

TTAB

Cary Brett Berman
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United States Department of Commerce
Patent and Trademark Office
Trademark Trial and Appeal Board
Attn: TTAB
PO Box 1451
Arlington, Va. 22313-1451

February 1, 2007

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

Dear Sir/Madam:

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

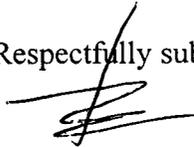
**1.APPLICANT'S FIRST NOTICE OF RELIANCE
PURSUANT TO TRADEMARK RULE 2.122(e)**

**2.APPLICANT'S SECOND NOTICE OF RELIANCE
PURSUANT TO TRADEMARK RULE 2.122(e)**

**3.APPLICANT'S THIRD NOTICE OF RELIANCE
PURSUANT TO TRADEMARK RULE 2.122(e)**

**4.APPLICANT'S FORTH NOTICE OF RELIANCE
PURSUANT TO TRADEMARK RULE 2.122(e)**

Respectfully submitted,


Cary Berman

CC: Kieran Doyle
Cowan, Liebowitz & Latman, P.C.


02-05-2007

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #22

Cary Brett Berman
1917 Lafayette Road
Gladwyne, PA 19035
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CERTIFICATE OF SERVICE

I, Cary Berman, hereby certify that true and correct copies of the foregoing **APPLICANT'S FIRST NOTICE OF RELIANCE PURSUANT TO TRADEMARK RULE 2.122(e); APPLICANT'S SECOND NOTICE OF RELIANCE PURSUANT TO TRADEMARK RULE 2.122(e); APPLICANT'S THIRD NOTICE OF RELIANCE PURSUANT TO TRADEMARK RULE 2.122(e); APPLICANT'S FORTH NOTICE OF RELIANCE PURSUANT TO TRADEMARK RULE 2.122(e)** were served on Opposer by priority mailing same (with delivery conformation) to Kieran Doyle Cowan, Liebowitz & Latman, P.C. 1133 Avenue of the Americas New York, NY. 10036-6799 this 1ST day of February, 2007.



Cary Berman

**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

Opposition No. 91162330
Serial No. 78320850

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

**APPLICANT'S FORTH NOTICE OF RELIANCE
PURSUANT TO TRADEMARK RULE 2.122(e)**

Pursuant to Trademark Rules 2.122(e), Applicant, representing himself pro se hereby gives notice of its reliance upon information contained in the letter written by Opposer's counsel dated December 23, 2004.

Two copies of the letter are attached hereto.

SUBMITTED this 1st day of February, 2007.

TO: Kieran Doyle
Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the Americas
New York, NY. 10036-6799

CARY BRETT BERMAN



CARY BRETT BERMAN

KRAMER LEVIN NAFTALIS & FRANKEL LLP
919 THIRD AVENUE
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TEL (33-1) 44 09 46 00
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December 23, 2004

BY FIRST CLASS MAIL

Mr. Cary Berman
1917 Lafayette Road
Gladwyne, PA 19035

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

Dear Mr. Berman:

This responds to your November 18, 2004 letter.

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

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

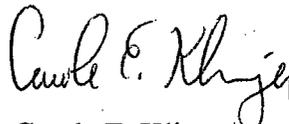
Regarding your inquiry as the creator of the ENYCE mark, such mark was conceived by Evan Davis, Tony Shellman and Rolando Felix while they were working at Fila. Since Mr. Davis and Mr. Felix are in our client's employ, we would be willing to produce Mr. Davis or Mr. Felix for a deposition at our offices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

KRAMER LEVIN NAFTALIS & FRANKEL LLP

Mr. Cary Berman
December 23, 2004
Page 2

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

Sincerely,


Carole E. Klinger

Subj: **FW: Deposition Dates for the Berman/L.C. Licensing, Inc. opposition proceeding**
Date: 2/25/2005 6:26:46 A.M. Pacific Standard Time
From: CKlinger@KRAMERLEVIN.com
To: autocary@aol.com

Mr. Berman:

This is simply to advise that the dates identified in the attached e-mail are confirmed. Please let me know your availability on those days.

Carole Klinger

Associate
Kramer Levin Naftalis & Frankel LLP
919 Third Avenue
New York, New York 10022
Tel: 212-715-9357
Fax: 212-715-8000
Email: CKlinger@KRAMERLEVIN.com
<http://www.kramerlevin.com>

Disclaimer - 2/25/2005

This communication (including any attachments) is intended for the use of the intended recipient(s) only and may contain information that is confidential, privileged or legally protected. Any unauthorized use or dissemination of this communication is strictly prohibited. If you have received this communication in error, please immediately notify the sender by return e-mail message and delete all copies of the original communication. Thank you for your cooperation.

-----Original Message-----

From: Klinger, Carole
Sent: Wed 2/23/2005 7:07 PM
To: 'Autocary@aol.com'
Cc:
Subject: RE: Deposition Dates for the Berman/L.C. Licensing, Inc. opposition proceeding

Mr. Berman:

Pursuant to your request to take the depositions of both Mr. Evans and Mr. Felix, I have provided below tentative dates on which Mr. Davis and Mr. Felix will be made available. Note that these dates remain subject to final confirmation from both Mr. Evans and Mr. Felix which I should be receiving tomorrow.

March 30th - Mr. Felix
March 31st - Mr. Davis

April 6th - Mr. Felix

April 7th - Mr. Davis

-----Original Message-----

From: Autocary@aol.com [mailto:Autocary@aol.com]

Sent: Tuesday, February 22, 2005 6:52 PM

To: Klinger, Carole

Subject: Re: Deposition Dates for the Berman/L.C. Licensing, Inc. opposition proceeding

Thank you!

**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

Opposition No. 91162330
Serial No. 78320850

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

**APPLICANT'S FIRST NOTICE OF RELIANCE
PURSUANT TO TRADEMARK RULE 2.122(e)**

Pursuant to Trademark Rules 2.122(e), Applicant, representing himself pro se hereby gives notice of its reliance upon information contained in the Deposition of ROLANDO FELIX taken April 6, 2005.

Two copies of the Deposition are attached hereto.

SUBMITTED this 1st day of February, 2007.

TO: Kieran Doyle
Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the Americas
New York, NY. 10036-6799

CARY BRETT BERMAN



CARY BRETT BERMAN

1 ----- x

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

5 Opposer,

6 -against-

7 CARY B. BERMAN

8 ----- x

9
10
11

12 DEPOSITION of ROLANDO FELIX, taken pursuant
13 to Opposition number 91162330/Serial number
14 7832085D, held at the offices of Kramer Levin
15 Naftalis & Frankel, LLP, 919 Third Avenue, New
16 York, New York, on April 6, 2005, at 1:10 p.m.,
17 before a Notary Public of the State of New York.

18
19
20

21 *****

BARRISTER REPORTING SERVICE, INC.

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New York, N.Y. 10271

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

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

BY: CAROLE E. KLINGER, ESQ.

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

XXXXXX

1

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

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

6

7 EXAMINATION BY

8 MR. BERMAN:

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

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

1 Felix

2 A Yes.

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

9 A Yes.

10 Q Have you ever been deposed before?

11 A I won't cut you off.

12 Q Have you ever been deposed before?

13 A No.

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

18 A Yes.

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

23 A Yes.

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

1 Felix

2 you, Mr. Felix?

3 A Yes.

4 Q If you don't understand a question
5 that I ask you, you shouldn't answer it.
6 Instead of answering a question you don't
7 understand, you should just tell me that you
8 don't understand. Will you agree to do that
9 before you answer a question, please?

10 A Yes.

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

15 A Yes.

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

25 MS. KLINGER: Objection to the

1 Felix
2 form of the question.

3 MR. BERMAN: Fine.

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

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

17 A Yes.

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

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

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

1 Felix

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

4 MR. BERMAN: Agreed.

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

9 A Yes.

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

19 A Yes.

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

1 Felix
2 to do. Is that okay with you?

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

5 You can answer it if you
6 understand it.

7 A It seems very vague.

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

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

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

17 A I don't quite understand it.

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

1 Felix

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

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

13 Q Do you wish to answer the question?

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

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

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

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

7 MS. KLINGER: I object to
8 that.

9 Can we go off the record?

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

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

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

23 MR. BERMAN: Off the record.

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

1 Felix

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

7 A Yes.

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

13 Are you ill today?

14 A No.

15 Q Do you feel fine physically?

16 A Yes.

17 Q Are you under any medication?

18 A No.

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

21 A No.

22 Q Have you had any alcohol today?

23 A No.

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

1 Felix

2 testimony today?

3 A No.

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

6 A Yes, as well.

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

10 A Yes.

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

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

15 Q Did you receive a degree?

16 A No.

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

19 A Yes.

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

22 A 1991.

23 Q What was your major?

24 A Fine art.

25 Q Were you employed during college?

1 Felix

2 A Yes.

3 Q In what capacity, might I ask?

4 A I had a part-time job.

5 Q In what field?

6 A In retail.

7 Q Retail, Home Depot, retail clothing?

8 Can you be more specific as to what type of

9 retail?

10 A In retail apparel.

11 Q Clothing?

12 A Yes, apparel retail.

13 Q In what location?

14 A In New York.

15 Q What did you do after college? What

16 was your next employment?

17 A I was working for -- I did various

18 things. I worked in apparel retail, I went

19 into retail buying. I eventually went into

20 apparel design.

21 Q Could you name any companies with any

22 dates associated with them, just

23 approximately?

24 A Yes.

25 MS. KLINGER: Objection as to

1 Felix

2 vague.

