Answer to OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS.

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.

Answers to OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS by numbered paragraph.

1. Applicant does not understand the question "affiliated or involved" but has ownership in one corporation. C. Berman Associates inc., incorporated in Pennsylvania and located at 1917 Lafayette Rd. , Gladwyne, Pa 19035. Corporate documents are located at it's accountant's office. Applicant is in possession of the corporate seal which is impossible to provide with this answer.

2. Specimen versions of the Vehicle Service Contracts offered are Attached as Exhibits A, B & C.

3. Specimen versions of the Vehicle Service Contracts offered are Attached as Exhibits A &B.

4. Specimen versions of the Vehicle Service Contracts offered are Attached as Exhibits A &B.

5. No documents exist in Applicant's possession.

6. No documents exist in Applicant's possession.

7. No documents other than those submitted to the United States Department of Commerce Patent and Trademark Office exist.

8. No documents other than those submitted to the United States Department of Commerce Patent and Trademark Office exist.

9. No documents exist that are responsive to this request.

10. No documents other than those received from the United States Department of Commerce Patent and Trademark Office exist.

11. No documents other than those received from opposer exist.

12. No documents exist that are responsive to this request.

13. No documents exist that are responsive to this request.

14. No documents exist that are responsive to this request.

15.No documents other than those submitted to or received from the United States Department of Commerce Patent and Trademark Office exist.

16. No documents exist that are responsive to this request.

17.No documents exist that are responsive to this request.

18. No documents exist that are responsive to this request.

19. No documents exist that are responsive to this request.

20. No documents exist that are responsive to this request.

21. No documents exist that are responsive to this request.

22. No documents exist that are responsive to this request.

23. No documents exist that are responsive to this request.

24. No documents other than those received from opposer exist.

25.No documents exist that are responsive to this request.

26. No documents exist that are responsive to this request.

27. No documents exist that are responsive to this request.

28. No documents exist that are responsive to this request.

29. No documents exist that are responsive to this request.

30.No documents exist that are responsive to this request.

31.No documents exist that are responsive to this request.

32.No documents exist that are responsive to this request.

33. No documents exist that are responsive to this request.

34. No documents exist in Applicant's possession, however applicant works from a home office at 1917 Lafayette rd., Gladwyne, Pa. 19035.

35.No documents exist that are responsive to this request.

36.No documents exist that are responsive to this request.

37.No documents exist that are responsive to this request.

38.No documents exist that are responsive to this request.

39. Applicant reserves the right to bring automobile products (wheels, brake pads,etc.) to the testimony period and hold said products up next to Opposer's clothing products to determine if confusion would exist between the products.

40.No documents exist that are responsive to this request.

41.No documents exist that are responsive to this request.

42.No documents exist that are responsive to this request.

43.No documents exist that are responsive to this request.

44.No documents exist that are responsive to this request.

45.No documents exist that are responsive to this request.

46.No documents exist that are responsive to this request.

47.No documents other than those received from the United States Department of Commerce Patent and Trademark Office exist.

48. Applicant received a letter from Opposer's council in July of 2004. Applicant did not keep a copy of said letter.

49.No documents other than those received from Opposer exist.

50. No documents exist that are responsive to this request.

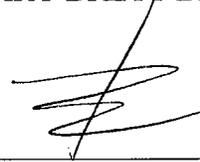
51.No documents exist that are responsive to this request.

52. Applicant is an individual representing himself pro se. Applicant does not have a document policy.

53. Applicant intends to hire an expert witness and utilize an expert witness report and testimony.

SUBMITTED this 12th day of September, 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 H

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

LC LICENSING, INC.,)
)
Opposer,)
) Opposition No.
vs.) 91/162,330
)
CARY BERMAN,)
)
Applicant.)
-----)

DEPOSITION OF CARY BERMAN
New York, New York
Thursday, June 29, 2006

Reported by:
FRANCIS X. FREDERICK, CSR, RPR, RMR
JOB NO. 7718

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

June 29, 2006
12:28 p.m.

Deposition of CARY BERMAN, held at the offices of Cowan Liebowitz, 1133, Avenue of the Americas, New York, New York, pursuant to Notice, before Francis X. Frederick, a Certified Shorthand Reporter, Registered Merit Reporter and Notary Public of the States of New York and New Jersey.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

COWAN LIEBOWITZ
Attorneys for Opposer
1133 Avenue of the Americas
New York, New York 10036
BY: ARLANA S. COHEN, ESQ.
KIERAN G. DOYLE, ESQ.

CARY BERMAN
Appearing Pro Se
1917 Lafayette Road
Gladwyn, Pennsylvania 19035

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C. BERMAN
CARY BERMAN, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:
EXAMINATION BY
MS. COHEN:
Q. Mr. Berman, I'd like to show you the Notice of Deposition which is the reason why you're here today which is to take your deposition in the captioned case entitled LC Licensing versus Cary Berman concerning your application to register the mark ENYCE. This is the Notice of Deposition and you understand that that's what you're here for.

A. This appears to be the Notice that I had received, yes.

MS. COHEN: I'm going to mark this as Opposer's Exhibit A.
(Opposer's Exhibit A, Notice of Deposition, marked for identification as of this date.)

BY MS. COHEN:

Q. Mr. Berman, we understand you are not here appearing with counsel. That's

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C. BERMAN

correct, yes?

A. Yes. That is correct. I am representing myself in this matter.

Q. Have you ever been deposed before?

A. Yes.

Q. Do you understand the general rules of a deposition?

A. As an individual. Not in a legal sense as I'm not an attorney.

Q. Okay. So I'm simply saying that if you don't understand a question just -- you can answer, please, I don't understand the question. You should answer yes/no questions as opposed to guessing. And you should stop and think about your answers appropriately.

Do you understand?

A. I understand.

Q. Mr. Berman, can you state your home address, please?

A. 1917 Lafayette Road, Gladwyn, Pennsylvania, 19035.

Q. And what is your highest level of education that you have received?

A. I graduated college with a

C. BERMAN

bachelor of science.

Q. In what year?

A. 1982 -- 1981? 1982.

Q. And what was your first job after graduation?

A. I worked selling for Adolfo Active Sportswear.

Q. And meaning -- when you said I work selling, was that a salesman position?

A. Management/sales.

Q. And where were they located?

A. 1411 Broadway.

Q. And what kind of items did they sell?

A. Warm-up suits. Short-sleeve shirts. Shorts. Swim trunks. Stuff like that.

Q. And this was all men's clothing?

A. Men's and women's.

Q. When you were with them, did you travel to customers or in any -- with regard to the job?

A. Yes.

Q. And would you visit with the

C. BERMAN

buyers of particular retailers? Is that what you did when you traveled?

A. Yes.

Q. Did you travel to any trade shows as well?

A. Yes.

Q. And what trade shows were they?

A. Various clothing trade shows with different names.

Q. Did you go to MAGIC?

A. Yes.

Q. What was the last year if you recall with Adolphi that you attended MAGIC?

A. '84. Maybe '85. Something like that.

Q. And when you were with Adolphi did you read any industry publications?

A. Yes.

Q. And what publications were those, if you can recall?

A. WWD and DNR.

Q. After the Adolphi -- excuse me. When approximately did you leave the Adolphi position?

C. BERMAN

A. Sometime in the mid '80s.

Q. And what was your next position after that?

A. I was a partner at a company called Active American Apparel.

Q. When you say a partner is that a company that you formed or started?

A. Yes.

Q. And what was the type of products that Active American Apparel sold, if any?

A. Similar products to the Adolfo products.

Q. And was there a brand name under which the products of Active American Apparel were sold?

A. Yes.

Q. What was that?

A. Givenchy.

Q. Can you spell that?

A. G-I-V-E-N-C-H-Y.

Q. And was that a name that was licensed or owned by the entity?

A. Licensed.

Q. And who was the license from?

C. BERMAN

A. Hubert de Givenchy originally. And then he sold it to another company who became the licensor.

Q. And the license was for the similar type of items of apparel that you had listed as to Adolphi.

A. It was only men's though.

Q. Okay. As a partner what was your role in the company as opposed to I assume your partner's role if you --

A. We all pretty much shared all the tasks.

Q. Did you continue doing sales?

A. Yes.

Q. Did you continue doing -- strike that.

Did you work in marketing?

A. Yes.

Q. Did you do any sourcing?

A. Yes.

Q. In terms of sales do you recall any of the stores or chains that you sold the products into?

A. I do. But they probably are no

1 C. BERMAN

2 longer in -- most of them are no longer in
3 existence. Department store chains that have
4 been gobbled up and there's a couple probably
5 still around. Macy's. But most of the names
6 are no longer around. If you would like me to
7 rattle some off --

8 **Q. Such as -- yeah.**

9 A. Berdines. Dayton Hudson. A lot
10 of -- I don't even know whether they're still
11 around or not. But from what I understand a
12 lot of these names are no longer in existence.

13 **Q. And did you travel to trade shows
14 with Active American Apparel?**

15 A. Yes.

16 **Q. And about how many trade shows a
17 year did you attend?**

18 A. Quite a few. But I don't recall.
19 Quite a few.

20 **Q. Did you go to MAGIC with Active
21 American Apparel?**

22 A. Yes.

23 **Q. And do you recall when the last
24 time you went to MAGIC on behalf of Active
25 American Apparel?**

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 A. It was either 1989 or 1990. It
3 was -- yes, the end of '80s or right in the
4 beginning of the '90s.

5 **Q. And if it's possible, what was the
6 demographic or type of consumer that the
7 Givenchy products were directed at?**

8 A. It depended on the style of the
9 product. I don't think it was a certain
10 demographic. It just depended on whatever the
11 particular type of product that was
12 fashionable at the time. And it would carry a
13 Givenchy label and it would appeal to a broad
14 field of consumers.

15 **Q. Did you advertise in any
16 particular publications?**

17 A. In conjunction with -- there was a
18 portion of the licensing fee that was
19 attributed to advertising. So the advertising
20 was done in conjunction with the whole
21 corporate structure.

22 **Q. And do you recall where that ad
23 spend was used?**

24 A. No. No.

25 **Q. While you were at Active American**

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 **Apparel, did you subscribe to any industry
3 publications?**

4 A. I don't recall.

5 **Q. Did you continue to read W?**

6 A. The publication I referred to was
7 WWD, not W. You are probably familiar with W.
8 I just want to make sure we're clear. It's
9 two different publications.

10 **Q. Correct. I thought you listed W
11 and WWD and DNR.**

12 A. No. I listed DNR and WWD.

13 **Q. Okay. Did you continue to read
14 WWD?**

15 A. I believe that I did -- no, I did
16 not because that's women's. I would probably
17 say -- thinking back, I probably was
18 specifically looking at DNR which was the
19 men's industry publication.

20 I would not say that I never, ever
21 looked at WWD, though, during that period of
22 time.

23 **Q. Um-hum.**

24 **And for how long were you
25 associated with Active American Apparel?**

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 A. It was four or five years. Six
3 years, something like that. It depends on the
4 time -- whenever the time was that I stopped
5 with Adolfo to the starting point and stopping
6 point. I don't recall those specific dates.

7 **Q. Do you recall how many years the
8 license for the Givenchy trademark was granted
9 for?**

10 A. No. I do not recall.

11 **Q. Did you continue to sell under the
12 Givenchy name, let's say, for -- till 1990?**

13 A. I left the company in 1990. The
14 business continued without me. It was -- I
15 left in 1990.

16 **Q. And at the time you left they were
17 still, to your recollection, still selling
18 Givenchy brand apparel.**

19 A. Yes.

20 **Q. Did the company sell any other
21 apparel other than Givenchy apparel?**

22 A. Very little. During my tenure.
23 What they might have done after that of course
24 I have no knowledge of.

25 **Q. Right. During your tenure.**

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 A. Yes.

3 Q. And what brands were those?

4 A. Non-branded.

5 Q. Private label?

6 A. Either private label or it would
7 carry the Active American Apparel name itself.

8 Q. You had said you had been deposed
9 before. Can you tell me in what
10 circumstances? Or, you know, one at a time.

11 A. I don't recall specifically. For
12 different matters I've been deposed. I've
13 been in depositions.

14 Q. Well, do you remember the
15 particular matters in which then you would
16 have been deposed? As opposed to the
17 deposition itself. Do you remember the legal
18 matters that they involved?

19 A. I'm 45 years old. I've been in
20 various different business matters. And there
21 have been legal issues that have arisen and
22 I've been in depositions.

23 Q. I'm not prying. I'm just asking
24 were they -- I then would assume from your
25 answer that they were related to business

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 matters as opposed to family matters.

3 A. Oh, yes. Yes.

4 Q. And were you, yourself, a party to
5 those matters or any of those matters or was
6 it you as an employee of a company?

7 A. Yes. And yes.

8 Q. Were you ever involved in an
9 intellectual property litigation?

10 A. Yes.

11 Q. Do you recall what kind?

12 A. Yes.

13 Q. And could you tell me?

14 A. I invented a product that is used
15 in casinos and tried to enforce my rights
16 associated with my patent. I was involved in
17 a litigation against -- at the time they were
18 known as Park Place Casinos which are now
19 known as I believe Caesar's. And I had a
20 matter that went on for quite some time.

21 Q. And so there was one matter that
22 you had filed against the person who allegedly
23 stole the item that you had a patent on.

24 A. They were using my patent and
25 there was a litigation that involved trying to

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 receive -- either stop them from using my
3 patent or receive compensation for them using
4 my patent.

5 Q. In your interrogatory answers I
6 think you had mentioned a patent but I looked
7 it up and I had no luck in pulling it up.

8 There was two numbers. And I don't believe I
9 had the full information. They started with
10 an 09 as opposed to a patent number like a
11 1,200,000, et cetera. So these look like they
12 were application serial numbers in the
13 interrogatory answers and not registration
14 numbers. But -- actually it says applicants
15 ask that the parties review US Patent
16 application number 09, blah, blah, blah.

17 So were these the patents that you
18 were referring to in your interrogatory answer
19 number 33? If you want to look at them.

20 A. If you're going to refer to a
21 document I'd ask that you place it as an
22 exhibit so we can properly refer to the
23 exhibit.

24 Q. Okay. Well, this is your answer
25 to the interrogatories but I will -- I will do

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 that but with one that is not scribbled on.

3 MS. COHEN: Why don't we just take
4 a couple-minute break.

5 (Recess taken.)

6 BY MS. COHEN:

7 Q. All right. Mr. Berman, we've now
8 made a copy and we can show you the --

9 A. Are you making that an exhibit?

10 Q. I will. First I want to show it
11 to you. The Answers to Opposers First Set of
12 Interrogatories to Applicant. And I will show
13 you the one we were speaking of was your
14 answer to number 33 which appears on page 5

15 Is this a copy of your answers to
16 the interrogatories if you recall?

17 A. It appears to be.

18 Q. Okay.

19 MS. COHEN: Can we mark this then
20 as Opposer's B.

21 (Opposer's Exhibit B, Answer to
22 Opposer's First Set of Interrogatories to
23 Applicant, marked for identification as
24 of this date.)

25 BY MS. COHEN:

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 Q. With respect to the patent I'll
3 show you your answer number 33 which refers to
4 the patents. Is either of those the patents
5 that you were discussing that the litigation
6 was concerning?

7 A. No.

8 Q. What type of device did you invent
9 for use in the gambling industry?

10 A. It's a funnel system that is used
11 to collect coinage underneath the slot machine
12 in the base that the slot machine sits on top
13 of.