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

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

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

10 A When did I first see that?

11 Q Yes, a date.

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

16 You can answer it if you
17 understand it.

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

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

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

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

11 Q Have you ever seen this document
12 before?

13 A No.

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

16 A I am familiar with the trademark.

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

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

23 You can answer the question.

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

1 Felix

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

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

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

7 Q What was the date?

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

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

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

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

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

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

1 Felix

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

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

8 Q Yes, after college.

9 A After college?

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

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

15 Q Located?

16 A In New York City.

17 Q That lasted until when, sir?

18 A 1992.

19 Q Then what did you do, sir?

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

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

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

1 Felix

2 York City.

3 Q That lasted until when, sir?

4 A Until '93. Then I went to another --
5 I became a graphic designer for a company
6 called Rec Clothing, that was also in New
7 York City, the following year. That was
8 '93, and that lasted for another year until
9 1994.

10 Then I started a clothing company
11 with two partners, Tony Shellman and Evan
12 Davis, in 1994 called Mecca U.S.A.

13 Q You stated that you started a
14 clothing company?

15 A Yes.

16 Q These two partners, were you equal
17 partners, the three of you?

18 A We all had different titles.

19 Q Was it a corporation that you
20 gentlemen had?

21 A We all worked for the corporation.

22 Q Was there an existing corporation
23 that you joined?

24 A There was an existing corporation
25 that we joined.

1 Felix

2 Q The name of that corporation, sir?

3 A MA Corporation.

4 Q MA Corporation?

5 A Yes.

6 Q Who were the owners of MA
7 Corporation?

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

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

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

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

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

25 Q You understand that this case

1 Felix

2 involves a trademark?

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

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

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

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

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

15 Q This lasted until when, sir?

16 A This lasted until 1996.

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

20 A No, we didn't.

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

23 A No.

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

1 Felix

2 A Yes.

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

6 A Up until 1996?

7 Q Yes.

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

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

13 A Yes.

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

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

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

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

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

1 Felix

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Can you please describe what

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

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

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

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

19 That's how we came across developing ENYCE.

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

23 A It came about before.

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

1 Felix

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

4 MS. KLINGER: Objection to the
5 form.

6 A Yes.

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

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

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

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

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

1 Felix

2 I will back up.

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

5 A It is the name of a clothing company.

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

9 MS. KLINGER: Objection.

10 Vague and ambiguous.

11 Q Does this have a meaning?

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

14 Q Is this a word?

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

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

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

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

1 Felix

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

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

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

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

11 You may answer it.

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

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

20 You can answer it if you
21 understand it.

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

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

1 Felix

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

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

7 A No.

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

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

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

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

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

1 Felix

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

5 A Any, including ENYCE?

6 Q Yes.

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

9 Q That you are aware of.

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

12 Q Please state those names, sir.

13 A This trademark, the trademark ENYCE.

14 Q Other than this trademark?

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

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

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

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

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

9 A I think I might have --

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

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

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

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

21 THE WITNESS: Can I speak to
22 you?

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

25 MS. KLINGER: Let's not take a

1 Felix
2 break because the question is
3 pending.

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

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

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

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

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

25 A Other than ENYCE?

1 Felix

2 Q Other than.

3 A No.

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

10 Please tell me the events surrounding
11 this discovery.

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

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

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

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

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

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

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

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

21 A No.

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

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

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

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

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

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

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

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

1 Felix

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

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

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

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

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

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

18 A We came up with a name, ENYCE.

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

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

24 Q You wanted to trademark if you could?

25 MS. KLINGER: Objection to the

1 Felix

2 form of the question.

3 A No.

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

10 MS. KLINGER: It is a mark.

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

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

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

19 A We developed a name --

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

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

1 Felix

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

5 (Recess taken.)

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

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

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

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

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

1 Felix

2 into the next day.

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

10 A Yes.

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

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

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

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

1 Felix

2 would be a good mark.

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

5 MS. KLINGER: Objection.

6 Asked and answered.

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

11 A No.

12 Q Was it the day before?

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

14 Q Was it a week, a month?

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

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

25 MS. KLINGER: Objection to the

1 Felix

2 form of the question.

3 You can answer.

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

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

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

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

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

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

1 Felix

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

4 You can answer it if you
5 understand it.

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

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

12 A It was a play on NYC.

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

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

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

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

1 Felix

2 pronounce it.

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

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

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

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

15 THE WITNESS: What was your
16 question again?

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

19 A Yes.

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

22 A Yes.

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

1 Felix
2 Applicant's 2.

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

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

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

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

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

16 A Yes.

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

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

23 You can answer it if you
24 understand it.

25 A No.

1 Felix

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

5 A Yes.

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

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

10 A Not really.

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

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

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

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

1 Felix

2 A I have seen it.

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

5 A No.

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

8 MS. KLINGER: Objection.

9 Asked and answered.

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

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

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

21 A I don't know.

22 Q You're not sure?

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

25 Q Just to back up one second, does this

1 Felix

2 mark have a meaning that you are aware of?

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

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

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

15 MS. KLINGER: Correct.

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

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

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

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

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

1 Felix

2 Q Let's get back to your employment.

3 Are you currently employed?

4 A Yes.

5 Q What do your daily activities consist

6 of?

7 A I am executive vice president of

8 ENYCE.

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

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

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

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

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

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

25 A I believe someone is trying to use

1 Felix

2 our mark for automobile accessories.

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

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

8 A Yes.

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

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

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

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

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

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

1 Felix

2 shipping, advertising, marketing.

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

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

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

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

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

18 A Fairly frequently.

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

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

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

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

1 Felix

2 of the New York office.

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

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

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

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

12 Q Five days a week?

13 A At least.

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

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

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

22 Q Are you dealing with marketing?

23 A On a day-to-day basis.

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

1 Felix

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

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

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

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

13 Q When did that change?

14 A A couple of years ago.

15 Q 2003, 2002?

16 A 2003.

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

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

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

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

1 Felix

2 responsibilities as being an executive.

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

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

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

11 A Advertising does fall into marketing.

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

14 A Trade shows do not fall into
15 marketing.

16 Q Anything else?

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

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

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

1 Felix

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

4 A Retail-related events.

5 Q Events?

6 A Events, shop development.

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

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

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

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

20 MR. BERMAN: Off the record.

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

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

25 Q Where do you advertise? Where does

1 Felix

2 your company advertise?

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

7 Q Any television ads?

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

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

11 A There are no television ads in
12 America.

13 Q Any radio ads?

14 A Occasionally, yes.

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

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

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

23 A Yes.

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

1 Felix

2 there newspaper ads?

3 A Outdoor.

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

6 A Correct, yes.

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

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

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

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

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

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

22 Q Did you say something about music?

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

1 Felix

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

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

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

12 A Nearly a million in circ.

13 Q For what?

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

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

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

1 Felix

2 description?

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

5 Q You stated you were involved in
6 advertising?

7 A Yes.

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

13 A Yes.

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

1 Felix

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

4 You can answer it if you
5 understand.

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

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

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

25 Q You referred to the lady version of

1 Felix

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

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

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

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

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

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

1 Felix

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

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

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

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

25 Q I prior to this tried to do a little

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

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

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

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

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

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

25 Q Is it more likely to be one of the

1 Felix

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

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

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

10 MS. KLINGER: Objection.

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

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

18 A No.

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

22 MS. KLINGER: Yes.

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

25 A Yes.

1 Felix

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

4 A Yes.

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

9 A Yes.

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

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

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

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

21 Q Who asked you to join Fila?

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

23 Q What is his or her name?

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

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

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

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

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

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

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

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

1 Felix

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

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

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

8 Q With?

9 A Mecca U.S.A.

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

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

17 You can answer it if you
18 understand it.

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

22 Q Did you not show Alden Sheets?

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

1 Felix

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

5 A From what I remember, yes.

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

8 A I believe so, yes.

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

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

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

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

18 A Yes.

19 Q Is that correct?

20 A Yes.

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

25 Have you ever seen this document

1 Felix

2 before?

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

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

8 A I have read this before.

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

11 A ENYCE, LLC, I believe, yes.

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

16 A ENYCE, LLC.

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

19 A No.

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

22 A No.

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

25 MS. KLINGER: I have to

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

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

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

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

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

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

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

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

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

1 Felix
2 held off the record.)

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

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

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

14 A Yes, I understand.

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

17 MS. KLINGER: As you
18 understand it.

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

21 Q Its assets, what were those assets?

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

24 Q Were there other assets?

25 MS. KLINGER: Objection. Lack

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

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

9 MS. KLINGER: Objection.
10 Compound question.

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

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

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

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

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

23 Q Does it come to mind right now?

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

1 Felix

2 Q Was there due diligence that
3 occurred?

4 A There was due diligence that
5 occurred.

6 Q How long did that due diligence take?

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

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

11 A Yes.

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

14 A In some cases, yes.

15 Q What were those?

16 A At the time it was discussing --

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

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

1 Felix

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

5 A Right.

6 Q Correct?

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

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

12 A I was never asked that.

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

16 A No.

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

21 A No.

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

25 When you were handling production,

1 Felix

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

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

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

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

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

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

24 Q Who might that have been?

25 A Evan Davis was my direct report.

1 Felix

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

4 A Yes.

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

8 A Me personally?

9 Q Yes.

10 A No.

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

13 A No.

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

16 A No.

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

20 A Yes.

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

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

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

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

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

14 A This is not me.

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

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

19 You can answer the question.

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

1 Felix

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

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

8 MR. BERMAN: As a corporate
9 entity.

10 A I don't know.

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

17 MS. KLINGER: Objection.
18 Vague and ambiguous.

19 You can answer the question.

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

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

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

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

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

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

10 A Yes.

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

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

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

25 MS. KLINGER: Objection to the

1 Felix

2 form of the question.

3 You can answer it if you
4 understand.

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

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

15 A Yes.

16 Q Other than what you have referred to?

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

19 Q Like what?

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

23 Q Did you see everything?

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

1 Felix

2 Q Do you believe you have seen
3 everything?

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

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

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

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

14 You can answer it if you
15 understand it.

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

20 Q Today?

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

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

1 Felix

2 A No.

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

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

10 THE WITNESS: Can you repeat
11 that?

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

14 A No.

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

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

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

1 Felix
2 have an article here that is Applicant's
3 Exhibit 6 written by Cecil Cross from Look
4 Magazine that apparently interviewed your
5 partner, associate, whatever this Tony
6 Shellman is. There are quotations from
7 Shellman, but then there is an area that's
8 not in quotations that the author has
9 stated --

10 MS. KLINGER: Tell us where
11 you are looking at.

12 MR. BERMAN: I am looking at
13 page 2 of this. Page 2 -- no, I
14 apologize. Page 3, the numbers all
15 say page 1 of 2 because it came off
16 the internet. It is actually page 3
17 of this article from Look Magazine,
18 and page 3 in the sixth paragraph
19 down.

20 Q The fifth paragraph down says, "It
21 was bananas," Shellman said." The sixth
22 paragraph said, "Shellman didn't waste any
23 time starting ENYCE, a sportswear company
24 geared towards 14 to 34-year-olds. He said
25 that the name ENYCE originated from a bet.

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

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

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

15 A Right.

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

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

25 Q I guess I don't understand something,

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

7 A Right.

8 MS. KLINGER: Objection to the
9 characterization.

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

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

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

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

25 Q Do you want to change any of your

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

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

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

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

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

13 A Yes.

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

18 A I believe it is incorrect.

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

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

24 A I believe it is incorrect.

25 Q Do you currently have an employment

1 Felix

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

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

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

13 Q Who was that contract with?

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

16 Q Do you receive a weekly paycheck?

17 A I receive a salary, yes.

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

20 A It is a bimonthly paycheck.

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

23 A ENYCE, LLC.

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

25 A Yes, I believe so, yes.

1 Felix

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

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

9 Off the record.

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

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

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

21

22

23

24

25

1 Felix
2 (Beginning of confidential
3 testimony.)

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

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

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

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

19 A Those things are being considered.

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

25 A No, I am familiar.

1 Felix

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

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

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

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

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

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

25 With respect to the types of products

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

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

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

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

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

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

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

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

1 Felix

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

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

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

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

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

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

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

24 A This morning.

25 Q How often do you see Tony Shellman?

1 Felix

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

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

6 A Yes.

7 Q Does he have an office?

8 A He has an office.

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

10 A He has day-to-day activities.

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

13 A Yes.

14 Q Would you describe those?

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

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

1 Felix

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

4 A Sometimes.

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

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

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

15 (Recess taken.)

16 MS. KLINGER: I have nothing.

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

18

19

ROLANDO FELIX

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

22

23 -----

24 NOTARY PUBLIC

25

A		
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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

Opposition No. 91162330
Serial No. 78320850

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

**APPLICANT'S SECOND NOTICE OF RELIANCE
PURSUANT TO TRADEMARK RULE 2.122(e)**

Pursuant to Trademark Rules 2.122(e), Applicant, representing himself pro se hereby gives notice of its reliance upon information contained in the Deposition of ROLANDO FELIX taken December 5, 2006.

Two copies of the Deposition are attached hereto.

SUBMITTED this 1st day of February, 2007.

TO: Kieran Doyle
Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the Americas
New York, NY. 10036-6799

CARY BRETT BERMAN



CARY BRETT BERMAN

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

3 LC LICENSING, INC.,

4 Opposer,

5 -vs-

Opposition No. 91/162,330

6 CARY BERMAN,

7 Applicant.

-----X
 ORIGINAL

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11
12 DEPOSITION OF ROLANDO FELIX

13 New York, New York

14 Tuesday, December 5, 2006
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19 Reported by:

20 Angela M. Shaw, CSR, RPR

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December 5, 2006

1:10 p.m.

DEPOSITION of ROLANDO FELIX, taken by
the Opposer, held at the offices of
Cowan Liebowitz, 1133 Avenue of the Americas,
New York, New York, before Angela M. Shaw,
a Certified Shorthand Reporter, Registered
Professional Reporter and Notary Public of
the State of New York.

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

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**

**

**

1
2 R O L A N D O F E L I X,

3 called as a witness, residing at 299 Pavonia
4 Avenue, Apartment 110, Jersey City, New Jersey 07302,
5 having been first duly sworn, was examined
6 and testified as follows:

7 EXAMINATION BY

8 MR. DOYLE:

9 Q. My name is Kieran Doyle. This is the
10 trial testimony of Rolando Felix, Opposer's witness,
11 in the Trademark Trial and Appeal Board proceeding,
12 captioned LC Licensing, Inc., v. Cary Berman,
13 Opposition No. 91/162,330.

14 I'm marking as Exhibit A, the Opposer's
15 notice of taking trial testimony, pursuant to which
16 we're appearing here today.

17 Mr. Berman, here's your copy.

18 (Exhibit A was received and marked for
19 identification, as of this date.)

20 BY MR. DOYLE:

21 Q. Good afternoon, Mr. Felix.

22 A. Good afternoon.

23 Q. I'm going to ask you a series of questions
24 today, which will be transcribed by the court
25 reporter. This is your testimony in connection with

1 R. FELIX - 12/5/06

2 the Trademark Trial and Appeal Board proceeding that
3 we just mentioned.

4 We'll need you to answer in an audible
5 manner. Please refrain from shaking your head or
6 nodding when I ask you questions. If there's any
7 question you don't understand, you need me to
8 repeat, please let me know.

9 If anyone in the room needs a break,
10 please let me know, and we can try to accommodate
11 those requests.

12 What is your name?

13 A. My name is Rolando Felix.

14 Q. Mr. Felix, where do you live?

15 A. I live at 299 Pavonia Avenue, Apartment
16 110, Jersey City, New Jersey 07302.

17 Q. And what's your date of birth?

18 A. My date of birth is June 4, 1971.

19 Q. Are you currently employed?

20 A. I'm currently employed.

21 Q. Where?

22 A. At Enyce, LLC.

23 Q. Would you spell that for us?

24 A. Yes. That's E-N-Y-C-E.

25 Q. Thank you. What's your title?

1 R. FELIX - 12/5/06

2 A. I am cofounder and executive vice
3 president.

4 Q. How long have you been in that position?

5 A. I've been in that position since 2002.

6 Q. How long have you been with Enyce?

7 A. Since it started in 1996, April 1996.

8 Q. Is Enyce, LLC, an entity that's related to
9 Liz Claiborne?

10 A. Yes. It was acquired Liz Claiborne in
11 2003.

12 MR. BERMAN: Objection. The witness did
13 not say it was Enyce, LLC. You've stated it's
14 Enyce, LLC. Can we get some clarification
15 there, please?

16 BY MR. DOYLE:

17 Q. Prior to your position with Enyce, LLC,
18 where were you employed?

19 A. Prior to Enyce --

20 Q. Strike that.

21 Prior to Liz Claiborne owning Enyce, LLC,
22 was Enyce, LLC, affiliated with another entity?

23 A. Yes. Enyce, LLC, was owned by Fila USA.

24 Q. What was your position during the years in
25 which Fila owned the company?

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2 A. I started as -- I was still a cofounder,
3 and I was vice president of design and production
4 for Enyce and eventually became executive vice
5 president over the course of time.

6 Q. During the Fila years, what were your
7 responsibilities?

8 A. During the first seven years of the
9 company, I oversaw all the aspects of the design and
10 production of the product line for Enyce.

11 Q. Were you involved in the establishing and
12 founding of the brand?

13 A. Yes.

14 Q. Since its inception?

15 A. Yes. I was there since its inception.

16 Q. Were you involved on a day-to-day basis,
17 overseeing all aspects of the design and production?

18 A. Yes. I was overseeing all the design
19 aspects of the design and production.

20 Q. And tell me again for during what period
21 was Enyce affiliated with Fila?

22 A. Between April 1996 to December 2003.

23 Q. Prior to your employment with Enyce, where
24 were you employed?

25 A. I was employed by MA Corporation, which is

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2 a corporation under International News, the original
3 parent company of Mecca USA.

4 Q. What was your position at MA Corporation?

5 A. I was a head designer for Mecca USA.

6 Q. Were you the cofounder of Mecca USA?

7 A. Yes. I was one of the cofounders.

8 Q. What were your responsibilities?

9 A. I oversaw the design development of the
10 Mecca product line.

11 Q. Did you help establish the Mecca USA
12 brand?

13 A. Yes, I did.

14 Q. You were involved with Mecca USA since its
15 inception?

16 A. Yes.

17 Q. How long were you with Mecca USA or MA
18 Corporation?

19 A. July 1994 to March of 1996.

20 Q. Prior to your position with MA
21 Corporation, Mecca USA, where were you employed?

22 A. I was a designer for a company called
23 Wreck Jeans and another company called Dilo. It was
24 same company; they had two labels.

25 Q. What was your position at Wreck

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2 Jeans/Dilo?

3 A. I was head designer.

4 Q. What were your responsibilities?

5 A. I oversaw the development of the
6 product -- of the apparel line for Wreck Jeans and
7 Dilo.

8 Q. How long were you with Wreck Jeans and
9 Dilo?

10 A. I was there from 1993 to 1994.

11 Q. And prior to your time with Wreck Jeans
12 and Dilo, where were you employed?

13 A. I was a graphic designer and salesperson
14 for a company called Fresh Threadz. Threadz with a
15 Z.

16 Q. And during what period was that?

17 A. That was between 1992 and 1993.

18 Q. What were your responsibilities there?

19 A. I was a salesperson and I also did graphic
20 design and I was assistant designer.

21 Q. Retail sales?

22 A. No. On wholesale sales.

23 Q. Okay. And prior to your work with Fresh
24 Threadz, where were you employed?

25 A. I worked for Canal Jean Company as a men's

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2 wear buyer and also a -- I was a merchandiser for
3 the private label, Canal Jean private label.