14 Q. And so you received a US Patent
15 registration.

16 A. Yes.

17 Q. And was that patent owned in your
18 own name or was it assigned to a company at
19 all?

20 A. It was at one point assigned to a
21 company.

22 Q. And was that company your company?

23 A. I had ownership in that company.

24 Q. Well, let's go backwards a little.
25 So you had the patent litigation.

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 Were you successful in the patent litigation?

3 A. No.

4 Q. And other than that patent
5 litigation was there any other intellectual
6 property litigations that you can recall being
7 involved in either as a witness or as a party?

8 A. No.

9 Q. After you left Active American
10 Apparel what was your next position?

11 A. My next position was developing,
12 manufacturing a beach chair product that I had
13 invented, had a patent for.

14 Q. And what type of beach chair
15 product was this?

16 A. It folds up and goes into a bag.

17 Q. And you received a United States
18 Patent for this product?

19 A. Yes.

20 Q. And was it owned in your name or
21 in a company name?

22 A. It was owned in my name as well as
23 a co-inventor.

24 Q. And did the product get developed
25 and manufactured?

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 A. Yes.

3 Q. And did it get sold?

4 A. Yes.

5 Q. And did it have a trademark or a
6 name associated with the product?

7 A. At one point it had a name
8 associated with the product.

9 Q. And what was it?

10 A. The Cary chair.

11 Q. And is that the regular spelling,
12 C-A-R-R-Y?

13 A. It was actually C-A-R-Y.

14 Q. Aha. I get it.

15 And did you ever license the
16 product or the trademark or the patent to
17 anyone?

18 A. No.

19 Q. So you manufactured it on your own
20 or your own with another individual. Was
21 there a name to the business that developed
22 and manufactured the product?

23 A. Yes.

24 Q. What was the name of that
25 business?

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 A. Mission Impossible Enterprises.

3 Q. And what was your position at the
4 Mission Impossible Enterprises?

5 A. I was a partner. I was an owner.

6 Q. And for how long were you involved
7 in -- or did you stay working at Mission
8 Impossible Enterprises?

9 A. Just for about a year.

10 Q. And what happened after that?

11 A. Initially I took some time off.

12 Q. And then?

13 A. I started to work at a company --
14 at another company.

15 Q. And what company was that?

16 A. Holly Manufacturing.

17 Q. And would you say we're now at
18 approximately 1992 or -3 or so?

19 A. Yes.

20 Q. And what type of product did Holly
21 Manufacturing sell?

22 A. Woodworking products. Store
23 fixtures. Products to the casinos. Products
24 to hospitals.

25 Q. And what was your position there?

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 A. Sales.

3 Q. And for how long were you
4 associated with Holly Manufacturing?

5 A. Three, four years. Something like
6 that.

7 Q. Do you recall what your position
8 was after Holly Manufacturing?

9 A. What job did I have? Is that the
10 question?

11 Q. Well, you said you were there
12 three or four years. So your next job, yes.

13 A. The company I joined after that
14 was called Rio Trading.

15 Q. Is that R-I-O?

16 A. Um-hum, yes.

17 Q. And what did they do?

18 A. Imported and distributed CD
19 changers that's went into the trunks of cars.

20 Q. And where were they imported from?

21 A. Korea.

22 Q. And they were distributed to car
23 dealers or to retailers?

24 A. Both.

25 Q. And what was your responsibility

TSG Reporting - Worldwide

877-702-9580

1 C. BERMAN

2 at Rio?

3 A. I ran the company.

4 Q. And you stated you joined the
5 company. Did you form the company as well?

6 A. No.

7 Q. It was an existing company.

8 A. Yes.

9 Q. And ran the company would include
10 continuing to work in sales as you had in the
11 other positions?

12 A. Yes.

13 Q. And did the CD changers have any
14 brand name?

15 A. Initially no. But then they ended
16 up -- they eventually had a brand name.

17 Q. And what was that?

18 A. OE Conekshünn.

19 Q. And was that a licensed name or a
20 name owned by Rio?

21 A. It was a name that I thought of
22 and trademarked.

23 Q. When the CD changers came over
24 from Korea did they have a name on them
25 already or they were unbranded?

TSG Reporting - Worldwide

877-702-9580

1 C. BERMAN

2 A. Initially they were unbranded.

3 Q. Um-hum.

4 A. When we started to distribute them
5 under the brand name they had the brand name
6 on them -- on the units and on the packaging
7 as any product would.

8 Q. Have you ever been involved in
9 matters or undertaken yourself to -- as heads
10 or partners in these companies, to send out
11 any cease and desist letters or receive any
12 cease and desist letters pertaining to brand
13 names?

14 A. I'm going to try to help you. You
15 said with respect to these companies. The
16 answer to these companies is no. But I have
17 been involved in cease and desist letters.

18 Q. Okay. In what regard?

19 A. Regarding my patent for my casino
20 product which is not part of these corporate
21 entities.

22 Q. Um-hum. And would that have
23 been -- can you explain the circumstances of
24 that cease and desist letter?

25 A. I don't understand your question.

TSG Reporting - Worldwide

877-702-9580

1 C. BERMAN

2 Q. You sent it to someone or they
3 sent it to you or just explain the
4 circumstances of the letter.

5 A. No. I sent it to the casinos that
6 were using my device.

7 Q. And in addition to the one that
8 you ended up in the patent litigation with.

9 A. Yes.

10 Q. And did you work with an attorney
11 or these?

12 A. Sometimes.

13 Q. How long were you with Rio
14 Trading?

15 A. Through 2000. Approximately.

16 Q. And after that what did you --
17 where did you work?

18 A. US Data Corporation.

19 Q. And what did they do?

20 A. They distributed T1 lines.

21 Q. And where were they located?

22 A. Near Miami, Florida. Not in Miami
23 but one of the cities that's near Miami,
24 Florida.

25 Q. And were you involved in sales?

TSG Reporting - Worldwide

877-702-9580

1 C. BERMAN

2 A. Yes.

3 Q. And did you have a territory?

4 A. Yes.

5 Q. What was your territory?

6 A. The northeastern part of the
7 United States.

8 Q. So I would say that was
9 approximately 2000 that you started there?

10 A. Yes.

11 Q. And would you sell the T1 lines to
12 businesses and to landlords, builders?

13 A. Yes and yes.

14 Q. Sometimes existing businesses,
15 sometimes in the construction stage, or --

16 A. Sometimes law firms.

17 Q. Sometimes law firms.

18 And how long were you with US
19 Data?

20 A. About a year.

21 Q. And then what did you do?

22 A. Then I started to work with
23 General Electric.

24 Q. And what did you do with General
25 Electric?

TSG Reporting - Worldwide

877-702-9580

1 C. BERMAN

2 A. I represent GE for their auto
3 warranty services.

4 Q. And was there a territory that you
5 had responsibility for?

6 A. I have -- I have a territory. But
7 I also have other territories that I go into
8 that are outside of my primary territory.

9 Q. And GE -- not that I'm that
10 knowledgeable about automobiles, but they
11 don't make any automobiles, do they?

12 A. No.

13 Q. So what is it that GE does? Do
14 they insure or back the warranties of the
15 vendor?

16 A. It's called a service contract.

17 Q. So GE gives the service contracts
18 to the consumers or to the dealers?

19 A. In most states the contract is
20 between the individual purchaser of the
21 vehicle or the person that's leasing the
22 vehicle and GE. In some states the dealer is
23 actually issuing the contract.

24 Q. So is the contract on after-market
25 items in the vehicle or on the vehicle itself?

TSG Reporting - Worldwide

877-702-9580

1 C. BERMAN

2 A. It's on various components on the
3 vehicle itself and each contract is specific
4 as to what's covered and what's not covered.

5 Q. And do you have a company that you
6 work for doing this work? Did you form a
7 company or --

8 A. Yes.

9 Q. And what is the name?

10 A. C. Berman Associates, Inc.

11 Q. And the position with GE or the
12 work associated with GE continues till today?

13 A. Yes.

14 Q. I'm going to go back for a moment
15 to Opposer's Exhibit B and I show you answer
16 number 33 which discusses two US Patent
17 applications, 09/400,600 and 09/625,950.

18 Do you see that?

19 A. Yes.

20 Q. And can you tell me what is meant
21 by applicant refers Opposer to the two
22 applications?

23 A. Yes.

24 Q. What do you mean?

25 A. When you were looking at the list

TSG Reporting - Worldwide

877-702-9580

1 C. BERMAN

2 of companies, Rio Trading eventually became
3 known as Custom Auto.com. Same corporate
4 entity. Changed its name. Custom Auto.com
5 was a business process patent application. It
6 was also a website. It was also a lot of
7 things. But it was a process where we would
8 show a vehicle on the Internet and show what
9 it would look like if it had accessories
10 installed in a virtual environment. And we
11 had business process patents that we had
12 applied for.

13 Q. And so these were two separate
14 applications for that type of service or
15 business method.

16 A. Yes.

17 Q. And stepping back from the patents
18 on the business, did you -- was Custom
19 Auto.com part of the operation of Rio Trading?

20 A. It was a continuation.

21 Q. Of Rio. And was that continuation
22 after you left Rio or after they stopped
23 doing -- importing CD changers?

24 A. It was the continuation of the
25 business after it stopped importing CD

TSG Reporting - Worldwide

877-702-9580

C. BERMAN

1 changers.

2 Q. And was the website, Custom
3 Auto.com, activated and operating?

4 A. At the time in a beta version.

5 Q. And did it ever operate in a real
6 version? Did it ever launch?

7 A. No.

8 Q. And in the beta version what type
9 of accessories would you say the auto got
10 accessorized with?

11 A. Rims, wheels, spoilers, grill
12 guards, roof racks. Deflectors. All sorts of
13 things.

14 Q. Any custom upholstery?

15 A. We didn't show the interior of the
16 car.

17 Q. Was there custom upholstery
18 offered in the offerings of Custom Auto.com?

19 A. It never actually became a
20 commerce site so there was never anything
21 actually offered for actual sale.

22 Q. Um-hum.

23 Are these business method patent
24 applications still pending or were they not
25

C. BERMAN

1 granted?

2 A. I do not think that these patent
3 applications are still pending. But as far as
4 I know they were never granted.

5 Q. Do you know if they were rejected
6 as similar to some other patented product or
7 rejected for a different reason than that?

8 A. They were rejected a number of
9 times. And our attorneys continued to come up
10 with other ways to reapply. I think that
11 answers your question.

12 Q. What publications do you subscribe
13 to now as part of your business -- your
14 business life?

15 A. Automotive News. F&I -- I think
16 it's Monthly or Weekly -- I think it may be
17 Monthly.

18 Q. F&I?

19 A. F&I. It's Finance and Insurance
20 is what it stands for.

21 Q. Thank you. Anything else?

22 A. No.

23 Q. Do you subscribe to any magazines
24 personally?
25

C. BERMAN

1 A. No.

2 Q. Do you read any magazines
3 personally from time to time?

4 A. No.

5 Q. Never read Esquire?

6 A. No.

7 Q. Never read Time Magazine?

8 A. If I'm sitting in the dentist's
9 office waiting to go in. I mean, no. The
10 answer to the question is no.

11 Q. Do you read GQ?

12 A. No.

13 Q. There came a time where you
14 applied for a trademark ENYCE; is that
15 correct?
16

17 A. Yes.

18 Q. And how do you say that?

19 A. ENYCE.

20 Q. That is how you pronounce the
21 trademark?

22 A. I never actually thought about
23 pronouncing the trademark.

24 Q. Well, I'm going to show you a copy
25 of a printout from the US Patent & Trademark

C. BERMAN

1 Office for showing the application for
2 registration of a mark which has the letters
3 ENYCE. Is this the trademark application that
4 you stated you applied for?

5 A. Its appears to be.

6 MS. COHEN: And let me just have
7 this marked as Opposer's Exhibit C.

8 (Opposer's Exhibit C, trademark
9 application, marked for identification as
10 of this date.)

11 BY MS. COHEN:

12 Q. Well, do you see on the top it
13 says the word mark, ENYCE. There's no periods
14 there. So I was only wondering how you
15 pronounced that because it I suppose it could
16 be pronounced differently. But you've never
17 thought of how you would pronounce it.

18 A. The first time that I heard it
19 pronounced was when I took the depositions of
20 a couple of individuals that were with your
21 client. They were pronouncing it a certain
22 way but I had never previous to that thought
23 about how it would be pronounced.

24 Q. Well, the goods on the trademark
25

1 C. BERMAN

2 application are listed as custom automobile --
3 excuse me -- custom automotive, accessories
4 namely, fitted car cover covers, shift knobs,
5 brake pads, and wheels for land vehicles,
6 license plate holders and spoilers for
7 vehicles; is that correct?

8 A. I believe that that is what is
9 listed under that category with the Trademark
10 Office. Again, you're an attorney. I'm not.

11 Q. Um-hum.

12 A. But that's where that description
13 comes from is what's listed in that category.

14 Q. Okay. And when did you decide to
15 sell or to look into selling those items?

16 A. I don't understand the question.

17 Q. One day you decided to sell brake
18 pads, fitted car covers -- the items listed
19 here. One day you decided to go into that
20 business. Is that correct?

21 A. If I received permission from the
22 United States Patent and Trademark Office to
23 have the rights to utilize my trademark for
24 these products, I will go into that business.
25 But I took the first step.

1 C. BERMAN

2 Q. Okay. But I was actually speaking
3 not about the name. I was speaking about just
4 the products. In other words, did there come
5 a time that you decided to sell custom
6 automobile accessories, namely just --

7 A. When did I decide to --

8 Q. Correct.

9 A. In the late '90s when I first
10 started with Rio Trading when we were selling
11 automobile products, when I first decided I
12 wanted to sell automobile products.

13 Q. And what is the meaning of -- you
14 can look at this because I have others --
15 custom auto accessories?

16 A. An automobile accessory that's
17 from a manufacturer is specific -- it's from
18 that manufacturer. It's not custom because
19 it's -- everybody that has the Honda Accord
20 that buys the Honda accessory can all have
21 that same Honda accessory for that vehicle.

22 A custom automobile accessory is a
23 product that, while it is made to fit that
24 specific vehicle, it is not produced and
25 distributed by the vehicle's manufacturer.

1 C. BERMAN

2 Q. So is it customized per individual
3 or it's just custom, not a very large amount
4 of it is made? In other words, is it custom
5 per order?

6 A. Custom automobile accessories is a
7 whole industry unto itself, a multi-billion
8 dollar industry. There are times when you
9 could have large quantities that can still be
10 considered custom and then there are times
11 when you will have very limited quantities
12 that are considered custom automobile
13 accessories.

14 Q. And the date of filing of this
15 application -- I'm reading from the
16 printout -- is October 30th, 2003. And I know
17 you're not an attorney. And so I'm just going
18 to ask you and if you don't know the answer,
19 that's fine, because it does seem to say that
20 you had an attorney that helped you file the
21 application. A person that's listed here is
22 Evelyn McConaughy -- McConathy. And -- which
23 may mean that she helped you file this. But,
24 in any event, this is a filing under 1B which
25 means that as of the date of the filing,

1 C. BERMAN

2 October 30th, 2003, you, as of that date,
3 determined that you would like to use that
4 name on those products.

5 Is that correct? Is that
6 something that occurred at approximately that
7 time in October 30th of 2003 that you
8 determined you wanted to do this?