4 Q. What does a men's wear buyer do?

5 A. A men's wear buyer shops all the wholesale
6 clothing companies and all the different brands and
7 labels and buys it for the store to turn around and
8 sell it to retail for customers.

9 Q. Canal Jean was a retail chain?

10 A. Canal Jean was a retail chain, and it also
11 had a private label division, which they're also a
12 manufacturer of clothes. So they're both a
13 wholesaler and a retailer.

14 Q. What does a merchandiser do?

15 A. A merchandiser designs what type of
16 products to be made, and is involved with working
17 with the design team on choosing which products to
18 design and have made.

19 Q. And these products that you were deciding
20 upon, were they for the private label?

21 A. Yes, they were. For the private label,
22 yes. I was helping decide which products were going
23 to be made with the Canal Jean label.

24 Q. And that was in your merchandise --

25 A. That was in my merchandise

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2 responsibilities. As a men's wear buyer, I was
3 shopping other wholesale companies to bring into the
4 store to turn around and sell retail as well. I was
5 doing both.

6 Q. And prior to working with -- how long were
7 you with Canal Jeans?

8 A. Between 1992 and 1993.

9 Q. Okay. Canal Jeans.

10 A. Canal Jeans. I'm backtracking a bit. I'm
11 sorry. That was 1991 to 1992, I worked at Canal
12 Jeans.

13 Q. And where did you work before working at
14 Canal Jean?

15 A. I worked for a retail company called Zebra
16 Club in Seattle between 1987 and 1991.

17 Q. And what did you do there?

18 A. Zebra Club was the retail division of a
19 clothing -- of a bigger clothing company called
20 International News. And I started out as a stockboy
21 and worked my way up to become a salesperson and
22 eventually became store manager for two of their
23 three stores at the time.

24 Q. During what period of time was that?

25 A. Between 1987 and 1991.

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2 Q. How old were you when you started working
3 there?

4 A. Let's see. That was October '87, so 16.

5 Q. And by what age were you a manager?

6 A. Eighteen.

7 Q. You were managing how many stores when you
8 were 18?

9 A. One store when I was 18. By the time I
10 was leaving, I was managing two stores, at the age
11 of -- yeah, in -- 19, yeah. I was managing two
12 stores by the age of 19.

13 Q. How many years have you worked in clothing
14 fashion?

15 A. Since October 1987 to the present. So
16 it's over -- just short of --

17 Q. Can you just summarize for me your
18 experience within the clothing fashion industry?

19 A. To summarize, I can -- I pride myself on
20 being able to say that I've done almost every step
21 between concept to closet.

22 I've been on the design side, where I've
23 helped conceive the product; I've been through
24 patternmaking to sample making to being that person
25 that actually sells it to the retail buyer; I've

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2 been that buyer that's bought it; and I've been that
3 merchandiser that's put it on the retail floor; and
4 I've also been that stockboy that's brought that
5 product up to the floor; and I've been that salesboy
6 that has helped sell it.

7 So there's -- pretty much from the whole
8 concept of design through wholesale to retail,
9 there's not much that I haven't done in that
10 whole -- in that whole process.

11 Q. That's over a period of about 19 years?

12 A. Yes.

13 Q. Could you describe your educational
14 background, please?

15 A. Yes. I graduated high school in 1989 in
16 Seattle, and I attended Parsons from the -- let's
17 see here. I attended Parsons for one year from 1990
18 to 1991.

19 Q. Did you graduate from Parsons?

20 A. No, I did not graduate from Parsons School
21 of Design.

22 Q. Did you leave to pursue employment?

23 A. Yes, I left to pursue employment full-time
24 with Canal Jean.

25 Q. Tell me about your current

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2 responsibilities with Enyce.

3 A. I'm still -- I'm an executive there, so
4 I'm kept abreast of all the overall -- of the
5 overall direction of the company.

6 My day-to-day now is focussing on the
7 marketing, so I focus on the brand imaging,
8 protecting of the brands, and making sure our
9 outside identity marries up to the product as well.

10 Q. So you have day-to-day responsibilities
11 over marketing?

12 A. Yes.

13 Q. Day-to-day responsibilities over
14 advertising?

15 A. Yes.

16 Q. Have you had day-to-day responsibilities
17 over product development?

18 A. Between 1996 to 2002, I oversaw the design
19 and production.

20 Q. And what's your role in the product
21 development process now, since 2002?

22 A. On a day-to-day, I just kind of watch from
23 afar. I can give my input, but I don't manage it on
24 a day-to-day basis now.

25 Q. Are you consulted on major decisions?

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2 A. I'm consulted on major decisions.

3 Q. Are you familiar with the sales generated,
4 by any chance?

5 A. Yes, I'm familiar.

6 Q. In what capacity?

7 A. I don't -- it's not my --

8 Q. Is it in your role as an executive and
9 cofounder of the company?

10 A. Yes. I'm kept abreast of the numbers, and
11 we have weekly meetings about where we're tracking
12 and how we're doing saleswise. But it's not my
13 official day-to-day responsibility.

14 Q. Do all the products for which you have
15 responsibility and all the marketing efforts and all
16 the advertising efforts for which you have
17 responsibility include the Enyce mark?

18 A. Yes.

19 Q. Are you familiar with the origins of the
20 trademark Enyce?

21 A. Yes, I am familiar with the origins of
22 Enyce, the trademark of Enyce.

23 Q. Tell me about that.

24 A. When we started -- let's see. Where do I
25 start?

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2 In 1996, we started a venture with Fila
3 USA company. It was two of my partners, Evan Davis
4 and Tony Shellman. We left our company, Mecca -- we
5 left the company we used to work for, Mecca USA, to
6 start a new brand, a new venture with Fila USA.

7 We started development in April 1996 for
8 the spring 1997 collection. We were developing
9 production without any names. We were coming up
10 with ideas of what names that we could come up with.
11 And initial trademark searches had kept on coming
12 up, oh, that's taken or this one is taken. We had
13 gone through probably, say, about two or three names
14 that we were trying to trademark.

15 The president of Fila USA at the time had
16 suggested that "perhaps, you should make up
17 something. Why don't you make up some type of
18 sequence of word? Why don't you make up a word,
19 because then it will probably have a higher chance
20 of being open."

21 So with that process, we came up with
22 the -- we came up with the series of letters,
23 E-N-Y-C-E. We took inspiration from where we were,
24 New York City, and we added the Es on either end.
25 And when I brought it -- I had actually come up with

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2 the first time that E-N-Y-C-E was put together.

3 And to me, my interpretation was that it
4 was the phonetic spelling of NYC. When I presented
5 it to my other partners, the first person had said
6 when I asked him, "What did this say --

7 Q. You showed him the sequence of letters?

8 A. When I went and showed him the sequence of
9 letters that was E-N-Y-C-E, he had pronounced it
10 E-nice, like E --

11 Q. Dash?

12 A. -- dash, N-I-C-E. That's how he
13 pronounced it, E-nice. My other partner, when I
14 asked him separately, he had pronounced it Enyce,
15 like U-H, dash, N-E-E-S-E. He pronounced it sort of
16 in a French type of pronunciation.

17 We were working with the Fila people at
18 the time and the -- Alberto Verde (phonetic) being
19 Italian, when I asked him, he had pronounced it
20 Enyce as in A, dash, N-E-E, dash, C-H-A-Y, in kind
21 of an Italian pronunciation.

22 Q. And just to be clear, when you had
23 first -- when this mark was first considered, before
24 it was shown to others to see how they would
25 pronounce it, you said it was the phonetic

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2 equivalent to N-Y-C.

3 So is it accurate to say that would be
4 E-N, space, Y, space, C-E?

5 A. Yes. That is how I looked at it. I
6 looked at it as the phonetic spelling of N-Y-C, as
7 in E-N, hyphen, Y, hyphen, C-E. I thought it was a
8 sure shot. It's representative of New York City.

9 But when I presented it to the other
10 partners, we had heard three different other
11 pronunciations. And we thought that that was
12 actually a good thing. We thought it meant
13 something different to different people.

14 And we thought as long as people are
15 talking about it, we thought that that would be
16 great for the branding, because it sounded exotic.
17 And as long as people are talking about it, we
18 thought it would be a success.

19 Q. Why not just choose a word that already
20 existed? Was this something you did in order to
21 create your own identity?

22 A. We had originally tried to go that route,
23 by trying to take actual words from the dictionary.
24 And we had -- the words that appealed to us happened
25 to be taken. And by actually coining the term, it

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2 cleared and --

3 Q. Did it give you an opportunity to create
4 an identity on a fresh slate?

5 A. Yes.

6 Q. During what period of time did was the
7 selection process taking place?

8 A. It was between April '96 and August '96.

9 Q. Have you been involved with this mark and
10 this brand ever since then?

11 A. Yes, I have.

12 Q. When was the mark first used?

13 A. When we started showing accounts, we
14 presented our apparel collection to the industry as
15 early as April, April or September 1996. And it
16 actually --

17 Q. April or September? Or August?

18 A. I'm sorry. Yes, August. August or
19 September 1996. And it actually hit retail floors
20 spring of 1997.

21 Q. When you were showing this at trade shows
22 and such in August '96, on what goods was the mark
23 placed?

24 A. It was placed on men's knits, men's
25 graphic T-shirts, men's cotton woven bottoms, men's

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2 jackets, windbreakers, outerwear, men's sweat suits,
3 and assortment of sportswear all across the board,
4 men's woven shirts, knits, men's sweat jackets.

5 Q. Since 1996, have the labels and hangtags
6 for the Enyce products featured the mark "Enyce"?

7 A. Yes. Yes, the labels and hangtags have
8 always said "Enyce" and/or the double-E interlocking
9 logo.

10 Q. I'm going to show you Exhibits B, what
11 I've marked as Opposer's Exhibit B through E. Each
12 is one page, and each page features several
13 depictions of what appear to be hangtags.

14 MR. BERMAN: This is B through what?

15 MR. DOYLE: E.

16 (A discussion was held off the record.)

17 MR. DOYLE: Excuse me. These should be
18 Exhibits B through F.

19 (Exhibits B through F were received and
20 marked for identification, as of this date.)

21 BY MR. DOYLE:

22 Q. Again, each exhibit is one page, and each
23 page features several depictions of what appear to
24 be hangtags.

25 Mr. Felix, would you take a look at those.

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2 A. Yes. These are hangtags from our product
3 line. This is a pocket flasher.

4 Q. I'm sorry. What you're pointing to is?

5 A. On B, this is a pocket flasher, which we
6 stick in the pocket of a pant, back pocket.

7 Q. That's the large brown item that says "R
8 No. 96312" on one side, and then it says "Enyce
9 Denim" on the other?

10 A. Yes.

11 Q. Okay.

12 A. These are all hangtags. These are found
13 hanging off the product. There's also examples on
14 Example C, the ticket that has a bar code and a XXL
15 on it, and it also has our corporate trademark.

16 Q. That's the interlocking Es, along with the
17 word "Enyce"?

18 A. Yes.

19 Q. Okay.

20 A. That's what we call a UPC ticket. I think
21 there's another example. There's more examples of
22 UPC tickets on Exhibit E, all the tickets with bar
23 codes. And there's another version of our corporate
24 trademark as well.

25 Every garment has a UPC ticket as well as

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2 our official corporate trademark. You'll see that
3 every hangtag has different artwork, but each
4 hangtag and/or pocket flasher has Enyce, the word
5 "Enyce" on it.

6 Q. And so we have -- tell me again, the bar
7 code items are called what?

8 A. UPC tickets.

9 Q. So an article of clothing will have a UPC
10 ticket, a hangtag, and will also have a label
11 inside?

12 A. Yes.

13 Q. And will the labels inside the garment
14 also feature the word -- mark "Enyce"?

15 A. Yes.

16 Q. Are these goods sold nationally?

17 A. They're sold -- yes, they're sold
18 nationally, and they're sold worldwide throughout
19 Europe as well as Japan and parts of Asia.

20 Q. And the Enyce mark has been in use ever
21 since 1996?

22 A. Yes. There's also the last exhibit of
23 that, I think on Exhibit F, it is also a new -- this
24 is also a new corporate logo for our Enyce Junior's
25 brand that's just gone into -- we've just started

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2 using that as of last year.

3 Q. The script design of the word "Enyce"?

4 A. Yes. That's two interlocking smaller Es.
5 So it's a version that we've also presented.

6 Q. Has the company applied to register the
7 mark "Enyce"?

8 A. Yes, it has.

9 Q. I'm going to hand you what I'm marking as
10 Opposer's Exhibit G, H, and I.

11 (Exhibits G, H, and I were received and
12 marked for identification, as of this date.)

13 BY MR. DOYLE:

14 Q. And I'm going to hand Mr. Berman a copy of
15 those very same exhibits. That's G, H, and I.

16 And I'll ask you, are these copies of the
17 federal trademark registrations that resulted from
18 those applications? Ask you to please take a look
19 at them.

20 A. (Witness complies.)

21 Yes, they're trademark registrations for
22 Lady Enyce and Enyce.

23 Q. Where are Enyce goods sold?

24 A. Enyce --

25 Q. Where have they been sold?

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2 A. Where have they been sold? Enyce has been
3 sold in better specialty stores throughout America
4 and major department stores throughout America as
5 well as major specialty stores across Europe.

6 The last time I checked, we're in over 13
7 countries. In Europe, we have over 13 different
8 sales reps in different countries in Europe. And
9 we're also sold throughout better specialty stores
10 in Japan and some department stores in Japan.

11 Q. When you first started off, did you go
12 right into department stores?

13 A. No, we didn't. We've been in department
14 stores, probably in the last -- we've been in
15 department stores since probably about -- no.

16 We've been in department stores since our
17 first season, but it's been a small part of our
18 business. It has just recently grown in the past,
19 let's say, four to five years.

20 Q. Originally, you started off in specialty
21 shops?

22 A. Originally, we started in specialty shops.
23 We had started in better key department stores.
24 We've been in Bloomingdale's. We've been in
25 Nordstrom's.

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2 It's kind of shifted now. We're more
3 in -- we're in over 400 Federated doors, which is
4 pretty much Macy's nationwide. Four hundred
5 department stores nationwide, which includes Macy's,
6 Dillard's, and then the Saks Company owns Parisian.

7 And those 400 doors comprise of about
8 25 percent of our distribution in the U.S. We're in
9 about 1900 to 2,000 doors across America.

10 Q. What does that mean "doors"?

11 A. Doors are individual points of
12 distribution. We probably have an account -- I'd
13 say -- I'd estimate that our account base is about
14 500 accounts. And when you look at all the
15 individual points of distribution, it's close to
16 902,000 points of distribution.

17 Q. So just on average, each of your 500
18 accounts, then, would have approximately four
19 separated stores, coming to the figure of about
20 2,000 --

21 A. Yeah, with basic math.

22 Q. -- separate points of distribution?
23 That's what you're referring to as "doors"?

24 A. Yes.

25 Q. Are Enyce products sold in malls

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2 throughout America?

3 A. We are distributed in every major mall
4 throughout America.

5 Q. And how many doors per mall would you
6 estimate?

7 A. My estimate is that there's one department
8 store and probably at least one to two specialty
9 stores in each of those major malls. So, on
10 average, two to three points of distribution in
11 every major mall.

12 Q. Across America?

13 A. Across America.

14 Q. How long has that been the case?

15 A. At least since 2000.

16 Q. Could you tell us where Enyce has offices?

17 A. Enyce has offices in New York City, Los
18 Angeles, Atlanta, Chicago. We have offices in
19 Canada. We have offices in Hong Kong. We have
20 offices in Germany.

21 And we have 13 satellite offices
22 throughout Europe, which cover England, Paris,
23 Spain, Italy. Wow. There's Holland. And there's
24 eight other European --

25 Q. Are you in Japan? Do you have offices in

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2 Japan?

3 A. We have -- no, we don't have offices in
4 Japan. We have a production office in Hong Kong.

5 Q. Have your companies advertised goods
6 bearing the Enyce mark? Has Enyce advertised goods
7 bearing the Enyce mark?

8 A. Sorry?

9 Q. Have you run advertisements promoting
10 goods bearing the Enyce mark?

11 A. Yes, we have, yes.

12 Q. Nationally?

13 A. Nationally, since 1997.

14 Q. And is that your responsibility within the
15 company, to oversee that advertising effort?

16 A. It has been my responsibility since 2002.

17 Q. In what media have you advertised the
18 mark?

19 A. We have advertised in print media. We
20 have advertised in outdoor media, such as billboards
21 or advertised on transit, such as buses, the sides
22 of buses. We've also done limited radio buys as
23 well. And we've done -- yeah, outdoor billboards
24 and national magazines, print campaigns.

25 MR. DOYLE: I'm going to mark as Exhibit

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2 J, a document which is captioned "Enyce
3 Spring/Summer 2006 Media Plan."

4 (Exhibit J was received and marked for
5 identification, as of this date.)

6 MR. DOYLE: Mr. Berman, there's your copy.

7 BY MR. DOYLE:

8 Q. Mr. Felix, I'll ask you to take a look at
9 that.

10 A. (Witness complies.)

11 Q. Could you tell us what that is?

12 A. Yes. This is a summary for the first six
13 months of 2006. These are the advertisements that
14 we ran. The titles running along the left side of
15 the column are the national publications that we ran
16 an ad. And, of course, the months are actually from
17 March to July -- March, April, May, June, July.
18 These are the months in which we ran ads.

19 Each of the -- for the images that are
20 horizontal or in a landscape format, those are
21 representative of a two-page ad that we ran in each
22 of those magazines. For the -- actually, the
23 only -- there's only two vertical ones, which are
24 representative of the single-page ad.

25 And that was one for Our Kids -- Kids in

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2 May, and then one also in Source for June.

3 Q. Is this representative of the scope of
4 advertising that Enyce generally undertakes?

5 A. Yes, yes.

6 Q. For how long have you been placing
7 advertisements on this scale?

8 A. On this scale, I would say that, at least
9 since 2000, we've been placing a media buy of this
10 size.

11 Q. And prior to that, what size media buy
12 would you be placing?

13 A. Prior to that, it would have been not as
14 many magazines, but it would have been still the
15 major publications such as VIBE, which has close to
16 a million circulation. The Source magazine would
17 have still been -- Source magazine, XXL, VIBE would
18 have been the three major magazines that we
19 advertise in.

20 And then other magazines such as DUB,
21 we've been running -- well, VIBE, Source, and XXL,
22 we've been running pretty much since the inception
23 of the brand. XXL came a little bit later because
24 it was founded later.

25 Q. Do you decide in what magazines your

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2 advertisements are placed?

3 A. Yes, I make the final decisions on that.

4 Q. You evaluate what the content of that
5 magazine is in making that decision?

6 A. We make our -- for the major publications,
7 we make that decision annually. Occasionally, there
8 are opportunities when we're approached, and we get
9 opportunities. And, sometimes, if we can afford it
10 and we think it's a good fit, then we continue --
11 and we jump on that opportunity.