9 A. There was nothing in my Notice of
10 Deposition that asked me to bring any
11 documents or records. And I did not bring
12 anything. So to refer back to specific dates
13 and things, I'm at a loss to do so.

14 Q. No, no. And that's fine. I'm
15 just saying do you recall anything about your
16 life at the time when you decided this is
17 something I want to do. I want to do this now
18 as opposed to in '99, let's say, or just in
19 general. How did the idea to do these
20 products come about?

21 A. I had a lot of ideas prior to this
22 and I've had a lot of ideas after this. And I
23 will continue to have many other ideas.

24 Q. I can tell.

25 But this specific idea in 2003 or

1 C. BERMAN

2 **October approximately, as it says here, and**
3 **I'm not asking you to recall exactly, but did**
4 **you at the time, say, research the market for**
5 **spoilers or for fitted car covers or -- in**
6 **other words, how did it evolve is basically**
7 **what I'm asking.**

8 Ideas generally -- people have a
9 lot of ideas but they don't go anywhere
10 because they forget them and they don't do
11 anything with them and they don't market them.
12 But you went further and, you know, put in a
13 trademark application. So I'm just looking
14 for the background of the idea.

15 A. When I'm not sitting in an office
16 like this taking a deposition with you I'm
17 in -- I'm usually in a car dealership
18 somewhere, someplace in a car dealership with
19 people that are in the car business. So a lot
20 of ideas come about that have to do with the
21 car business every day of my life.

22 **Q. And anything specific to the --**
23 **these accessories?**

24 A. These accessories would be New
25 York City accessories. It was for accessories

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 to be sold on e-commerce through the Internet.
3 You know, electronic commerce was the whole
4 purpose of this was -- is what the E in front
5 of and behind the New York City is about.

6 **Q. And what is it about these**
7 **accessories and New York City that go**
8 **together?**

9 A. Well, it wasn't supposed to be
10 limited to New York City.

11 **Q. No, I understand.**

12 A. This was the first one. And if
13 this were to be successful the business model
14 or the thought process, let's say that because
15 it never really became a business model, was
16 to look at Los Angeles and Detroit and other
17 cities that -- you know, these cities are
18 large enough, certainly New York City being
19 the largest, the population base that focus on
20 products for New York City is very, very
21 feasible. It's something that could be very
22 successful or maybe it wouldn't be very
23 successful. But it's certainly a business
24 that -- go ahead.

25 **Q. Would it be on-line or in I guess**

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 **brick and mortar dealers or -- we call them,**
3 **as opposed to on-line, brick and mortar.**

4 A. The first process of putting out a
5 branded product that I have learned through
6 reading and what have you is to receive a
7 trademark. Or if it's a patent, receive a
8 patent. Whatever it may be. And receive some
9 sort of protection before you invest money
10 into developing the product. And the rest of
11 the business concept has not been developed
12 yet. And will not be till I completely win
13 this matter in the United States Patent and
14 Trademark Office.

15 **Q. Right. But you do seem to have**
16 **some sort of idea about the New York City**
17 **thing. So some of it you have thought about.**

18 A. Thought about it. Then I've
19 changed my mind. And then I've thought about
20 something else. And the Internet has changed
21 over the years. And a lot of people have
22 high-speed Internet connections. And yet
23 there's a lot of stores that do very well,
24 too, so who knows.

25 **Q. And are these custom car**

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 **accessories packages popular out there?**

3 A. The Specialty Equipment
4 Manufacturers Association which is known as
5 SEMA, the last time I looked which was a few
6 years ago, I believe that they had annual
7 sales of \$4 billion. Something to that
8 effect. So the industry is out there. That's
9 in the United States. And, again, I don't
10 have the exact figures but that's -- there's
11 an industry, yes.

12 **Q. And why did you think this would**
13 **be a good name for these custom automotive**
14 **products?**

15 A. Why. I don't know. I don't even
16 know how to answer that question.

17 **Q. Well, there came a time that you**
18 **came up with the name. I assume when you did**
19 **that you liked the one you picked. In other**
20 **words, why did you like it? Why did you think**
21 **it was a good name? Or why did you pick it?**
22 **Did you have others you were going to pick?**
23 **Or, you know, I'm just again going through the**
24 **process.**

25 A. Yes. There are others that were

TSG Reporting - Worldwide 877-702-9580

C. BERMAN

planned as a part of this whole sequence. There were supposed to be other cities with the E on each side of the city. E Philly, you know. ELAE. You know, it was supposed to be -- the whole concept here was to do electronic commerce with the different cities associated with it. Any name can be successful if the product's right and if it's promoted right.

Q. So I guess then going back that's how you conceived of the name is you came up with the Es on the side of NYC; is that what you're saying?

A. Yes.

Q. And when you did that, do you recall how you got that idea? Just was it walking down the street or in the middle of the night or in the shower or -- it's hard to sometimes explain intellectual property that's ideas.

A. I didn't think it was that big of a deal. It didn't seem that it was that big of a deal and never did I think I was going to be faced with this opposition. So it wasn't

TSG Reporting - Worldwide 877-702-9580

C. BERMAN

one of my -- I didn't think it was one of my best thoughts if you really want to know.

Q. Well, did you pay this Evelyn McConathy to file the trademark application for you?

A. A little bit, yes.

Q. So it was somewhat of an idea that then cost you some money.

A. It wasn't worth keeping her on to fight this litigation, was it?

Q. I don't know. I don't know her.

A. That's why I represent myself.

Q. But the idea -- again, it stuck. It went forward and you filed something. So I was wondering, again, if that, therefore -- you know, you how it came to you or how you picked it was anything you could recall.

A. You see NYC all the time. You see it on everything. You see it on -- you know, it's all over the place. It's in your face constantly. So I have been in automobile products and in the electronic commerce business utilizing the Internet. It's ENYCE. That's what it is.

TSG Reporting - Worldwide 877-702-9580

C. BERMAN

Q. Did you consider any other names?

A. Yes.

Q. And do you remember any of them?

A. Yes. I told you those names over and over again. Different cities with E surrounding it. And that will be something that I would look into continuing to do after this is launched and if this is successful. That would be something that I'd be -- I'd think about doing anyway.

Q. Do you attend any car shows in connection with your business?

A. Well, there are conventions associated with the car business. But they're not like your typical car show that you're thinking about going to at the Javitz Center if that's what you were referring to.

Q. That's what I was referring to. You don't, let's say, go to the New York Auto Show.

A. I've already seen the vehicles before they show up there.

Q. So you go to car conventions.

Like a clothing convention except it's for

TSG Reporting - Worldwide 877-702-9580

C. BERMAN

cars.

A. NADA, National Automobile Dealers Association.

Q. And are there any other conventions, car conventions, that you go to?

A. On a regular basis, no.

Q. And when was the last time you went to a convention that was given by NADA?

A. It was either the end of February -- end of February or early January of this year. I think it was the first week of February this year.

Q. And where was that held?

A. Orlando.

Q. And was any custom car accessories shown at the -- did the convention have a name?

A. NADA.

Q. Convention.

A. National Automobile Dealers Association.

Q. Convention.

A. I guess. Convention.

Q. Were any custom car accessories

TSG Reporting - Worldwide 877-702-9580

C. BERMAN

shown there?

A. Yes. That's not the focus of the show but -- it's the automobile business as a whole.

Q. Do you attend any trade shows where car accessories is the focus of the show?

A. I have.

Q. And what -- can you name any of those?

A. SEMA, Specialty Equipment Manufacturers Association.

Q. And they have conventions, too.

A. Yes.

Q. And when was the last time you were at one of those conventions?

A. It was a few years ago.

Q. And as -- are you member of SEMA?

A. Not currently.

Q. Are you a member of the NADA?

A. Yes.

Q. Do they have publications and -- that they send their members routinely?

A. Every day I get an e-mail.

C. BERMAN

Q. And in addition to e-mails, do you get publications?

A. Not on a regular basis but they do have mailings they do.

Q. Do you -- are you familiar with any custom car accessory on-line sites?

A. I've seen some. I'm not particularly familiar with any. Why?

Q. Well, could you name any of them?

A. Tire Rack.

Q. Tire Rack?

A. Tire Rack.com.

Q. Well, because you also had the business of Custom Auto.com I wondered if you also looked at other people's --

A. Custom Auto.com was a victim of the dot com era.

Q. But other than the fact that it -- did you look at other sites to see what other people had and were doing?

A. So I should get sick that I don't have it? Is that why?

Q. What's a spoiler?

A. A spoiler can go on the front or

C. BERMAN

the rear of the car. It originally was to deflect the air in certain ways to make the car go faster. It's since, you know, become more of a decoration on car. Some spoilers are actually functional.

Q. And have you been -- excuse me. Are you familiar with these, let's say, custom car rims?

A. Certainly.

Q. And the sale of these custom rims, is that a large business?

A. Yes.

Q. And how is that done? Do people go to after-marketplace and buy a rim out of a catalogue? Or do they select it on-line? Or how does that business work?

A. Yes and yes and yes.

Q. And are there smaller trade shows or car shows that would be for custom rims or custom -- I don't know what -- real cosmetic -- more cosmetic accessories I would think they're more dressing up a car as opposed to a spoiler or -- you say though a spoiler now is decorative.

C. BERMAN

Is it a separate thing, the decorative car custom accessories?

A. There may be smaller shows but that SEMA shows is where everybody goes for the custom accessories.

Q. Decorative or functional.

A. Um-hum, yes.

Q. Because in here it would say a fitted car cover which obviously has a function of covering your car. But I guess it could be nice looking. But the rims to me are totally cosmetic.

A. A car cover could also be like a bra. There's a car bra that goes on the front of a car that is decorative and not really functional.

Q. I thought they blocked bugs.

A. They do. But the primary function most people use them for is decorative.

Q. But certainly the rims are decorative. I don't know that they have a function. Do you know they have --

A. Is there a question?

Q. Do you think they have a function?

1 C. BERMAN

2 A. Well, you need to have a rim --
3 you need to have a wheel that functions to
4 drive your car.

5 Q. Right.

6 A. While you may not need to change
7 your wheel for -- the wheel still has to
8 function.

9 Q. When you filed for the trademark
10 that was referred to in Exhibit C, did you
11 perform a trademark search?

12 A. I personally did not. I had the
13 services of an attorney at the time.

14 Q. Do you recall if she charged you
15 for performing a trademark search?

16 A. I do not recall whether she
17 charged me for performing a trademark search.
18 However, I will tell you that she is a very
19 competent attorney and she specializes in
20 patents and trademarks for a very large firm.
21 And I would be very surprised if she didn't
22 follow the proper protocol.

23 Q. And do you recall ever seeing the
24 trademark search?

25 A. Again, I was not asked to bring

1 C. BERMAN

2 anything with me to this deposition or to
3 review any previous documents prior to coming
4 to this deposition. And I have not done so.

5 Q. Well, I think that it may have
6 been requested in your document requests and I
7 don't believe that you stated that you were
8 aware of there being one.

9 A. Then at that time I must have done
10 the search prior to answering that. If that's
11 the case prior to answering any of those --

12 Q. You can review them again if you
13 want.

14 A. No. But currently now you asked
15 me a question.

16 Q. Right.

17 A. That may have been answered a year
18 ago. I don't know what the date on that is.

19 Q. Would you look and check your
20 records if you have the trademark search?

21 A. If you make a formal discovery
22 request it will be considered.

23 Q. Well, I can ask at a deposition
24 for something that comes up and ask you
25 informally if you would --

1 C. BERMAN

2 A. I have documents and things I have
3 asked for since last March that I have not
4 received.

5 Q. Okay. I believe we have already
6 requested it.

7 Other than the trademark in
8 Exhibit C, did you file any other trademarks
9 for these products?

10 A. I don't know whether different
11 things got to actual filing stages or not. I
12 have had a lot of ideas associated with car
13 products. And I don't recall whether some of
14 the other things became actual applications or
15 not. You probably have that right there and
16 you're probably going to pull it out and tell
17 me so...

18 Q. Well, other than whether your
19 ideas become actual filings, do you remember
20 requesting an attorney to file any other
21 trademarks for these type of products?

22 A. Not within the last year or two.
23 I've been waiting for this matter to get
24 resolved. However, I may have prior to that.

25 Q. How about three years ago?

1 C. BERMAN

2 I'll show you an abandoned
3 application to register the mark Mecca,
4 M-E-C-C-A, for the same products in the other
5 application. This is custom automotive
6 accessories, namely, fitted car covers, shift
7 knobs, brake pads, wheels for land vehicles,
8 license plate holders and spoilers for
9 vehicles.

10 You can look at that and let me
11 know if that Cary Berman there is you and
12 whether you now recall that you filed this
13 application?

14 A. Mecca is another city name. That
15 is me, yes.

16 Q. Okay.

17 A. And Mecca is another name of
18 another city. I'm sure you know that Mecca is
19 a town in -- you know, that the Moslems have
20 their pilgrimage to Mecca. I'm sure you're
21 probably aware of that. It's a very large
22 city.

23 Okay. But, yes, Mecca is another
24 city name. I don't recall that it actually
25 got to the point that there was an

1 C. BERMAN
 2 application. But I do know that nothing is
 3 pending with respect to that.
 4 MS. COHEN: Could you mark this as
 5 Exhibit Opposer's D.
 6 (Opposer's Exhibit D, trademark
 7 application, marked for identification as
 8 of this date.)
 9 BY MS. COHEN:
 10 Q. And I notice that the Mecca name
 11 was applied for about August, September,
 12 October -- three months before the next
 13 trademark, the ENYCE trademark.
 14 So I wondered if -- you know, how
 15 the two -- I guess you stated already.
 16 They're both city names. So you thought of
 17 both of them.
 18 A. Yes.
 19 Q. Do you know that they're also both
 20 brand names for clothing?
 21 A. Well, I'm aware that your client
 22 has the ENYCE name now that this litigation
 23 has been going on. Your client has made me
 24 aware of -- or the previous counsel for your
 25 client and as well as yourself have made me

1 C. BERMAN
 2 aware of the business that goes on with ENYCE
 3 in clothing that I was not previously aware
 4 of.
 5 Q. And are you aware that Mecca is a
 6 clothing brand, a men's clothing brand?
 7 A. That Mecca is a clothing brand?
 8 No, I'm not aware of Mecca being a clothing
 9 brand.
 10 Q. You never heard of Sean John?
 11 A. Is Sean John a singer or something
 12 like that? Isn't he a rapper or something
 13 like that?
 14 Q. I'm not sure but I think he has a
 15 line of clothing. You're not familiar with
 16 that?
 17 A. I must travel in different
 18 circles. I know Ralph Lauren. I know Liz
 19 Claiborne, the name of your company.
 20 Q. Did you ever hear of Phat Farm as
 21 being a clothing brand?
 22 A. No.
 23 Q. You never heard of Phat Farm.
 24 A. I never heard of Phat Farm.
 25 Q. Ever heard of Fila?

1 C. BERMAN
 2 A. Yes, I have heard of Fila.
 3 Q. Did you ever hear of Lugz?
 4 A. Never heard of Lugz.
 5 Q. Did you ever hear of Funk Master
 6 Flex?
 7 A. Can I be laughing on the --
 8 THE WITNESS: Is it okay if you
 9 take note of the fact that I'm laughing?
 10 THE COURT REPORTER: You just did.
 11 THE WITNESS: Okay.
 12 A. No.
 13 Q. Did you ever note that Funk Master
 14 Flex's business is custom car accessories?
 15 A. As I mentioned to you before, it's
 16 been a few years since I've been to one of
 17 these custom automobile product trade shows,
 18 so perhaps that's why I've never heard of him.
 19 Q. Did you ever hear of Vans?
 20 A. I've seen sneakers that are Vans.
 21 I think my daughter had a pair of Vans. So,
 22 yes, that's something that I -- I think that's
 23 what they're called. I'm pretty sure I've
 24 heard of Vans.
 25 Q. Did you ever hear of Rocawear?