12 Q. In, yet, a different magazine, someone who
13 you might not have otherwise had a relationship
14 with?

15 A. Yes. And we get -- we're approached on a
16 monthly basis for other opportunities as well.

17 Q. Are these all nationally distributed
18 magazines?

19 A. These are -- let's see here. Yes, these
20 are nationally distributed magazines. College
21 Bound, the very last ad, it's not a newsstand
22 magazine; it's actually targeted towards high
23 schools, juniors and seniors. And it's specific to
24 subscription and to certain schools.

25 Q. It's a niche publication?

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2 A. Yes. Yes.

3 Q. Are there any magazines in which you've
4 advertised that aren't on this list?

5 A. Nothing of great circulation. There might
6 have been an occasional -- something smaller.

7 Nothing on a regular basis, I would say.

8 Q. Have you ever advertised in teenVOGUE?

9 A. Yes, we have advertised in teenVOGUE.

10 Q. For how long a period did you advertise in
11 teenVOGUE?

12 A. It would be occasional.

13 Q. Sporadic?

14 A. It would be sporadic. They're definitely
15 a regular on our 2007 plans, because ELLEgirl, their
16 direct competitor, the number-two competitor in that
17 same market towards teen girls, has recently folded,
18 last summer.

19 So we'll be putting all the money that we
20 would have spent with ELLEgirl to teenVOGUE.

21 Q. Are there any other magazines in which you
22 intend to advertise in 2007 that aren't on this
23 list?

24 A. That aren't on this list. For 2007, we
25 are considering FHM Magazine, FHMUS. And we are

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2 also considering King magazine as well, which is --

3 Q. I'm going to ask you to go through each of
4 those magazines and please tell me how long you've
5 been advertising with them, whether you've been
6 advertising regularly with them, and what the
7 circulation of that magazine is, and what the -- and
8 also what the theme of the magazine is.

9 A. Okay.

10 Q. And if you need me to repeat any of the
11 criteria, please let me know as you go along.

12 A. Okay. The major publications are VIBE
13 magazine, Source magazine, XXL magazine. VIBE
14 magazine is a -- all three of those magazines, VIBE,
15 XXL and Source, are all music magazines. They also
16 cater towards the urban lifestyle.

17 VIBE magazine is currently the largest
18 circulation out of those three publications. VIBE
19 focuses more on R&B, which is rhythm and blues,
20 urban music and hip-hop music, but they also feature
21 fashion, and they also cover more about the urban
22 lifestyle.

23 Their circulation is just under a million,
24 and they're large enough to be -- they also acquired
25 Spin several years ago, which is another big

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2 magazine. I think the only other larger music
3 magazine in America that's ABC-certified is Rolling
4 Stone.

5 The Source and XXL are magazines that are
6 similar, they cater towards the urban lifestyle.
7 They target that urban consumer, and they are more
8 focussed on hip-hop versus R&B music. And I believe
9 they're both neck and neck as far as circulation,
10 but they're at least -- the numbers always come up
11 every year.

12 I could definitely estimate that they're
13 over a half million per month circulation.

14 Q. And they're nationally distributed?

15 A. They're nationally distributed. Well,
16 actually -- yeah.

17 Q. These are three magazines with which you
18 have been advertising, more or less, since the
19 beginning?

20 A. Since we started shipping product, which
21 is in 1997. We've been advertising with Source and
22 VIBE since 1997. I believe XXL was founded in 1999.
23 So once they started, we started advertising with
24 them. Let's see here.

25 Q. Vixen, could you tell us about Vixen?

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2 A. Vixen is a spinoff publication from the
3 VIBE people, and it is catering towards the female
4 consumer. They just -- they're a
5 quarterly-published magazine, and they just finished
6 their first full year of four issues. And we
7 support them, and we're going forward with them in a
8 big way.

9 Q. What's the national distribution?

10 A. It's smaller than VIBE. We don't have
11 those numbers as of now. I don't think they're --

12 Q. Are they nationally distributed?

13 A. Yes, they're nationally distributed.

14 Q. The numbers that you gave for VIBE, is
15 that circulation, or does that take into
16 consideration pass-through readers?

17 A. No.

18 Q. Are those terms with which you're familiar
19 with?

20 A. Yeah. That's -- those are just total
21 issues, so that's a combination of newsstand as well
22 as subscription.

23 Q. What does the term "pass-through readers"
24 mean?

25 A. Meaning that the copy or issue can be

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2 actually seen by more than one person. It can
3 actually pass down or you could pass it to someone
4 else.

5 Q. Is there some customary multiple that you
6 consider in determining how many folks might
7 actually view the magazine as opposed to how many
8 individual magazines are distributed?

9 A. There's certain bureaus. The ABC is
10 probably the most recognized one. It's one of
11 those -- not all magazines are ABC-credited, but
12 VIBE is.

13 Q. And do you know what their pass-through
14 figures -- the multiple is?

15 A. I don't know.

16 Q. Do you know if it's at least a multiple of
17 two?

18 A. I don't know. I don't know.

19 Q. Okay. Tell us, please, about ELLEgirl.

20 A. ELLEgirl is a magazine that was -- it was
21 actually the number-two magazine in the teen female
22 demographic. It was second to teenVOGUE, and it is
23 a magazine that we featured Enyce product, mostly
24 our Enyce Junior's product line.

25 Q. Is that nationally distributed?

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2 A. It's a nationally distributed magazine.

3 Q. How about Complex?

4 A. Complex is a men's lifestyle magazine. It
5 talks about the latest and greatest in fashion, the
6 must-have gadgets and accessories, time piece,
7 jewelry. General style magazine for men. It could
8 talk about the newest cars, anything that's pretty
9 much of interest to males in their -- 20-something
10 males.

11 Q. Is it an urban culture magazine?

12 A. It's an urban culture magazine. It's
13 actually founded by one of our competitors of Enyce.
14 His name is Marc Ecko. It's a publication that he
15 started, I believe, in 2002 or 2003.

16 Q. Okay. And we've discussed XXL and The
17 Source?

18 A. Yes.

19 Q. For the reporter's purposes, XXL is X-X-L?

20 A. Yes.

21 Q. How about Elemental?

22 A. Let's see here. Elemental, and I would
23 even say Fader, they're more of what we call -- we
24 classify as our downtown magazines. They're more of
25 the -- for the hipster crowd. They're covering, I

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2 guess, subgenres of underground hip-hop culture.

3 And Fader covers more of the subcultures
4 for the consumer that's really into music or really
5 into hip-hop, per se. They have smaller
6 circulations, but they are the magazines to be in as
7 far as getting credibility.

8 Q. Do you know where the title "Fader" comes
9 from?

10 A. "Fader" actually is a reference to a
11 piece -- it's to a mixing board, which is the
12 crossfader, which is a piece of AV equipment used
13 for mixing when you're going back and forth between
14 turntables. So it was --

15 Q. Studio mixing or DJ/club mixing?

16 A. DJ mixing and club mixing. The original
17 issues of Fader was primarily based about DJ
18 culture, which is one of the major elements of
19 hip-hop culture. And it eventually blossomed into
20 becoming more of a music-oriented magazine.

21 Q. That's a direct reference to the equipment
22 that is used in connection with the hip-hop music
23 industry?

24 A. Yes. The hip-hop music industry as well
25 as culture.

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2 Q. What about DUB? Tell us about DUB.

3 A. DUB magazine is an automotive lifestyle
4 magazine. I guess it differs from the other
5 automotive magazines in that it covers more
6 lifestyle.

7 A lot of the magazines, when we're
8 choosing our Enyce media buy, we believe we're a
9 lifestyle brand, and we try to affiliate ourselves
10 with magazines that are in that similar genre.
11 That's why when we look at VIBE, per se, they cover
12 urban culture. Yes, they may be categorized as a
13 music magazine, but they cover fashion, they cover
14 lots of different elements for urban lifestyle.

15 Same with DUB. They may cover primarily
16 the car culture or the aftermarket scene with
17 automobiles, but they also cover the entire
18 lifestyle. And if that's relating to music, if
19 that's relating to the car show scene, it's kind of
20 in the same way that Elemental or Fader covers more
21 underground hip-hop.

22 DUB goes more into car culture, and -- so
23 car culture and car lifestyle is completely
24 integrated in hip-hop lifestyle and hip-hop culture
25 and urban culture. And we see ourselves as a

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2 clothing brand, where we focus on clothing, per se,
3 but we're also looking to expand our brand into
4 urban culture.

5 Q. The underpinnings of your brand were
6 founded in urban culture; is that right?

7 A. Yes.

8 Q. DUB, you referred to it as an automotive
9 lifestyle magazine. Is it general automotive
10 lifestyle, or does it focus on the urban culture?

11 A. It's not as general as a Road & Track or
12 an AutoWeek, per se. It focuses more on the
13 aftermarket scene for people that want to improve
14 their cars or people that are into exotic cars.

15 Actually, it focuses on the fashion part
16 of the automotive world, whether it's accessorizing
17 your cars with the latest accessories, such as the
18 rims or the tires or whether it's performance parts
19 for your engine, whether it's accessories, various
20 accessories.

21 It could be anything for the interior. It
22 could be enhancing your car -- your car's
23 audio/video system.

24 And, you know, the people that are
25 involved, the people that are into that, are a cross

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2 section, but I would say that a lot of people that
3 are also interested urban culture are also
4 interested in the automotive lifestyle as well.

5 Q. Based on the advertisements you've seen in
6 DUB magazine, would you say that the advertisers are
7 offering what you might describe as urban culture
8 products?

9 A. I'm sorry?

10 Q. Based on the advertisements you've seen in
11 DUB magazine, would you say that the advertisers are
12 offering items that appeal within urban culture?

13 A. Yes, yes. We see our direct competitors
14 of Enyce also advertising in DUB magazine. We also
15 find companies that are selling other things such as
16 accessories. And in many cases, you might actually
17 find people that are doing both fashion as well as
18 car accessories too.

19 It runs pretty much the whole gamut, from
20 jewelry to time pieces to the automotive accessories
21 as well.

22 Q. The title DUB, do you know where that
23 comes from?

24 A. DUB is a term referring to the wheels.
25 You know, in my days, we called them just rims. But

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2 now they're called "dubs." I believe dubs are any
3 wheel that is at least 20 inches in diameter or
4 larger.

5 Q. So it's an aftermarket embellishment on a
6 vehicle?

7 A. It's a slang term for wheels. And usually
8 wheels that size, I mean, are usually aftermarket.

9 Q. Take a look at the next page, the second
10 page of Exhibit J.

11 A. (Witness complies.)

12 Q. Could you tell us about that?

13 A. These are examples -- this is our
14 outdoor -- this is Enyce's outdoor media buy that we
15 ran for spring/summer 2006. Each of these images
16 are representative of a much larger billboard. The
17 first one is located on 125th Street in Harlem in
18 New York City. It runs 12 months out of the year,
19 and will be running 12 months out of the year for
20 2007 as well.

21 The next one is on Houston Street in New
22 York City, in downtown New York City. That ran
23 earlier this spring. And we also ran this billboard
24 here on Sunset Boulevard in Los Angeles, California.
25 That ran during the springtime.

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2 And the last one is Houston, Texas, which
3 also ran -- that ran also in the spring/summer
4 months as well. We run the ones in Los Angeles and
5 Houston because of this culture that we're talking
6 about, Los Angeles, the awards season, the GRAMMYS,
7 Oscars.

8 A lot of the tastemakers are in Los
9 Angeles during that time. So we feel it's -- we've
10 always tried to influence those that influence
11 others. So these same people are in this town.
12 That's why we advertise there.

13 And Houston is because NBA All-Star
14 Weekend in 2006 was -- that's where it occurred.
15 And, again, this lifestyle which -- this hip-hop
16 urban lifestyle obviously transcends. And just as
17 it goes into the automotive world, it also goes into
18 the athletic world.

19 And when you flip through the pages of DUB
20 magazine, you'll see many NBA athletes and athletes
21 also featuring their vehicles, too, so it's
22 completely interrelated, this world, this urban
23 style.

24 Q. I'm going to ask you to take a look at
25 what I'm marking as Opposer's Exhibit K.

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2 (Exhibit K was received and marked for
3 identification, as of this date.)

4 BY MR. DOYLE:

5 Q. It's a multipage Exhibit, some of which --
6 some of the pages are foldout pages.

7 A. Okay.

8 Q. I'm handing Exhibit K to Mr. Berman.
9 Take a look and I'll ask you some
10 questions.

11 A. Okay.

12 (Witness complies.)

13 Q. Is the first page of Exhibit K a copy of
14 the cover of Elemental Magazine?

15 A. Yes, it is.

16 Q. And it says, "His Last Interview Proof,
17 Busta Rhymes, Leader of the True School"?

18 A. Yes.

19 Q. Is there Enyce advertisements in this
20 magazine?

21 A. Yes, those pages are.

22 Q. When you refer to "those pages," you're
23 referring to the pages marked as Bates-labeled
24 EN000039 and EN000040?

25 A. Yes. That's the photocopy of the two-page

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2 spread that we took out in that copy of Elemental.
3 The next page, the LRG advertisement, it's a direct
4 competitor of Enyce that also advertised in that
5 issue.

6 The next page is an advertisement for
7 Tribal gear, which is another competitor of Enyce.
8 The next two pages look like an advertisement from
9 Scifen, S-C-I-F-E-N, which is another competitor and
10 it -- yeah, of Enyce.

11 Q. Is Akomplice, A-K-O-M-P-L-I-C-E, a
12 competitor of Enyce?

13 A. No. Akomplice is a hip-hop artist, music
14 artist.

15 Q. Is Dr. Jays a clothing retailer?

16 A. Dr. Jays is a clothing retailer, and they
17 are also an online clothing retailer.

18 MR. DOYLE: I'm going to mark as Exhibit
19 L, a seven-page document. It starts with Bates
20 No. EN000173 to EN000179. I'll give Mr. Berman
21 a copy of this.

22 (Exhibit L was received and marked for
23 identification, as of this date.)

24 BY MR. DOYLE:

25 Q. I'm going to ask you to identify what this

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2 document is, please.

3 MR. BERMAN: This is L?

4 MR. DOYLE: Yes, it's L.

5 A. These are the advertisements between 2003
6 and 2005 that we advertised specifically in DUB
7 magazine. The cover is representative of which
8 issue, and then the image below is representative of
9 the ad that we took out.

10 BY MR. DOYLE:

11 Q. Okay.

12 MR. DOYLE: I'm now going to mark as
13 Exhibit M, a document which features on its
14 first page DUB magazine, dated June/July 2006.

15 (Exhibit M was received and marked for
16 identification, as of this date.)

17 BY MR. DOYLE:

18 Q. Would you please take a look at that.

19 A. (Witness complies.)

20 Q. I'll give Mr. Berman his copy as well.

21 That's M.

22 Could you tell us what this document is?

23 A. Yes. The first page is the cover of DUB
24 magazine. It's June/July 2006, and the next page is
25 the two-page advertisement that we took out for

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2 Enyce.

3 Q. Going back to Exhibit L for a moment,
4 could you please tell me if you recognize the people
5 on the cover of each of these DUB magazines and who
6 they are?

7 A. Okay. For Exhibit L, that's Sugar Shame
8 Mosley. He is a boxer.

9 Q. That's on the first page?

10 A. That's on the cover of DUB magazine. And
11 let's see here.

12 Second page is the spring 2003 issue, No.
13 17, which features Westside Connection. It's a
14 hip-hop group out of Los Angeles. That's the cover
15 of that ad.

16 Issue No. 19, summer 2004, on the next
17 page, features Nigo. Nigo is actually a urban
18 fashion designer from Tokyo, Japan. He started a
19 brand called Bathing Ape and Billionaire Boys Club.
20 They are a direct competitor to Enyce. And it looks
21 like it's the Rolls-Royce that he owns on the cover
22 of DUB.

23 The next page is Issue 26, summer 2005.
24 And this is Shawn Marion and Quentin Richardson.
25 They are athletes, NBA athletes, sitting next to

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2 their cars as well.

3 And Issue 27 on the next page, summer
4 2005, features a model, Vida Guerra, G-U-E-R-R-A,
5 and she's a pinup girl, model.

6 And the next page is Issue 28, fall 2005.
7 It features Nick Cannon. He's an actor.

8 And the last page, Issue 30, winter 2005,
9 features the rock group Green Day and their cars as
10 well.

11 Q. And on Exhibit M, who is on the cover of
12 DUB?

13 A. That is Busta Rhymes, platinum-selling
14 hip-hop artist.

15 MR. DOYLE: And I'm going to mark now as
16 Exhibit N, a copy of -- oh, well, an exhibit,
17 the first page of which is the cover of DUB
18 magazine, dated August/September 2006. Here's
19 Mr. Berman's copy of Exhibit N.

20 (Exhibit N was received and marked for
21 identification, as of this date.)

22 BY MR. DOYLE:

23 Q. Who is that on the cover?

24 A. That is hip-hop legend Darryl McDaniels,
25 also known as DMC from the group Run DMC.

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2 Q. What are the next pages of that exhibit?

3 A. The next page of this is the two-page
4 advertisement we took out for fall 2006 for Enyce.

5 Q. And that appears in DUB magazine?

6 A. Yes.

7 MR. DOYLE: I'm going to mark as Exhibit
8 O, another exhibit that the first page of which
9 appears to be the cover of DUB magazine, dated
10 March 2006. I'll give Mr. Berman his copy of
11 Exhibit O.

12 (Exhibit O was received and marked for
13 identification, as of this date.)

14 BY MR. DOYLE:

15 Q. And who is that on the cover?

16 A. This is Ludacris. He is an Atlanta-based
17 hip-hop artist, music artist, and his crew DTP,
18 known as Disturbing the Peace.

19 Q. And inside, or the following pages of that
20 exhibit, could you tell us what that is?

21 A. Yes. One is a two-page advertisement that
22 we took out for Enyce for spring 2006. And the
23 other page is actually editorial from the magazine.
24 It's from DUB magazine itself. It's their fashion
25 editorial, and they actually covered Enyce clothing

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2 in the fashion editorial.

3 Q. Okay.

4 MR. DOYLE: I'm going to mark as Exhibit
5 P, an exhibit that the first page of which
6 appears to be Complex magazine from
7 February/March. I'll give Mr. Berman his copy.

8 (Exhibit P was received and marked for
9 identification, as of this date.)

10 MR. BERMAN: Is this O or P?

11 MR. DOYLE: P.

12 BY MR. DOYLE:

13 Q. Could you tell us what that is?

14 A. Yes. This is the cover of Complex for
15 February/March 2006, featuring Naomi Campbell, super
16 model.

17 Q. And what are the additional pages of that?

18 A. The other page is the two-page
19 advertisement that we took out in Complex magazine
20 for Enyce.

21 MR. DOYLE: I'm going to now mark as
22 Exhibit Q, a copy of what appears to be VIBE
23 Vixen magazine, dated spring 2006, with
24 additional pages. I'll give Mr. Berman his
25 copy.

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2 (Exhibit Q was received and marked for
3 identification, as of this date.)

4 BY MR. DOYLE:

5 Q. Could you tell me what that exhibit is?

6 A. Yes. It's the cover of VIBE Vixen for
7 spring 2006, quarterly issue. It features Kimora
8 Lee Simmons. She is actually the head of a direct
9 competitor of Enyce's -- she heads up the company
10 Baby Phat, which produces urban women's clothing.