1 C. BERMAN
 2 A. You know, that kind of rings a
 3 bell. I don't know why.
 4 Q. Ever here of Fubu?
 5 A. Yes, I have heard of Fubu.
 6 Q. But you never heard of Mecca as a
 7 car -- as a clothing company.
 8 A. Is that a question? Previously
 9 you asked me about Mecca at the time I filed
 10 for the patent. Now you're saying have I
 11 heard of it since --
 12 Q. Ever. Yeah, yeah, yeah.
 13 A. Yeah, I've heard of it since. I
 14 mean filed for the trademark. Excuse me.
 15 Q. Right. Not patent.
 16 A. Yeah.
 17 Q. And when was that?
 18 A. I don't recall.
 19 Q. You had heard of the Mecca
 20 clothing before you filed the application or
 21 after, do you recall?
 22 A. I don't know. You guys are
 23 confusing me with all these dates and things.
 24 I don't know.
 25 Q. And my client's brand, ENYCE,

1 C. BERMAN

2 which is spelled exactly as your trademark
3 application, you've never heard of that brand.

4 A. I'm very familiar with it now.
5 Since this litigation.

6 Q. Prior to this action being filed.

7 A. Not prior to this action being
8 filed.

9 Q. So after the action was filed you
10 learned that there was a clothing company with
11 the same name; is that correct?

12 A. Due to all the information that
13 was provided by the previous attorney for your
14 client.

15 Q. Well, did you ever go to the store
16 and look at it?

17 A. No. But I stood on street corners
18 in Philadelphia and New York and informally
19 asked dozens and dozens of people if they ever
20 heard of it and nobody ever heard of it.

21 Q. How did you pronounce it?

22 A. I held it up. I wrote it out and
23 held it up on a piece of paper. Not a single
24 person ever heard of it.

25 Q. Do you have that piece of paper?

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 A. No. But I could recreate it for
3 you very, very easily. A white piece of paper
4 with ENYCE on it.

5 Q. Well, you said to me that you have
6 since learned or heard of Mecca. How did it
7 happen that you since learned of that brand?

8 A. Mecca was -- the idea behind Mecca
9 was the same idea behind New York City. But
10 Mecca, with all of the backlash with the Arab
11 community in the United States became a
12 start-and-stop thought process very quickly
13 because it is the pilgrimage for the Islamic
14 people to -- in their -- in the Moslem
15 religion that one of the things they're
16 supposed to do in their life is go to Mecca
17 and that is the whole thing behind Mecca.

18 And, you know, our country is
19 not -- I don't think the place to market a
20 product with a trademark associated with the
21 Arab community. At least not at this time.

22 So it didn't really become
23 something that I was very concerned with for
24 very long.

25 Q. But after you filed the

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 application you did become aware that it was
3 also a clothing brand.

4 A. At some point. But, again, I
5 don't see the relevance because it didn't have
6 any -- there was no continued desire to
7 associate myself with anything with that name.

8 Q. Did you ever hear of the movie
9 Pimp My Car?

10 Is that the name of it?

11 MR. DOYLE: TV show.

12 Q. TV show.

13 MR. DOYLE: Pimp My Ride.

14 Q. Pimp My Ride.

15 Did you ever hear of that?

16 A. Yes.

17 Q. And would you agree that has a lot
18 in it about accessorizing one's car?

19 A. I never watched it for more than
20 two seconds. My daughters have had it on and
21 I've passed by when they've had it on so I'm
22 aware the show exists but I never took the
23 time to watch it.

24 Q. Well, are you familiar with the
25 hip-hop car accessorizing trend at all?

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 A. The hip-hop. I was at a car
3 dealer yesterday where a guy was buying a
4 pickup truck and was going to put on his
5 22-inch rims and this was in Kingston, New
6 York. And the guy was anything but hip-hop.

7 So, I mean, there are the trend of
8 wanting to do things to your car. I think the
9 only thing that the trend is associated with
10 is perhaps a younger person and perhaps maybe
11 more a male person.

12 But I don't think there's anything
13 that has to do with any other aspect of life.
14 I see it all over the place.

15 Q. But there is -- part of that
16 demographic would be young urban black
17 individuals?

18 A. I would -- my experience doesn't
19 say that. I was at Mercedes Benz of
20 Huntington, Long Island last week when a
21 doctor that happened to be -- I don't know how
22 to say this -- white, he certainly wasn't
23 African American, he was a white doctor, maybe
24 in his forties and he was telling the guy he
25 wanted these big rims on his car. I haven't

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 seen that. It may be the case but I haven't
3 seen it. At least not in my travels.

4 **Q. Well, you had stated that you were**
5 **familiar with Ralph Lauren and those kind of**
6 **things. Are you familiar with the fact that**
7 **certain car interiors are -- upholstery use**
8 **clothing brands and their logos to upholster**
9 **cars?**

10 A. I've seen Eddie Bauer. I've seen
11 Harley Davidson. Recently those are the only
12 two that I've noticed. Years ago there was
13 all kinds of things. There was Gucci at one
14 point did something with a car. I don't know
15 if those names are associated with any
16 particular type of individual. I would think
17 not.

18 **Q. So then you are familiar with**
19 **clothing manufacturers being associated with**
20 **cars.**

21 A. Only to the extent that I just
22 referred to which I would think is extremely
23 nominal.

24 **Q. Well, have you ever heard of the**
25 **L. L. Bean Subaru Forester edition?**

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 A. No. And I deal with quite a few
3 Subaru dealerships and I've never heard of
4 that.

5 **Q. Well, I'll show you a printout --**

6 A. You don't have to. I believe you.
7 And I would say that I would pick
8 up the phone and I could call ten different
9 Subaru dealers and nine of them probably never
10 heard of that.

11 MS. COHEN: Well, since we've
12 discussed it I'm going to mark the
13 printout of the 2006 Subaru Forester, L.
14 L. Bean edition for the record as Exhibit
15 E.

16 (Opposer's Exhibit E, Subaru
17 Forester marketing document, marked for
18 identification as of this date.)

19 BY MS. COHEN:

20 **Q. And you did mention the Eddie**
21 **Bauer edition. Would that be of the Ford**
22 **Expedition, do you know?**

23 A. Yes. But you being more familiar
24 with clothing these days than I am, is Eddie
25 Bauer a clothing company? I thought it was

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 all that hiking stuff. Is that clothing,
3 Eddie Bauer? I refer to it as a brand name.
4 But I don't know that I would think of Eddie
5 Bauer as a clothing company. Maybe I'm wrong.

6 **Q. Well, what do you hike in?**

7 A. I guess. Okay.

8 **Q. You wear shoes and clothes, right?**
9 **Not much more to hiking stuff. Yes?**

10 A. I don't know. I think of
11 backpacks and I think of things associated --
12 you know, other hiking things when I think of
13 Eddie Bauer. And perhaps that's why it's used
14 in a truck.

15 **Q. But before you stated you're**
16 **familiar with clothing companies being**
17 **involved in car activities.**

18 A. Well, I said Harley Davidson when
19 I answered that question. I don't know that
20 the question had to do specifically with
21 clothing companies. I would have answered it
22 that way.

23 **Q. How about Coach? Have you ever**
24 **heard of a Coach interior of a Lexus?**

25 A. No.

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 **Q. Have you ever been to a Lexus**
3 **dealership?**

4 A. I drive a Lexus. I'm going to
5 leave here today and go to Lexus of Manhattan.

6 **Q. Well, this stated that they have**
7 **been -- this article which I'm looking at in**
8 **my hand about the partnership to produce the**
9 **Coach edition of the ES 300 is dated January**
10 **4th, 2001.**

11 A. But, again, isn't Coach handbags
12 and things like that? Coach, is that
13 clothing?

14 **Q. Well --**

15 A. I think that -- I would think that
16 Coach leather is probably the idea behind
17 that. That you have a nice leather product
18 associated with the leather of a car. Just my
19 thinking there.

20 MS. COHEN: I'm going to mark this
21 article about Coach and Lexus.

22 (Opposer's Exhibit F,
23 theautochannel.com web page printout,
24 marked for identification as of this
25 date.)

TSG Reporting - Worldwide 877-702-9580

C. BERMAN

BY MS. COHEN:

Q. Have you ever heard of Dub magazine?

A. No. Let me back up a second. There were some magazines that I looked at prior to taking the depositions of the two individuals. I don't recall the names of those magazines. But that I did have with me to ask questions of the two individuals when I took their depositions last year. So I don't know the -- I don't recall the names of those magazines but I have not picked up those magazines before and have not since. So I don't know if one of them was Dub.

Q. But you never heard of it other than that.

A. Correct.

Q. Did you ever hear of Academics as a clothing company?

A. No.

Q. Ecko, E-C-K-O?

A. For some reason that rings a bell. I don't really know why. But it does.

Q. And One?

TSG Reporting - Worldwide 877-702-9580

C. BERMAN

A. Yes. And One is -- I believe Alan Iverson wears And One.

Q. Did you ever hear of car dealers or car companies which have clothing they sell in their dealership?

A. Very limited, but, yes.

Q. Such as Mercedes Benz jackets or -- well, you can tell me what you've seen.

A. Well, like a short-sleeve shirt that has a Porsche symbol on it.

Q. Anything else?

A. Not that I recall specifically but I have seen things in car dealerships that have the car brand name on other articles, whether they be key chains or license plates or clothing of some sort.

Q. And certainly you would have heard of racing gloves, car racing gloves.

A. Of course I've heard of car racing gloves.

Q. And how about driving shoes?

A. I'm aware that they exist.

Q. And are you aware that clothing companies make such products?

TSG Reporting - Worldwide 877-702-9580

C. BERMAN

A. Not specifically but it doesn't surprise me.

Q. So it wouldn't surprise you that Puma would make shoes, bags, gloves, underwear and racing suits and racing gloves?

A. Again, Puma, to me, I think of a sneaker. Not of clothing. And I may be wrong but that's what comes to mind when I think of that brand. So when you say that's a clothing company it very well may be but I think of it as a sneaker company.

Q. And I'll show you this printout from the Puma website discussing these products just for your information.

A. I believe you. It's okay.

MS. COHEN: I'm going to mark this as Opposer's Exhibit G.

(Opposer's Exhibit G, Puma web page printout, marked for identification as of this date.)

BY MS. COHEN:

Q. Are you familiar with clothing companies which sponsor NASCAR cars or teams?

A. I am not a fan of NASCAR so I do

TSG Reporting - Worldwide 877-702-9580

C. BERMAN

not follow it.

Q. Are you a fan of motorcycles?

A. Not currently.

Q. Were you aware that Vans had sponsored a motorcross team?

A. No.

Q. But it doesn't surprise you that Vans would have sponsored a motorcycle or a motorcross team.

A. Can we go off the record a second? (Discussion held off the record.)

Q. It doesn't surprise you that Vans would sponsor a motorcycle team?

A. I have no knowledge of it at all.

Q. I'll show you an article where it shows Vans sponsoring a motorcycle team.

A. I believe you.

MS. COHEN: I'll have this marked for the record as Opposer's H.

(Opposer's Exhibit H, EXPN web page printout, marked for identification as of this date.)

Q. Did you ever hear of P. Diddy?

A. Yeah, I have heard of -- yes, I

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 have heard of P. Diddy. Isn't he an actor?

3 **Q. No. I think he's the same singer**
4 **that previously I referred to as Sean John. I**
5 **think that's the name of his clothing.**

6 **There's an article here about Sean**
7 **P. Diddy venturing into custom car rims. The**
8 **hip-hop clothing entrepreneur going into car**
9 **rims.**

10 A. I thought he was an actor.

11 **Q. He may also act.**

12 MS. COHEN: Does he?

13 A. It says right on here that he's an
14 actor.

15 **Q. Ah. But are you aware that he**
16 **also is involved in the custom rim business?**

17 A. I am now that you're showing me
18 this article. I was not aware of this prior
19 to you showing me this. Assuming that this
20 article is correct.

21 **Q. Well, had you ever seen any custom**
22 **rims that were associated brands of any sort,**
23 **of brand name products, like Coach or Puma,**
24 **whether they be shoes or, as you said, bags,**
25 **or brand name companies being associated with**

TSG Reporting - Worldwide

877-702-9580

1 C. BERMAN

2 **this rim business?**

3 A. No. The rim business generally
4 has its own type of brand names. Which is why
5 I felt I could create a name and promote it
6 properly in that field. E-N-K-E, Enke is a
7 big brand in rims. American Racing is a big
8 brand in rims. Ultra Wheel. I mean,
9 there's -- and I don't know that I've seen
10 those names necessarily on other things, you
11 know. But that's -- those are some of the big
12 names of rims.

13 **Q. But in car upholstery you've seen**
14 **the names that we were speaking of before,**
15 **meaning the Coach and the Eddie Bauer. Brand**
16 **names, being used in car accessories.**

17 A. No. I referred to the fact that
18 there were some original manufacturer editions
19 of vehicles. They were not accessories. They
20 were versions of vehicles that I was aware of
21 that were Harley Davidson versions of -- I
22 think it's a Ford vehicle, I think it's a Ford
23 F150 or 250 and an Eddie Bauer vehicle or
24 something. But that's not accessories that
25 I'm aware of.

TSG Reporting - Worldwide

877-702-9580

1 C. BERMAN

2 **Q. So you're not aware of car**
3 **accessories that have brand names? We just**
4 **went through a number of them.**

5 A. The only thing that really applied
6 to that was the last thing that you showed me
7 where some actor is putting his name on rims.
8 That's the only one that looked like it really
9 applied. You showed me original equipment
10 situations. As I mentioned to you before,
11 custom, after-market automobile accessories
12 are not the same as original equipment
13 products.

14 MS. COHEN: I'm going to mark this
15 article with the P. Diddy custom
16 automobile rims article from MSN.

17 (Opposer's Exhibit I, MSN article,
18 marked for identification as of this
19 date.)

20 BY MS. COHEN:

21 **Q. Did you ever hear of bling-bling?**

22 A. I've heard of bling. I don't know
23 that I've ever heard of bling-bling.

24 **Q. Well, this article states, "In the**
25 **urban market they call it 'bling-bling' which**

TSG Reporting - Worldwide

877-702-9580

1 C. BERMAN

2 **means showy, shiny and 'Look at me.' 'The way**
3 **we've developed spokes, holes, the features,**
4 **it looks like it is aggressively moving even**
5 **when it's not moving.' Look for Sean John**
6 **wheels at your favorite high-end auto**
7 **accessory retailer. These wheels are expected**
8 **to retail from 700 to \$3,000 each. Wheels**
9 **have become a fashion statement, a badge of**
10 **taste and style, says Puffy."**

11 A. I have an objection.

12 **Q. Yes.**

13 A. I object to you reading from an
14 article from a third party and giving it any
15 sort of validity.

16 **Q. I'm not. That's why I was going**
17 **to ask you if you believed that rims can sell**
18 **for 700 to \$3,000. Is that even -- is that**
19 **what they run?**

20 A. Sounds high to me.

21 **Q. Are these wheels a part of a**
22 **fashion statement when people -- is that why**
23 **people buy them?**

24 A. The design of the after-market
25 wheel is very important to the successful sale

TSG Reporting - Worldwide

877-702-9580

1 C. BERMAN

2 of the after-market wheel.

3 **Q. And would you say that these**
4 **designs are shiny and a badge of style for**
5 **these people who buy them? They buy them**
6 **to -- to I guess make their car look special**
7 **and -- is that correct?**

8 A. There are parts to what you said
9 that may be correct and parts to what you said
10 that may not be correct.

11 **Q. I'll show you a printout from**
12 **Automotive Rhythms.com again talking about the**
13 **Sean John rims spinning in fashion, which I am**
14 **reading from. And I guess I'm just asking do**
15 **you think that it's -- part of the rim culture**
16 **is the fashion and style aspect?**

17 A. I have no knowledge to comment on
18 that. No specific knowledge.

19 **Q. What would a custom license plate**
20 **entail? On your list of products you speak of**
21 **custom license plates. Is that a license**
22 **plate holder?**

23 A. Generally. Or in certain states
24 you don't have the need for the license plate
25 in the front of the car so you could actually

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 have a license plate in the front of the car
3 that's decorative.

4 **Q. So they are decorative.**

5 A. They're decorative.

6 **Q. So what kind of decorations would**
7 **they have?**

8 A. Well, I don't know when the last
9 time you went into, let's say, a Pep Boys or
10 something was or an R&S Strauss but you'll see
11 license plates that have sayings on them.
12 You'll see license plates that have Donald
13 Duck on them. You'll see license plates that
14 have your NASCAR stuff on them like you were
15 referring to before. That's what a license
16 plate holder or an actual license plate would
17 actually be.

18 **Q. So they don't have filigree or**
19 **carvings in them. They're not themselves**
20 **pretty? Or they have names on them?**

21 A. Well, they're generally going to
22 come out of some sort of a mold, whether
23 they're metal or plastic. So they're going
24 to -- I wouldn't say carvings but they're
25 going to have characteristics -- or they can

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 have characterizations, they don't have to.
3 It's a frame that has four places to put
4 screws into it to hold the license plate. Or
5 if it's the actual plate it's the size of a
6 license plate and it has things on it. It's
7 not -- you know, it's not that complicated.

8 **Q. Have you ever seen in a Pep Boys**
9 **or a -- what was the other one?**

10 MR. DOYLE: Strauss.

11 **Q. -- Strauss store any products of**
12 **clothing brands and -- in a Strauss or a Pep**
13 **Boys?**

14 A. You know, again, I've seen shirts
15 that have Donald Duck on them. And I've seen
16 license plates that have Donald Duck on them.
17 I don't know that I would say that the Donald
18 Duck license plate is -- stems from a clothing
19 company. I don't think that I would say that.
20 But -- you know, specifically a clothing
21 company, a name on a license plate holder I
22 have not seen.

23 **Q. Or anywhere in the entire Pep Boys**
24 **store. On any product.**

25 A. Not that I'm aware of.

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 **Q. What made you think of putting a**
3 **trademark or a brand on these accessories? Do**
4 **they normally have names? Or are they just**
5 **rims?**

6 A. To go into the manufacturing
7 process of any one of these categories that
8 are, you know, subcategories of this main
9 category requires molds, requires production
10 runs. And if that's going to occur there's a
11 sizable investment associated with that. And
12 that investment needs protection. So if
13 something's going to go out into the
14 marketplace and be successful and then
15 somebody else can turn around and just get it
16 from you, that's not doing anybody any good.

17 So that's the purpose for my idea
18 of filing for a trademark.

19 **Q. Have you seen rims and these car**
20 **accessories with brand names on them?**

21 A. Yes. And I mentioned some of
22 those names to you.

23 **Q. And --**

24 A. Like Enke, American Racing. Some
25 of the names that are on some of these

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 products.

3 **Q. Yes. And here they have some**
4 **names in this Sean John article. Apollo,**
5 **Atlas. So I guess they have names.**

6 A. Those two names I'm not familiar
7 with but they may be names. You know, I don't
8 know.

9 MS. COHEN: Can you mark this
10 article from Automotive Rhythms.com.

11 (Opposer's Exhibit J, Automotive
12 Rhythms.com web page printout, marked for
13 identification as of this date.)

14 BY MS. COHEN:

15 **Q. So now that you do know, though,**
16 **that there is a name, a brand of clothing**
17 **which my client owns which is ENYCE, you don't**
18 **think that if that name was put on one of**
19 **these rims that people wouldn't think that it**
20 **came from my client or was licensed by my**
21 **client?**

22 A. I don't think anybody knows your
23 client exists. I stood on street corners in
24 some of the largest cities in the country and
25 nobody knew -- had never heard of it. The

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 name would need to be promoted and would need
3 to be advertised. It would need to have the
4 wheels with that name on it, with the name on
5 it, would have to have the right look that the
6 customers would want to buy it. It would have
7 to have a process associated with it to be
8 successful. I don't think it would have any
9 affiliation with your client at all. I don't
10 think your client has any -- has anything to
11 do with this. That's what I've never
12 understood since I first received the
13 opposition.

14 **Q. Well, if one of the rims was named**
15 **Vans, do you think people would think that**
16 **they came -- or were licensed by Vans?**

17 A. No. I don't think people would
18 think it had anything to do with Vans. Vans
19 is cars. Vans is minivans or whatever.

20 **Q. No, I meant --**

21 A. I mean, so, you know, I would see
22 Vans and I would think it was vans on a wheel.
23 And I wouldn't think anything of the kind.

24 **Q. How about Levis?**

25 A. Well, Levis is a name that people

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 know. I mean, Levis is now a brand name that
3 people know. That is a brand name.

4 **Q. So you think that people might**
5 **think that if there was Levy rims that it came**
6 **from Levy, the jean company.**

7 A. I don't know. Maybe not. But at
8 least there's a chance of that. I mean,
9 nobody ever heard of this -- your ENYCE name.
10 I mean, the United States Patent and Trademark
11 Office obviously didn't hear of it either
12 because they approved of it. So I don't think
13 it's a fair comparison.

14 **Q. No one ever heard of it but yet**
15 **you applied for it and another brand in the**
16 **same exact field that it's in, one of its**
17 **biggest competitors, Mecca, and within two**
18 **months of each other you never heard of either**
19 **one of those and just by coincidence you**
20 **applied for both of those names as shown in C**
21 **and D. Is that what you're saying?**

22 A. I applied for OE Conekshünn and I
23 received that name. I invented multiple
24 things, two of which I received patents on. I
25 really -- I feel that it's an insult for you

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 to make a statement like that to me. I don't
3 think it's fair.

4 **Q. How about if someone -- well, I**
5 **didn't make a statement. I'm asking you if**
6 **you're saying it was a coincidence.**

7 A. I have no response to the
8 question.

9 **Q. How about if someone put Fubu on**
10 **rims, do you think people would think it came**
11 **from that company?**

12 A. Fubu would have to promote it in
13 conjunction with their clothing.

14 **Q. Well, you're welcome with licenses**
15 **because you had a license.**

16 A. Yes.

17 **Q. So might people think it was**
18 **licensed by Fubu?**

19 A. If it was promoted with the other
20 Fubu products, if it had the same logo on it,
21 the Fubu logo, if it had some association, if
22 it was on the same website, yes, at that
23 point, you would. But otherwise people might
24 not know what that name was either.

25 **Q. How about if it had Nike on the**

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 rims, would then people think that it was
3 licensed by Nike?

4 A. I don't know. You're getting into
5 a whole different line of questions that I'm
6 not prepared to answer.

7 Q. And what about when you had this
8 Givenchy license; would you believe that
9 someone could without a license sell Givenchy
10 bathing suits?

11 A. Again, you're getting down to a
12 whole line of questions that I don't -- I'm
13 not prepared to answer. I don't even know how
14 to begin to answer these questions.

15 Q. Well, you paid money for the
16 license; is that correct? The Givenchy
17 license?

18 A. Givenchy was a clothing product
19 and the license was for another type of
20 clothing product. And that's what it was for.

21 Q. But you paid for -- you paid money
22 to get the license.

23 A. Yes.

24 Q. And you paid money to them
25 throughout the course of the license.

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 A. Yes.

3 Q. What about Rolex? If you wanted
4 to put out Rolex wheels, do you think you
5 would have to get a license from Rolex?

6 A. Once again, you're going down a
7 whole line of questions that I wasn't prepared
8 to answer.

9 Q. Well, it's just a -- would you
10 think that you would need a license?

11 A. If they had filed -- again, you're
12 going down a whole other line of questions
13 that I don't -- I'm not a lawyer. I don't
14 know how to answer these questions.

15 Q. Would you think consumers would
16 think that they are licensed, the Rolex wheels
17 from Rolex?

18 A. I think if you put a big clock on
19 the side of a building and put the name Rolex
20 on it, I think people would say that clock has
21 something to do with Rolex watches. That's
22 why when you put a swim trunk with the name
23 Givenchy on it somebody thinks it has
24 something to do with the ladies' gowns.

25 But when you say do you put it on

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 a wheel, I don't know how to answer that
3 question. That's a different kind of
4 question.

5 Q. But sitting here today could you
6 say that clothing and automobile accessories
7 are not related to each other due to all the
8 products that we saw today and talked about
9 today?

10 A. I don't think that means a thing.
11 I think that clothing and automobile products
12 are completely separate from each other. They
13 have nothing to do with each other. You may
14 have pulled out a couple of products that may
15 represent, you know, some significant
16 percentage of automobile sales. I would think
17 you would need to do a little homework and see
18 the type of business that's done in original
19 equipment accessories as well as after-market
20 accessories and then come up with a percentage
21 that you're referring to and I would say it's
22 such a minuscule percent, you know, one in
23 every hundred million dollars worth of sales
24 is based on the things that you pulled out
25 there.

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 So, no, I don't think they have
3 anything to do with each other. If you ask
4 the question it has nothing to do with each
5 other at all.

6 Q. A small amount of the custom
7 accessories business has to -- is related to
8 the clothing business, then.

9 A. No. I'd say it's such an
10 insignificant amount that it's not even worth
11 talking about.

12 Q. Have you ever heard of clothing
13 companies sponsoring auto shows?

14 A. No. And I don't understand what
15 that has to do with anything at all.

16 THE WITNESS: And please take note
17 of the fact that I'm laughing again.

18 MS. COHEN: Okay. I'm going to
19 take a break.

20 (Recess taken.)

21 MS. COHEN: Let me just say
22 something. I am going to ask and/or have
23 Mr. Doyle finish this up if that's okay
24 with you.

25 THE WITNESS: Fine.

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN
2 MS. COHEN: Maybe he talks faster
3 than I do.

4 MR. DOYLE: I'll try to be quick.
5 EXAMINATION BY
6 MR. DOYLE:

7 Q. Mr. Berman, when you were with
8 Adolfo, did Adolfo sell watches?

9 A. First of all, it was Adolfo.

10 Q. Okay, thank you.

11 A. And I don't know. I sold the
12 active sportswear. I don't know what they
13 sold.

14 Q. Other than active sportswear what
15 else did the company sell?

16 A. Well, Adolfo was a designer for
17 ladies' -- fancy lady dresses and stuff. And
18 he had -- one of his big clients was Nancy
19 Regan. She wore like his -- I mean, that was
20 what he was famous for.

21 Q. Right. Red in her case.

22 A. Yeah, red. He was a designer for
23 her -- yeah, exactly.

24 And we were doing the active
25 sportswear.

1 C. BERMAN

2 Q. So there was high fashion, women's
3 high fashion. There was active sportswear.
4 What else?

5 A. There was men's suits, I know
6 that. There was men's dress shirts. And
7 there were men's ties. I don't remember what
8 else they had.

9 Q. Belts?

10 A. I don't remember. They may have.
11 I don't remember.

12 Q. Sunglasses?

13 A. It's a long time ago. I don't
14 remember. I remember, though, the ladies
15 gowns and stuff.

16 Q. Was it a well-known brand?

17 A. Yeah.

18 Q. I'm just going to run through the
19 places where you worked briefly. You were
20 with Adolfo right out of college and at the
21 time you were working with Adolfo were you
22 also working with any other companies?

23 A. Well, Adolfo wasn't the name of
24 the corporation. They was a licensee.

25 Q. The corporation was a licensee of

1 C. BERMAN

2 Adolfo?

3 A. Yes.

4 Q. What was the name of the
5 corporation?

6 A. I don't remember. Sorry.

7 Q. During your time with that
8 corporation were you working with any other
9 companies?

10 A. No. Well, I was working for
11 that -- you're talking about when I got out of
12 college?

13 Q. Yes.

14 A. After college.

15 Q. Yes.

16 A. No. I don't think so.

17 Q. For this line of questioning I
18 just want to -- we went through all the places
19 you worked. I just want to make sure that we
20 got them all, that maybe perhaps in some cases
21 you were working for one place and also
22 freelancing with another. I just don't know.

23 So I want to explore that possibility.

24 When you were a partner with
25 Active American Apparel were you involved with

1 C. BERMAN

2 any other company either as an employee or as
3 an owner?

4 A. There were times throughout my
5 career where I did get involved with some
6 other projects. You're referring to a
7 specific time right now where I did start to
8 develop my beach chair invention while I was
9 with Active American Apparel. So for me to be
10 specific about, you know, that, all I did was
11 work for that company. At any given time I'd
12 like to say that almost completely I was -- I
13 always look at doing other things no matter
14 what I'm doing. But I don't ever let it take
15 away from what I'm doing.

16 Q. No, of course not. That's not
17 what I'm trying to imply. But you had a
18 couple irons in the fire often.

19 A. I have nights and I have weekends
20 to perform other tasks.

21 Q. Sure.

22 A. Even if I'm employed full time.

23 Q. No, I'm not trying to imply that
24 you had divided loyalties. I'm only trying to
25 get a full picture of your professional

1 C. BERMAN
2 experience during this time because we sort of
3 went in a linear fashion.
4 So at the same time you were
5 working for Active -- or an owner of Active
6 American Apparel you were also developing the
7 Cary chair; is that right?
8 A. Yes.
9 Q. Any other projects?
10 A. I'm sure there were but I don't
11 recall.
12 Q. Nothing you recall. Any other
13 projects that involved a trademark that you
14 had come up with?
15 A. At that time?
16 Q. Yeah.
17 A. I had a line of sportswear called
18 Cary Brett but I don't think I ever filed for
19 a trademark. I don't recall ever filing for a
20 trademark.
21 Q. Cary Brett Sportswear?
22 A. My middle name is Brett.
23 Q. Okay.
24 A. But I don't recall -- but there
25 may have been other things so I don't -- I

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN
2 don't remember specifically.
3 Q. No, it's not a memory test. I'm
4 just trying to get -- you know, flesh out the
5 picture. Cary Brett Sportswear, what goods --
6 well, was that the trademark, Cary Brett?
7 A. Again, I do not think it ever
8 became a trademark. I don't think we ever
9 tried to make it into a trademark.
10 But I did have a line that I tried
11 for a period of time -- and I don't recall
12 whether it was -- which period it was with any
13 of that. But, I mean, that's something that
14 comes to mind.
15 But there's other things that I
16 did do from time to time.
17 Q. When you say make it into a
18 trademark you mean apply to register it?
19 A. Yes.
20 Q. But did you ever take the Cary
21 Brett words and put them on a piece of
22 clothing and sell that piece of clothing?
23 A. Yes.
24 Q. On a label.
25 A. Yes.

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN
2 Q. And tell me the goods on which you
3 placed the Cary Brett mark.
4 A. I don't remember. I just remember
5 a sign that we had at the door -- it's too
6 far -- too long time ago.
7 Q. What period was it?
8 A. Sometime in the '80s.
9 Q. Did you put it on anything other
10 than textiles?
11 A. No. Other than the sign on the
12 door.
13 Q. Fair enough. I meant as a mark on
14 any products.
15 Next, am I correct that after
16 leaving Active American Apparel you went to
17 Mission Impossible Enterprises?
18 A. I don't know about the next day.
19 But it was the next main thing that I was
20 doing.
21 Q. Can you remember any projects that
22 you undertook between the two?
23 A. I got involved doing a couple
24 commercials.
25 Q. What do you mean by doing

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN
2 commercials?
3 A. I was involved also at one point
4 in a -- actually producing some TV
5 commercials.
6 I also was involved in a book
7 project where we developed -- trying to offer
8 an easy understanding as to employment laws to
9 an individual. We had a book called Know Your
10 Rights At Work.
11 I mean, there have been other
12 things that I have done during my career.
13 Q. Between other employment
14 opportunities.
15 A. Yes, yes.
16 Q. Tell me about the TV commercials.
17 A. One was for this perfume
18 application thing where you'd pull this thing
19 out of a -- pull this thing out of a thing and
20 it had perfume already in it and the girl
21 could put it on herself. Another one was for
22 baseball card holder things. I mean, there
23 were a few commercials.
24 Q. What else?
25 A. I don't remember.

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 **Q. I'm interested. Tell me.**

3 MS. COHEN: Off the record.
4 (Discussion held off the record.)

5 **Q. What other TV commercials?**

6 A. I think that was it with
7 commercials.

8 **Q. Just perfume and --**

9 A. Baseball card holders.

10 **Q. So you did two TV commercials?**

11 A. I think those were the only two I
12 did. I can't remember any others.

13 **Q. Do you have a resume?**

14 A. No.

15 **Q. When was the last time you had a
16 resume?**

17 A. I guess when I was getting the job
18 for US Data in the year 2000 after Custom Auto
19 went out of business.

20 **Q. Do you have a copy of that still?**

21 A. No.

22 **Q. What were the brand names of the
23 perfume product and the baseball card holder?**

24 A. They weren't branded. They were
25 from a plastic manufacturer that was making

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 pieces that were going on my beach chair and
3 he was -- he had molds for these things and he
4 wanted to make commercials to promote these
5 things that he had molds for. That's how --
6 that's why I did the commercials. But they
7 weren't branded.

8 **Q. Tell me about the book project.
9 What was your role in the book project?**

10 A. I thought of the idea myself --
11 and another guy together we had a book idea.

12 **Q. This was a book that would explain
13 to the layman employment law?**

14 A. The Americans With Disabilities
15 Act was just coming into play full force. And
16 you had the age discrimination law. You had
17 the -- there were different laws associated
18 with the work place. And we tried to lay it
19 out for a person to understand, easily
20 understand what -- you know, if they were
21 being treated incorrectly in the work place
22 with either a firing or not being promoted or
23 equal pay. Situations like that sort of
24 thing. Then there was a questionnaire. And
25 there was a referral for an attorney.

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 **Q. What was your role in that
3 project?**

4 A. I was one of the people that
5 thought of the idea to do it.

6 **Q. Who wrote it?**

7 A. We had a law firm write it.

8 **Q. So after leaving Active American
9 Apparel you produced a couple TV commercials
10 you did this book project. Anything else
11 before joining Mission Impossible Enterprises?**

12 A. And I don't know that I'm giving
13 you the right time line either. I think the
14 book project was after the Mission Impossible
15 thing. I think that was more like '92 or so
16 for the book.

17 But I don't recall exactly -- they
18 were all in that same kind of time frame but I
19 think it might have been after the beach chair
20 project.

21 **Q. Okay. But was there anything more
22 that you can recall that happened between the
23 Active American Apparel and the Mission
24 Impossible jobs?**

25 A. Not that I can think of right now.

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 **Q. During the time that you worked
3 with Mission Impossible Enterprises were you
4 employed elsewhere simultaneously as either an
5 employee or an independent contractor?**

6 A. I don't think so. I don't think I
7 had started with the actual next employment --
8 see, Mission Impossible I was an owner trying
9 to start a business. I wasn't really drawing
10 a paycheck as an employee. If anything, I was
11 investing money. I think the only place after
12 that was when I started with Holly when I
13 became an employee.

14 **Q. But at the same time you were with
15 Mission Impossible were you employed by anyone
16 else either as a true employee or as a
17 consultant?**

18 A. I may have gotten a little
19 consulting work with some things but nothing
20 to speak of.

21 **Q. What type of consulting did you
22 do?**

23 A. I looked at businesses for
24 different reasons.

25 **Q. Such as?**

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 A. Manufacturing standpoint. From a
3 sales standpoint.

4 Q. Well, what would they ask you to
5 come in and do as a consultant? And what type
6 of companies were these?

7 A. Basically in the manufacturing
8 field. You know, you think you're making
9 money but you're not doing your estimates
10 correctly. You're not delivering products on
11 time. You have, you know, left-over materials
12 that aren't accounted for properly in the cost
13 of producing the product. And your times
14 associated with your personnel and your
15 equipment don't actually fall in line with the
16 way you estimated the project.

17 And, therefore, on paper it looks
18 like you might be making money but really
19 you're delivering product late.

20 I can go in and look at a company
21 and advise a company on some of their
22 manufacturing areas and some of the things
23 that they're -- they should correct.

24 Q. How about sales? What did you do
25 if asked to consult regarding sales?

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 A. Sales is something that I
3 personally am very good at. And each product
4 needs to be sold differently. Each product
5 doesn't need to be sold differently but I
6 would have to look at a particular market, and
7 a particular marketplace and try to sell it
8 and see if I could get some success selling it
9 and see if I could teach others to sell it the
10 same way I've been selling it. I've always
11 been successful at sales. It's the only thing
12 I can fall back on and --

13 Q. Have you advised any of your
14 clients in your capacity as a consultant with
15 regard to product expansion?

16 A. I advise GE right now about how to
17 come up with additional contracts, additional
18 coverage levels, different terms. Absolutely.
19 I think about a lot of things.

20 Q. Can you tell me some more examples
21 of clients whom you've advised in connection
22 with product expansion?

23 A. Not specifically.

24 Q. Well, let's focus on goods rather
25 than services or contracts. Can you think of

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 any clients who were goods manufacturers or
3 distributors where you --

4 A. The only thing that I would be
5 able to speak of are things that occurred
6 recently. And if you'd like I can describe
7 the type of expansion that I'm referring to
8 with respect to the GE product. I'll be happy
9 to tell you about that. But going back more
10 than four years or so I'm not going to do.
11 I'm just not going to do.

12 Q. You're not willing to do.

13 A. No, I don't have the specific
14 recollection. If there's one thing that I do
15 lack it is without referring to notes -- I
16 write everything down and I keep records of
17 everything because I do not have the best
18 memory in the world. But if you want me to
19 tell you about what's occurred recently I can
20 certainly do that.

21 Q. Have you advised anyone in
22 connection with product expansion other than
23 GE that you can recall?

24 A. Not that I can recall
25 specifically.

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 Q. Generally.

3 A. We're going nowhere with this
4 question. If you want me to talk about what
5 I've asked GE to do and they've done I can do
6 that.

7 Q. No. I'm not asking for that. Nor
8 am I asking for a perfect recollection. I'm
9 asking for your best recollection. So please
10 give me your best recollection of any products
11 in connection with which you've recommended a
12 product expansion.

13 A. I don't recall anything
14 specifically referred to.

15 Q. Do you recall any clients
16 generally who -- other than GE who you advised
17 in connection with product expansion?

18 A. I did advise other companies that
19 I worked with. I don't just --

20 Q. Can you tell me the companies?

21 A. I advised US Data when I worked
22 with them some of the things I thought they
23 should do. I certainly was involved with Rio
24 Trading.

25 Q. Tell me what your understanding is

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN
2 of product expansion.

3 A. US Data had a T1 line. They
4 wanted to go out and do a T1 line. Well, you
5 know, maybe somebody didn't need the use of a
6 full T1 line. Maybe you could give them a
7 half of a T1 line. So they, therefore,
8 expanded their offerings to offer not just a
9 full T1 line to a customer, but offer maybe a
10 half of one, maybe not half the price, maybe
11 at 60 percent of the price, but having the
12 ability to do something like that.

13 That is expanding your offerings
14 to your client base. That to me is expansion
15 of a service or a product. I don't know if
16 you need any better explanation than that.

17 Q. That's great.

18 Focusing on merchandise,
19 specifically clothing, could you tell me do
20 you recall ever having advised anyone in
21 connection with expanding from a clothing line
22 into another product category?

23 A. I mean, I remember we'd look at
24 other fabrics and we would look at -- we would
25 make warm-up suits out of velour. And then we

1 C. BERMAN

2 would want to make warm-up suits out of
3 crinkle triloba nylon. So we would make them
4 in another fabric.

5 Is that what you're talking about?

6 Q. No. I'm talking about going from
7 clothing into another category of merchandise

8 A. Well, if you don't have the
9 manufacturing capability, if that's not what
10 you do, you don't -- if you're in business and
11 you have -- you usually have a couple things
12 going for you.

13 Q. I'm asking do you recall.

14 A. You have manufacturing
15 capabilities or sourcing. And you have sales
16 and distribution. So if you have those things
17 you try to stay within those channels and you
18 expand within those channels.

19 Q. Thank you. But the question is do
20 you recall ever having advised either your own
21 company or someone for whom you were
22 consulting to expand from clothing into
23 another product category?

24 A. Never from -- not that I recall
25 from clothing into another category.

1 C. BERMAN

2 Q. Okay. How about from automobile
3 merchandise into another category beyond
4 automobile merchandise?

5 A. I could tell you that I advised
6 against such a thing.

7 Q. Tell me about that.

8 A. When Holly was trying to get into
9 electronic contract manufacturing and I told
10 them they shouldn't do it and they did it
11 anyway. I was totally against that. And I
12 was right.

13 Q. From Holly you went to Rio
14 Trading; is that correct?

15 A. Yes.

16 Q. Did you work anywhere in between?

17 A. Well, Holly had this other company
18 that it had bought to do electronic contract
19 manufacturing and it wasn't being run properly
20 and I ended up getting involved in running
21 that company. But it was still with Holly.

22 Q. Anything else other than your work
23 on behalf of Holly with this other company
24 prior to going to Rio?

25 A. Not that I recall.

1 C. BERMAN

2 Q. Have you ever sought a license
3 from anyone to use a particular mark or brand
4 in connection with automobile merchandise that
5 you wanted to manufacture or distribute?

6 A. Yes.

7 Q. Could you tell me about that.
8 Well, how many times?

9 A. Once.

10 Q. And tell me what company was that
11 and what was the mark.

12 A. Well, it was Rio that became OE
13 Conekshünn that became Custom Auto.com which
14 was all an extension of the same company. And
15 we were in discussions with Fubu.

16 Q. Can you tell me about those
17 discussions.

18 A. We wanted to license the name Fubu
19 for automobile products.

20 Q. What products?

21 A. Various automobile products.

22 Q. Such as?

23 A. Such as the same kind of products
24 we're talking about here.

25 Q. Can you elaborate?

1 C. BERMAN

2 Well, excuse me. The same sort of
3 products for which you're seeking registration
4 of the ENYCE mark?

5 A. Well, rims, et cetera.

6 Q. Well, let's be specific.

7 Can you tell me the goods for
8 which you're seeking registration for ENYCE?

9 A. Are you referring to ENYCE?

10 Q. Yes, I am.

11 A. You know, wheels --

12 Q. All the goods that are set forth
13 in your application?

14 A. Spoilers, license plate holders.

15 Q. Did you intend -- when you filed
16 this did you intend to actually use it on all
17 these goods?

18 A. Again, there's no business model
19 associated with this until I receive
20 permission to go ahead and use it and then the
21 business model will be produced.

22 Q. That's not the question. When you
23 filed this application, serial number
24 78320850, did you intend to use the mark ENYCE
25 on fitted car covers?

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 A. Perhaps --

3 Q. It's a yes or no answer.

4 A. I don't have any -- there's no
5 specific intentions at this time.

6 Q. No. At that time, though. At the
7 time you filed the application.

8 A. A car bra, if you want to call
9 that a fitted car cover.

10 Q. Is that a fitted car cover?

11 A. I guess.

12 Q. Shift knobs?

13 A. Shift knobs, yes.

14 Q. You intended to use ENYCE on shift
15 nobs?

16 A. Yes.

17 Q. On brake pads?

18 A. Probably not.

19 Q. No?

20 A. No.

21 Q. You didn't intend to use ENYCE on
22 brake pads?

23 A. No.

24 Q. License plate holders?

25 A. Probably.

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 Q. Spoilers?

3 A. Probably.

4 Q. Getting back to -- tell me again,
5 on whose behalf did you seek a license from
6 Fubu?

7 A. It was the corporate entity that
8 eventually become known as Custom Auto.com.

9 Q. You approached Fubu?

10 A. You know, I don't know. They
11 may --

12 Q. Did Fubu approach you?

13 A. I don't recall.

14 Q. Were you involved directly in the
15 efforts on behalf of Custom Auto.com to
16 license the mark Fubu?

17 A. It was really lawyers. Lawyers
18 were involved in it. It really wasn't --

19 Q. There were no -- it's a yes or no
20 question.

21 A. I was in a couple meetings if
22 that's what you want to -- if that's the
23 question.

24 Q. Was it your idea to license Fubu?

25 A. Well, we were -- it was car guys.

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 It was something that Fubu had already filed
3 for the trademark for that category.

4 Q. I'm sorry. I'm just going to ask
5 for a yes or no answer. Was it your idea --

6 A. I was one of the people that had
7 the idea, yes.

8 Q. Okay. And why did you think that
9 was a good idea?

10 A. I don't recall.

11 Q. Was it a good idea?

12 A. I don't know. They never did it.

13 Q. Was it a foolish move?

14 A. I don't know.

15 Q. Was it something you regretted
16 trying to do?

17 A. The only thing I regret in
18 business is that --

19 Q. No, it's a yes or no answer.
20 Please.

21 A. Repeat the question I guess.

22 MR. DOYLE: Can you repeat the
23 question.

(Record read.)

24 A. What is it that I'm regretting

25 TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 trying to do? I'm sorry.

3 **Q. License Fubu -- the Fubu mark on**
4 **behalf of Custom Auto.com for the use on**
5 **automotive parts?**

6 A. No, do I regret it? No, I don't
7 regret it.

8 **Q. Does it make sense to you from a**
9 **business standpoint?**

10 A. It's like anything else. If the
11 product was designed properly, priced
12 properly, distributed properly, promoted
13 properly, it could have been very successful.
14 If it was mismanaged and the designs were
15 poor, you know, and distribution wasn't
16 correct, it would have been a failure. I
17 mean, so was it something that would have been
18 great or something that would have been
19 horrible, I'd like to think that if I was a
20 part of it it would have been successful.

21 **Q. Why would you try to license**
22 **someone else's mark for use on your own goods?**

23 A. The company was distributing CD
24 changers. And it had a certain amount of
25 success distributing CD changers that plugged

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 into the trunks of cars. And it competed
3 directly with the car manufacturers' own CD
4 changers. And the car manufacturers didn't
5 like that. And they changed the software on
6 their car radios.

7 So the business was a business
8 that was in business suddenly without a
9 business. With distribution channels and with
10 salespeople and with sourcing. But without a
11 product. And we were searching for a product
12 to try to put together a business that
13 eventually then the product became the website
14 known as Custom Auto.com which then eventually
15 became a dot com stock situation that then, of
16 course, never -- you know, it ended up
17 fizzling out because it was the year 2000 and
18 every dot com, no matter how many millions and
19 millions of dollars they had invested in it,
20 pre-IPO situations went down the toilet.

21 So would that have been better
22 than eventually going into Custom Auto.com,
23 who knows.

24 MR. DOYLE: I'm sorry. Can you
25 read the question again. And, Mr.

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 Berman, please try and answer the
3 question.

4 (Record read.)

5 **Q. Can you answer that question,**
6 **please.**

7 A. Trying to continue a business that
8 had distribution, that had sales, a sales
9 force, with a substitute product.

10 **Q. Okay. You would have to pay Fubu**
11 **for those licensing rights, correct?**

12 A. Certainly.

13 **Q. And what value is there in the**
14 **Fubu mark to you in a car manufacturing**
15 **enterprise?**

16 A. You're asking me to think about
17 something from -- you know, from eight years
18 ago, whenever it was. Seven, eight, nine
19 years ago. Whenever it was. I don't know
20 what value we perceived then.

21 **Q. Did you do a cost benefit**
22 **analysis?**

23 A. I don't believe it ever got to
24 that point.

25 **Q. Do you consider yourself a**

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 **successful businessman?**

3 A. Now I do.

4 **Q. And what motivated your business**
5 **decision to license the mark Fubu for car**
6 **parts?**

7 A. It was many ideas that we wanted
8 to try to utilize to continue a business that
9 had no product.

10 **Q. Would you have had a greater**
11 **chance of selling your car accessories if they**
12 **bore -- if they featured the Fubu mark than**
13 **you would have if they didn't feature that**
14 **mark?**

15 A. I don't know.

16 **Q. Was that your hope?**

17 A. That's what Fubu said would
18 happen. I don't know if it would happen.

19 **Q. Was that your hope?**

20 A. I looked at a company that had --

21 **Q. It's a yes or no -- please give me**
22 **a yes or no answer.**

23 A. I looked at a company that had a
24 banking line of credit and had distribution
25 and had --

TSG Reporting - Worldwide 877-702-9580

C. BERMAN

1 Q. Mr. Berman, I understand the
2 company --

3 A. And, you know, I had business
4 partners in the business and there was a
5 desire to look at that. Any question that you
6 ask me I'm going to answer your question
7 truthfully. You asked the question that
8 brought this whole subject matter up and I'm
9 not going to say no. I'm going to tell you
10 that there were conversations. But were they
11 substantial, did they become anything, no.

12 Q. Was it your hope that placing the
13 Fubu mark on automobile accessories would make
14 those accessories more appealing to the
15 consumer; yes or no?

16 A. I don't recall what my thoughts
17 were about it at the time.

18 Q. Do you recall whether you retained
19 counsel to represent you in negotiations with
20 Fubu?

21 A. Yes.

22 Q. Do you recall whether a license
23 agreement was drafted?

24 A. I don't know if it got to that

C. BERMAN

1 stage but I know there were some documents
2 that were being discussed.

3 Q. Over how long a period did these
4 negotiations take place?

5 A. At least a couple of months. I
6 could tell you who the attorney was. I
7 remember the attorney.

8 Q. Please do.

9 A. Specter Gaden Rosen. Milton Ross.
10 They're out of Pennsylvania. There's no
11 secrets.

12 Q. Did you have an equity interest in
13 Custom Auto.com?

14 A. Yes.

15 Q. How much -- what percentage of the
16 business did you own?

17 A. It changed because the idea was
18 the company was going to go public. We took
19 in investors and we had a law firm that was
20 representing the company on behalf of the
21 patent applications as well as the stock --
22 you know, preparation for the IPO. And my
23 ownership fluctuated up and down based on --

24 Q. Within what range?

C. BERMAN

1 A. I don't remember. I mean, it was
2 substantial. I had a substantial --

3 Q. More than 50 percent?

4 A. No. I don't think so. But I had
5 20 percent or some kind of -- I mean, I don't
6 remember the number but it was some
7 substantial number.

8 Q. What happened to that company?

9 A. The company was in development of
10 a website where we had a beta version of a
11 website showing what we could do. But to
12 properly populate the database and have the
13 proper equipment, computer equipment and
14 servers, and to properly promote it and to
15 properly tie it in with distribution channels
16 would have been, you know -- I forget what we
17 estimated it at, \$20 million, \$25 million,
18 just to get it launched. And we had -- you
19 know, we had a lot of money invested in it but
20 it certainly wasn't that much.

21 And then when the stock market did
22 what it did in the year 2000, nobody else
23 wanted to invest in it and it didn't have any
24 revenue. So we just closed the doors.

C. BERMAN

1 Q. And what happened to its assets,
2 its real property?

3 A. It had leased computers. It had,
4 you know, rented office.

5 Q. Desks? Pencils?

6 A. The decision was made not to put
7 the desks in storage because someone was going
8 to have to pay for the storage facility. It
9 was the same fate that dot coms -- you know, a
10 dot com the previous year that was airing a \$2
11 million Super Bowl commercial, the next year
12 they were out of business. So, I mean, we
13 weren't the only ones that had that fate.

14 Q. What about the records of the
15 business?

16 A. They were maintained for whatever
17 period of time they needed to be maintained
18 for. At this point I don't think they still
19 needed to be maintained. I don't know. But
20 the attorneys still have records. That were
21 handling the matter.

22 Q. Does that firm still represent you
23 at all?

24 A. They haven't represented me in

1 C. BERMAN

2 anything in years.

3 **Q. Is that the same firm that filed**
4 **the application for the mark at issue here on**
5 **your behalf?**

6 A. Yes.

7 **Q. Do you recall how --**

8 A. But that's not the same firm that
9 represented the company that was negotiating
10 with Fubu.

11 **Q. Well, thank you.**

12 A. That's Dilworth Paxon with this
13 matter. And with the patents with Custom
14 Auto.com, Specter Gaden Rosen was the law firm
15 that represented -- which was known as OE
16 Conekshünn at the time or maybe it was still
17 known as Rio, I don't remember, but they
18 represented the company in the Fubu
19 negotiations. Not Dilworth Paxon who
20 represented the company with respect to Custom
21 Auto.com and that represented me with this.

22 **Q. The firm that represented you in**
23 **the Fubu negotiations, do they still represent**
24 **you in any capacity?**

25 A. No. I'm still friends with the

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 guy. But he hasn't represented me on anything
3 since then.

4 **Q. Was that the only matter in which**
5 **he -- for which you retained him?**

6 A. No. He was involved with me when
7 I originally had the patent in the casino
8 matter.

9 **Q. Do you recall the fees associated**
10 **with the negotiation of the Fubu agreement?**

11 A. No.

12 **Q. During what time period was -- did**
13 **these negotiations take place generally? What**
14 **year?**

15 A. '98, '99. Something like that.

16 **Q. Is it fair to say that you --**
17 **strike that.**

18 **Did Rio or Custom Auto.com**
19 **advertise?**

20 A. Rio never advertised as Rio. OE
21 Conekshünn had a little bit of -- there was a
22 little bit of advertising. And Custom
23 Auto.com, again, that never became an actual
24 consumer site but there was some premature
25 advertising that did actually occur.

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 **Q. Okay. Where was OE Conekshünn**
3 **advised?**

4 A. I think in just some industry
5 publications.

6 **Q. Which industry is that?**

7 A. Well, it was a CD changer that
8 went into trunks of cars. So it would have
9 been the -- there was some electronic
10 something publication for, like, these car
11 stereo stores and stuff like that.

12 **Q. Do you remember any titles?**

13 A. No.

14 **Q. Do you recall if it was advertised**
15 **in a magazine called Rides?**

16 A. I don't recall.

17 **Q. Do you recall if it was advertised**
18 **in Dub magazine?**

19 A. That was a name that you guys
20 mentioned before and I don't know -- I don't
21 remember -- I don't really know this name
22 Rides either.

23 **Q. Do you recall if it was advertised**
24 **in Dub magazine?**

25 A. No.

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 **Q. You don't recall?**

3 A. No, I don't --

4 **Q. Do you recall if it was**
5 **advertised --**

6 A. I recall that I don't recall that
7 it was ever in a magazine. So I don't -- go
8 ahead.

9 **Q. Do you recall if it was advertised**
10 **in Vibe magazine?**

11 A. It was not advertised in Vibe
12 magazine. It was not advertised in any of
13 those types of magazines at all. Vibe
14 magazine now I recall as being the one that I
15 brought out when I did the deposition with you
16 guys.

17 **Q. How do you spell OE Conekshünn?**

18 A. O-E, and then space,
19 C-O-N-E-K-S-H-Ü-N-N, with a little umlaut over
20 the U.

21 **Q. O-E. C-O-N-E- --**

22 A. -- K-S-H-Ü-N-N.

23 **Q. That's an unusual spelling.**

24 A. And there's a little umlaut over
25 the U.

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 **Q. Who chose that spelling?**

3 A. I chose that spelling.

4 **Q. Why?**

5 A. It just looks a little fancy. You
6 know, it just looks like it's foreign.

7 **Q. Are you familiar with the clothing
8 brand Phat Farm?**

9 A. I think I was asked that question
10 before.

11 **Q. What was your answer?**

12 A. I think it was asked and answered.

13 **Q. What was your answer?**

14 A. I think it was asked and answered.

15 **Q. And what was your answer? Are you
16 familiar with Phat Farm?**

17 A. You know, the thing is once you
18 ask me a question another time now that you've
19 asked it again, now I'm familiar with it
20 because -- so if I answer the question now I'm
21 going to say that now I am familiar with it
22 because you have now told me about what it is.
23 So whether --

24 **Q. Fair enough.**

25 **Prior to coming here today, were**

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 **you familiar with the clothing brand Phat
3 Farm?**

4 A. Asked and answered.

5 **Q. You're refusing to answer that
6 question; is that correct?**

7 A. The question has been asked. The
8 question has been asked.

9 **Q. Do you know how to spell Phat
10 Farm?**

11 A. Well, I know how I would spell fat
12 farm but I guess you're trying to make it into
13 something else so I'm not --

14 **Q. Do you know how the clothing
15 manufacturer whose brand is Phat Farm spells
16 that brand?**

17 A. I'm sure I'm going to be wrong so
18 why don't you tell me.

19 **Q. It's a yes or no answer that's
20 required.**

21 A. No.

22 **Q. Did either Rio Trading Company or
23 Custom Auto.com advertise or have a booth at
24 trade shows?**

25 A. Custom Auto.com had a booth at a

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 trade show. I'm trying to think was it OE
3 Conekshünn. OE Conekshünn had a booth at a
4 trade show, yes. They did. Yes.

5 **Q. More than one trade show each?**

6 A. Well, it again, it evolved from
7 one industry into another.

8 **Q. Which came first?**

9 A. The chicken or the egg?

10 **Q. Which of the two companies --**

11 A. Well, OE -- Rio Trading was
12 distributing CD changers. CD changers then
13 became known as the OE Conekshünn CD changer.
14 The trade show that they exhibited at I'm sure
15 once, perhaps more than once, I think it might
16 have been twice, was CES, the Consumer
17 Electronics Show. Once the company became
18 known as Custom Auto.com it had to deal
19 with --

20 **Q. Well, let's just focus on OE
21 Conekshünn first. In what years did the OE
22 Conekshünn appear at the CES trade show?**

23 A. '97, '98, something like that.

24 **Q. More than one year?**

25 A. I think -- again, I think it was

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 two years in a row that we were at -- I'm
3 pretty sure it was two years in a row that we
4 were at the trade show.

5 **Q. Did you have a booth there?**

6 A. Yes.

7 **Q. What did you display at your both?**

8 A. CD changes that went into trunks
9 of cars.

10 **Q. Anything else?**

11 A. No.

12 **Q. Did you give away any promotional
13 merchandise bearing the OE Conekshünn mark?**

14 A. I'm sure we had some sort of
15 little handout of some kind that we gave out.
16 I don't recall specifically.

17 **Q. You don't know what?**

18 A. Well, you're spending the money to
19 be at a booth. It's a trade show.

20 **Q. It's just a yes or no.**

21 A. You usually hand something to
22 somebody. I don't recall anything
23 specifically that was so thrilling.

24 **Q. And how about on behalf of Custom
25 Auto.com? What was their activity at trade**

TSG Reporting - Worldwide 877-702-9580

C. BERMAN

shows?

A. Well, that was at the SEMA show because that was a different situation.

Q. What years?

A. That was probably '99 I would say.

Q. Did you give away any promotional merchandise at the SEMA show with the Custom Auto.com mark on it?

A. We had a little brochure.

Q. Was that all?

A. I think so but there may have been something else.

Q. You don't recall anything else?

A. I don't recall anything else.

Q. Just to be clear again, your efforts on behalf of Custom Auto.com to license Fubu, was that around 1998?

A. The company wasn't known as Custom Auto.com at that time.

Q. Okay. What was the name of the company on whose behalf you were attempting to license the Fubu mark?

A. OE Conekshünn.

Q. And in what year was that?

C. BERMAN

A. I'm going to say it was approximately around 1998.

Q. You mentioned earlier that ENYCE was the first in a series of marks that you hoped to use. And that your theme would be the names of cities with the E on either side. Can you tell me what the other marks were that you had in mind?

A. I mentioned them before. This has been asked and answered.

Q. Well, you mentioned two. You mentioned LA and Philly. Were there any others?

A. This has been asked and answered.

Q. No. That question was not asked and it has not been answered. You mentioned LA and Philly.

A. I also mentioned Detroit when the question was asked before and the question has been asked and the question has been answered.

Q. What other cities in addition to LA, Philly and Detroit?

A. Well, if you go down the population of the United States --

C. BERMAN

Q. No, that you had in mind.

A. -- and you start with the largest population. And, you know, what weren't going to do Providence, Rhode Island because there's only five people that live in Providence. Rhode Island. But we were going to go down the list of the population.

I mean, my thought was to look at the largest cities. Chicago would have been a thought. You know, whatever cities that have large amounts of people living in them or around them would be the logical list of cities.

Q. Did you have any documents or notes pertaining to these plans? Did you jot down your ideas?

A. These plans were only in my mind.

Q. Okay. So we have -- the ones that you've mentioned specifically were Philly, LA and Chicago. Were there any others that you specifically contemplated using in the same way?

A. I looked at the largest city with the most people. That's what I wanted to

C. BERMAN

start with. And if I had success in the largest city in the United States I could then move forward and look at the second largest city in the United States which is either LA or Chicago depending on whose information you're looking at. And then who's the third largest and who's the fourth largest. Is Philadelphia the fourth largest, is Detroit, is San Francisco. Who's the fourth largest, who's the fifth largest, who's the sixth largest. I mean, you know.

Q. The LA one how were you going to spell that?

A. You know, the actual -- it would have been something like ELAE would have been the thing. But you know what?

Q. And how about Philadelphia?

A. If you notice there's no artwork associated with my mark because the artwork would have to be developed. And then if the art work were developed to be associated with ENYCE, the same artwork theme would carry on to the next city and then that would be the whole -- that's the thought process. Did it

1 C. BERMAN

2 ever develop past that, no. Because we're
3 waiting to find out if and when I receive a
4 approval from the United States Patent &
5 Trademark Office to move forward. And if it
6 works in New York City then it will be looked
7 upon for the other cities.

8 **Q. I'm not talking about font or
9 artwork. I'm talking about spelling.**

10 **So for the LA one it would be
11 ELAE? How about Philly? What was your plan
12 with that?**

13 A. There are no plans. I don't know
14 how many times I have to tell you. The plans
15 are -- the plans would be developed.

16 **Q. Did you have a specific idea about
17 how you were going to use this family of
18 marks?**

19 A. I was going to call you and I was
20 going to ask you to help me come up with the
21 idea.

22 **Q. Did you have a specific idea as to
23 this family of marks of how they were going to
24 be spelled?**

25 A. Specific to the cities. People

1 C. BERMAN

2 are proud to wear their sports jerseys of
3 their home town cities. And they're proud to
4 have things on them that say their cities name
5 on them because they live those cities or live
6 in the suburbs of those cities or in those
7 cities and the whole concept is to be
8 associated with your specific city.

9 So as long as it clearly
10 identified that it has to do with the city it
11 would be the marketing.

12 **Q. You mentioned E Philly E before.
13 I was just curious how you intended to spell
14 it.**

15 A. I don't know.

16 **Q. You don't know. Mecca. You
17 applied for that within months of the ENYCE
18 application; is that correct?**

19 A. Asked and answered.

20 **Q. Well, looking at the two
21 applications I see that the ENYCE application
22 was filed October 30th, 2003. The Mecca
23 application was filed just within two months
24 of that.**

25 **Why didn't you include the E on**

1 C. BERMAN

2 **the front and back ends of Mecca?**

3 A. These questions have been asked
4 and answered. The questions about this have
5 been asked.

6 **Q. That question has neither been
7 asked nor answered, Mr. Berman. And I'm
8 asking you now why did you not include the E
9 at either the beginning or the end of the mark
10 for Mecca?**

11 A. I don't know. These questions
12 have been asked and answered.

13 **Q. You mentioned that you abandoned
14 the Mecca mark because of the backlash in the
15 United States against names that might be
16 related to Moslems or Islam; is that correct?**

17 A. Asked and answered.

18 **Q. Is that correct?**

19 A. That question's been asked, the
20 question's been answered.

21 **Q. And your answer was you abandoned
22 this because of that backlash.**

23 **Why did you apply for it in August
24 of 2003, two years after the attacks on the
25 World Trade Center?**

1 C. BERMAN

2 A. I don't know. I don't recall.

3 **Q. Custom auto websites. There was
4 some mention of those earlier and you said
5 that you didn't want to look at them just to
6 see how others have made a go of a business
7 that Custom Auto.com had not succeeded in.**

8 **At the time that you were actively
9 attempting to develop Custom Auto.com were you
10 looking at custom auto websites?**

11 A. Yes.

12 **Q. Do you recall any of those
13 websites?**

14 A. Yes.

15 **Q. Can you tell me the names of some
16 of those websites?**

17 A. Wrenchhead.com. Carparts.com.
18 There's others I can't think of. That's all I
19 can think of.

20 **Q. Those are the only two you can
21 recall?**

22 A. Um-hum.

23 **Q. You mentioned earlier that Gucci
24 had something to do with cars. What was it
25 that you recalled that Gucci did with cars?**

1 C. BERMAN

2 A. I recall, like, the days of that
3 guy that would come on with the Chrysler
4 Cordoba, the guy that was --

5 Q. Riccardo Montalban?

6 A. Riccardo Montalban. Who was the
7 guy from Fantasy Island.

8 Q. Fantasy Island um-hum.

9 A. And he would come on with that
10 Chrysler Cordoba or whatever it was called.
11 Was that the name of the car?

12 Q. I think so.

13 A. And I just remember the split-top
14 roof. And I remember them somehow having a
15 Gucci like half roof on the car.

16 Q. Gucci meaning with the little logo
17 repeating on it or something?

18 A. Um-hum, yeah.

19 Q. And we were talking earlier about
20 Eddie Bauer and L. L. Bean. Would you
21 consider those lifestyle brands of clothing?
22 You had mentioned that Eddie Bauer you
23 associated with hiking. Are those what you
24 would consider lifestyle brands?

25 A. I'm not an expert on that to try

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 to tell you what I consider it to be. I just
3 know what I think of when I think of the
4 brand.

5 Q. So what do you think of when you
6 think of Eddie Bauer?

7 A. This question was asked and this
8 question was answered.

9 Q. Outdoors and hiking I think is
10 what you said.

11 And how about L. L. Bean? What do
12 you think of when you think about L. L. Bean?

13 A. I think of a catalogue that I
14 never open up. So I don't even know what I
15 think of. All I think of is the fact that I
16 know they have a catalogue. And I don't
17 think -- I don't remember ever opening it up.

18 Q. So you don't have -- it doesn't
19 conjure up any association for you.

20 A. No.

21 Q. Can you think of any examples of
22 clothing companies cross-licensing their marks
23 for either automobiles or automobile parts
24 other than those that we have mentioned so far
25 today?

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 A. That who has mentioned?

3 Q. Well, okay. We've talked about
4 Eddie Bauer. We've talked about L. L. Bean.
5 We've talked about Gucci. We've talked about
6 Coach. All of which I would say are either
7 clothing or fashion marks.

8 Is that a fair characterization?

9 A. I don't think I've ever agreed
10 with that characterization today.

11 Q. Okay. Let's take them one at a
12 time. Is Eddie Bauer a mark associated with
13 clothing?

14 A. Asked and answered.

15 Q. Mr. Berman, is L. L. Bean a mark
16 associated with clothing?

17 A. I just answered what I think of
18 when I think of L. L. Bean.

19 Q. No, you didn't answer the question
20 of whether L. L. Bean was a mark associated
21 with clothing. Please answer that.

22 A. To me it's a mark associated with
23 a catalogue.

24 Q. A catalogue that sells what?

25 A. A catalogue that I never opened.

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 Q. Have you ever been to a Sears
3 store?

4 A. In the hardware department.

5 Q. In the past three years?

6 A. I'd say in the hardware
7 department.

8 Q. Within the past three years.

9 A. Yeah, I think so.

10 Q. Have you noticed L&L Bean clothes
11 being sold there?

12 A. No.

13 Q. You don't know whether L&L Bean is
14 a mark that's used on clothing?

15 A. I think there's usually a person
16 wearing something on the cover of the
17 catalogue. So it's catalogue that I know is a
18 catalogue that I don't open.

19 Q. But you don't know if L&L Bean is
20 a mark that's used on clothing.

21 A. I don't know anything about L. L.
22 Bean.

23 Q. Okay.

24 A. And neither do you apparently,
25 because you keep calling it L&L Bean. At

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 least I know it's L. L. Bean.

3 Q. Well, thank you.

4 How about Levy? Is that a mark
5 associated with clothing?

6 A. Yes.

7 Q. Are you -- do you know of Levi
8 ever having been licensed in connection with
9 automobiles? For use on automobiles?

10 A. Not that I'm aware of.

11 Q. Is Gucci a fashion brand?

12 A. You're asking me to be an expert
13 on things that I've never claimed to be an
14 expert on, sir.

15 Q. No, I'm not asking you to be an
16 expert at all. I'm asking if you considered
17 Gucci to be a fashion brand?

18 A. I guess.

19 Q. And how about Coach?

20 A. You know, you went from clothing
21 to now fashion brand.

22 Q. Yeah.

23 A. I don't know. Maybe I'm
24 misunderstanding what we're talking about
25 here.

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 Q. I think you understand. Is Coach
3 a fashion brand?

4 A. Coach is in leather bags.

5 Q. Ties?

6 A. They may be. I never saw them if
7 that's the case.

8 Q. Okay. Other than the use of the
9 marks Levy, L. L. Bean and Eddie Bauer, are
10 you aware of any other examples of
11 clothing-related trademarks being used in
12 connection with automobiles or automobile
13 parts?

14 A. I'm not aware of those. So I'm
15 not of -- you know, it's so insignificant to
16 make it into such an issue it doesn't make any
17 sense.

18 Q. Can you list for me the clothing
19 trademarks that you know of that have been
20 used on automobiles or automobile parts?

21 A. The ones that I thought of I've
22 answered the question to already. And I can't
23 think of anything else.

24 Q. Are you familiar with jewelry that
25 replicates car rims?

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 A. No.

3 Q. The Harley Davidson mark that you
4 mentioned earlier that was used in connection
5 with the Ford vehicle that would be the Harley
6 Davidson edition of some sort of Ford pick-up
7 truck?

8 A. Yes.

9 Q. Beyond that are you familiar with
10 Harley having been licensed -- the Harley
11 marks being licensed for automobile parts or
12 accessories?

13 A. Not that I'm aware of.

14 Q. Seat covers?

15 A. They could be but I'm not aware of
16 it.

17 Q. Steering wheel covers or license
18 plate frames?

19 A. (Witness nods.)

20 Q. How about for clothing? Harley
21 Davidson marks, have you seen those appear on
22 clothing?

23 A. I've seen leather jackets that
24 have a Harley David mark on it.

25 Q. T-shirts?

TSG Reporting - Worldwide 877-702-9580

1 C. BERMAN

2 A. I've seen some T-shirts.

3 Q. Tank tops?

4 A. I specifically have not seen any
5 tank tops but if you tell me there's tank tops
6 it wouldn't surprise.

7 Q. Any of which have the Harley marks
8 on the labels?

9 A. Yes.

10 Q. As opposed to just on the exterior
11 of the garment.

12 A. Yeah. They're clearly -- they're
13 clearly -- I think they have the Harley name
14 and the Harley logo.

15 Q. On the labels of the clothing.

16 A. Well, on the labels but also on
17 the clothing.

18 Q. Okay. Have you heard of Sean
19 Puffy Combs, or also known as P. Diddy, also
20 known as Puff Daddy?

21 A. Asked and answered.

22 Q. You mentioned earlier that 700 to
23 \$3,000 for wheels sounded high to you. Do
24 wheels that are -- that bear a recognizable
25 brand sell for more than wheels that are

TSG Reporting - Worldwide 877-702-9580

C. BERMAN

unbranded in your experience?

A. I have not been involved in the sale of wheels in quite some time.

Q. Yeah. But in your experience.

A. The recognized brand names. Enke, being a brand name, American Racing being a brand name. Ultra Wheel or Ultra something was a major brand name that is a recognized brand name within the industry. But it's not just because of the name. It's because that name is associated with quality. And with the styling.

Q. When you license the mark Givenchy for clothing did the clothes that were branded Givenchy retail for more than your private label items?

A. Sometimes. And sometimes they didn't. It depended on the style. When we had purple pants that had Givenchy on it you still couldn't sell them.

Q. If you had two items that were the same -- did you ever sell two items that were identical other than the fact that one had a Givenchy label in it and the other did not?

C. BERMAN

A. Yes.

Q. And of the two which would have a higher retail price?

A. You would like to think that the branded product would have the higher retail price but it doesn't necessarily guarantee anything.

Q. That's the hope though. That's what you'd like to think.

A. But it doesn't always work that way.

Q. Are you familiar with the mark Sean John as a marked associated with clothing?

A. Asked and answered.

Q. I don't think that was answered in a yes or no format when it was asked earlier.

Are you familiar with the mark Sean John as used on clothing?

A. Asked and answered.

Q. Is it fair to say that customized wheels are somewhat of a fashion statement?

A. I don't know.

MS. COHEN: I have one final bit

C. BERMAN

and we're out of here, okay?

EXAMINATION BY

MS. COHEN:

Q. Did you, Mr. Berman, take the deposition of Mr. Felix of the Opposer, LC Licensing?

A. Yes.

Q. And I will tell you that that occurred on April 6, 2005. I assume that you would believe that me that that's true.

A. I do believe you that that's true. I have no reason to question that statement.

Q. Okay. And the interrogatory answers that we marked before as Exhibit B, I will also state to you that is September 2005.

Would you agree with me that that is true, that appears to be the case?

A. It certainly appears to be the case.

Q. So when you took the deposition of Mr. Felix in April of 2005, do you recall asking him why or how he came up with the name ENYCE?

A. I recall the fact that the person

C. BERMAN

that really came up with the name was not available for deposition because they said that that person was not really an employee of the company when, in fact, the depositions discovered that he really was an employee of the company.

Q. Well, do you recall discussion of how the mark came into being by whomever? Other than yourself.

A. I do recall asking questions with respect to that.

Q. And do you recall the answer?

A. There were two depositions that were taken from two different individuals and there was information that came from each of them. So the information you're about to read from I don't specifically remember exactly what's in that deposition. So why don't you read it to me.

Q. Okay. Well, it says, "After brainstorming Shellman won the bet by wisely deciding to place an E at the front and at the end of NYC. What started out as a bet among friends morphed into ENYCE and a \$100 million

C. BERMAN

company."

Do you remember that answer?

A. I don't believe that that's the answer. I believe that's me quoting an article that I pulled out that -- yes, it is. It's me asking a question where -- you see, this Mr. Shellman is the gentleman that should have been allowed -- I should have been allowed to depose this gentleman and I wasn't because I was incorrectly told that he was no longer an employee of the company, when in fact he shows up there on a regular basis, has an office, and is really, according to the IRS, an employee of the company. But that's another story for another day. So I never got to take this Mr. Shellman's deposition. In one of these depositions one of the guys says that he thought of the idea. And then in an article it says that this guy said he thought of the idea. And -- you know, so --

Q. But, the article stated the story of the -- what do you call it? -- the rumor that it was created just by putting an E at the end and the beginning of NYC.

TSG Reporting - Worldwide 877-702-9580

C. BERMAN

A. If you really want to play that out you probably want to look at the date of that article. You'll want to look at the date of my first response to your opposition. And I'm sure when I first responded I said how I thought of this. And it was long before any of this other stuff took place. If you're going to go down that road you should look at some dates.

Q. Well, I was looking at the dates and --

A. Well, you should look at the date of my first response when I first responded to the opposition that your predecessor had filed.

Q. All right. And do you also know that of the two names in the entire world that the company that were -- the company from whom our client bought ENYCE also owned the Mecca name.

A. I do not know that. I learned some of that when I talked to these guys in their depositions. When you look at their depositions they talked about some of that.

TSG Reporting - Worldwide 877-702-9580

C. BERMAN

Q. Do you find that to be a coincidence?

A. There is no issue with respect to the Mecca name.

Q. Because you didn't decide to go forward with it.

A. Are we done with the deposition?

Q. No, no. Is that what you're saying as to why there's no issue?

A. Am I mistaken or there some ongoing issue with respect to the Mecca name?

(Continued on next page to include jurat.)

TSG Reporting - Worldwide 877-702-9580

C. BERMAN

Q. No. It's abandoned.

A. Okay.

Q. I was just asking if it was some sort of a coincidence.

A. Don't know.

Q. Okay. No further questions.

(Time Noted: 4:03 p.m.)

CARY BERMAN

Subscribed and sworn to before me
this ___ day of _____, 2006.

TSG Reporting - Worldwide 877-702-9580