11 And the inside is the two-page spread that
12 we took out in VIBE Vixen for Enyce.

13 MR. DOYLE: I'm going to mark as Exhibit
14 R, a one-page document, Bates-numbered
15 EN000396. Mr. Berman, here is your copy.
16 That's R.

17 (Exhibit R was received and marked for
18 identification, as of this date.)

19 BY MR. DOYLE:

20 Q. Could you tell me what that is?

21 A. Yes. This is an advertisement for Enyce
22 from holiday 2005. It's a two-page spread.

23 Q. Do you know where that ad ran?

24 A. Offhand, I don't know. But, I mean, if I
25 estimated, it would be VIBE magazine or Source or

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1
2 XXL.

3 Q. It was a magazine ad, a print ad?

4 A. Yes.

5 Q. And it definitely ran?

6 A. It definitely ran during that season.

7 Which magazine, right now I'm not specific on.

8 Q. Was it a national ad campaign?

9 A. Yes.

10 MR. DOYLE: I'm marking as Exhibit S, a
11 one-page document that features Bates No.
12 EN000335.

13 (Exhibit S was received and marked for
14 identification, as of this date.)

15 BY MR. DOYLE:

16 Q. Could you tell me what that is?

17 A. Yes. This is a publication put out by
18 NASCAR. It's Urban Youth Racing School. NASCAR has
19 created an initiative to start getting urban youth
20 interested in NASCAR.

21 NASCAR has been a racing phenomenon that's
22 kind of taken the nation by storm. What started out
23 in rural America has taken over America worldwide.
24 And they're trying to get urban youth involved into
25 the sport.

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2 And they actually approached Enyce to see
3 if we're interested in advertising. And they looked
4 to us as being one of those authentic brands in the
5 urban lifestyle. And when we saw that it was to
6 promote youth and get them educated on racing, we
7 thought it was a great idea. So we took out six
8 pages.

9 Q. You took out six pages' worth of
10 advertising --

11 A. Yes.

12 Q. -- in this magazine?

13 A. Yes.

14 Q. They approached you?

15 A. Yes. The people at NASCAR approached us.

16 Q. Tell me about your radio advertising.

17 A. Radio advertising, we limit it to local
18 areas, and it's usually event-driven. If there's
19 a -- if there's some type of retail promotion or
20 event -- some type of event promotion, then we
21 usually run radio advertising around there.

22 In the past, we've participated with some
23 of the -- what they call the Summer Jams, which are
24 like summer hip-hop concerts. We've promoted those
25 in cities such as New York and Los Angeles on a

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2 regular basis.

3 We've also -- if we have a retail in-store
4 where we may do an autograph signing with a
5 celebrity at a specific store, we may run radio ads
6 in that particular city for that event. We've also
7 run radio ads for contests such as the car giveaway
8 in Atlanta that we did last year for Macy's South.

9 And the one regular thing we've been doing
10 for the past -- for several years right now, since
11 at least 2003, we've been working with an account in
12 Philadelphia called City Blue, down on Chestnut
13 Street. And we give him an allowance of \$30,000
14 annually, and he spends it quarterly, 7500 a quarter
15 to purchase radio ads to promote Enyce at his retail
16 store in the Philadelphia area.

17 Q. Where do you run bus ads?

18 A. Bus ads, primarily in New York City. We
19 run them seasonally. We have also expanded the
20 program to the Chicago metropolitan area as well as
21 Atlanta.

22 Q. Have you had an advertising budget every
23 year since 1996?

24 A. Since 1997 when I started retail, yes.

25 Q. Do you know, on average, how much you've

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2 spent per year on advertising?

3 A. On average, yes. When we were just first
4 starting in 1997, our marketing budget was about
5 \$900,000, of which we devoted \$500,000 just for
6 advertising. It's increased as our volume has
7 increased.

8 And in the later years, dating from 2000
9 on, it's averaged anywhere from 4 to 5 percent. Our
10 marketing budget has averaged about 4 to 5 percent
11 of our sales for that particular year. And our
12 advertising has averaged, I would say -- I would
13 estimate about 40 percent of that.

14 Q. Of that marketing budget?

15 A. Of that marketing budget.

16 Q. Could you estimate how much you've spent
17 on marketing since 2007?

18 A. On marketing since 2007, yes. I would say
19 that we've spent -- we have spent in excess to
20 \$13 million since 1997 to now.

21 Q. How much of that would you say went to
22 advertising, per se?

23 A. I believe that is the number.

24 Q. For advertising?

25 A. Yes.

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2 Q. That's an advertising number?

3 A. Yes.

4 Q. And the marketing number would be
5 something more than double that?

6 A. Yes.

7 Q. Okay. Does Enyce have a Web site?

8 A. Yes, it does.

9 Q. What are the domain names that Enyce owns
10 that link to that Web site?

11 A. Www.enyce.com and www.ladyenyce.com.

12 Q. What's the purpose of this Web site?

13 A. The purpose is -- it's promotional
14 purposes to promote the brand Enyce.

15 Q. How long has that site been active?

16 A. It has been active since 2002.

17 Q. And was there a period of time prior to
18 that when it had been active?

19 A. It had been inactive between 2000 and
20 2001, and it was up sporadically in 1999. Prior to
21 that, we didn't really have an online presence.

22 Q. Okay. Just so I understand. In 1999, you
23 launched a Web site, and how long did that stay
24 active?

25 A. It was sporadic for anywhere from three to

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2 six months.

3 Q. Okay.

4 A. We actually had a corporate site as well
5 as E-commerce in 1999. And then our E-commerce
6 partner went out of business, and we miserably
7 failed, and we were dormant between the years 2000
8 and 2001.

9 And from 2002 to the present, we have
10 produced our own corporate site, marketing site,
11 with no E-commerce. For 2007, we plan to relaunch
12 E-commerce for Enyce.

13 Q. Does this site always feature the Enyce
14 mark permanently?

15 A. Yes, the Enyce trademark is prominently
16 featured.

17 Q. And it always promotes Enyce goods?

18 A. Yes, it does.

19 Q. Do people register on this site?

20 A. We have an area where a user can register.

21 Q. And how many registered users are there?

22 A. Currently, our database consists of about
23 115,000.

24 Q. And have you ever tracked how many
25 visitors you get within a given month?

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2 A. Yes, we have.

3 Q. And what numbers have you seen there?

4 A. We have seen our traffic as high as 80,000
5 unique users in a given month. It's usually tied
6 into when we're doing a promotion. Currently, it's
7 probably not that high, but we've seen traffic as
8 high as 80,000.

9 Q. Does the content of your site change from
10 time to time?

11 A. It changes on a -- at least a six-month
12 basis.

13 Q. Does the content generally parallel your
14 present ad campaigns?

15 A. Yes, it does.

16 Q. Does your Web site promote contests?

17 A. Yes, it does.

18 Q. Could you tell us some of those?

19 A. We've had promotions and giveaways. We've
20 done collaborations with different magazines where
21 we've done trivia contests and the winner has
22 received gift packs, whether it's an Enyce knapsack
23 filled with promotional items and T-shirts and
24 goodies like that.

25 We've also had Enyce giveaways or Enyce

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2 contests to win customized Enyce iPod MP3 players.
3 We've also -- during that short stint in 1999, we
4 also had an a sweepstakes where the winner won a
5 trip to Las Vegas and had the opportunity to see
6 what Enyce does at a trade show.

7 Q. What trade show was that?

8 A. That's the MAGIC trade show in Las Vegas.

9 (Exhibit T was received and marked for
10 identification, as of this date.)

11 BY MR. DOYLE:

12 Q. I'm going to show you what has been marked
13 as Opposer's Exhibit T. It's a multipage document.
14 Give Mr. Berman his copy.

15 Could you tell me what that is?

16 A. Yes. These are screen shots from
17 enyce.com. And it is a -- let's see. The pages --
18 I guess -- the first page is our home page, and then
19 the first ten pages feature a quote from Enyce
20 staff, past and present, as well as images from
21 advertising campaigns over the course of years from
22 1997 to the present.

23 The 11th page shows pictures from our
24 tenth anniversary event that we held in New York
25 City. And Pages 12 through, I guess, 23 is a

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2 section that features the fall holiday -- that
3 features products that we sold during the fall
4 holiday 2006 season. It shows our advertising
5 campaign as well as the product.

6 Q. We talked briefly about contests a moment
7 ago.

8 Has the company promoted its Enyce mark
9 through contests?

10 A. Yes, it has.

11 Q. Give me some examples again, please.

12 A. We've done iPod giveaways online. We've
13 done trivia contests online.

14 Q. Were those iPods decorated with the Enyce
15 mark?

16 A. Yes, we put our corporate logo, and we
17 customized -- we put a customized paint job on the
18 iPods as well as our corporate logo, our corporate
19 trademark, on the iPods.

20 Q. How many did you give away?

21 A. Gave away six.

22 Q. And you mentioned you had a contest where
23 the winner would go to the MAGIC trade show in Las
24 Vegas?

25 A. Yes. We did an enyce.com sweepstakes

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2 where the winner won a flight to Las Vegas and had
3 the opportunity to see what we do at an apparel
4 trade show.

5 Q. What other shows have you offered people
6 tickets to?

7 A. We've done modeling contests in
8 conjunction with The Tyra Banks Show during Los
9 Angeles Fashion Week, where the winner won an
10 opportunity to get the opportunity to be an actual
11 model in one of our runway fashion shows.

12 We do in-store contests, retail giveaways.
13 We've given away product during in-store events as
14 well as -- we've done concert ticket giveaways with
15 retailers where we'll tie in where customers can go
16 into our stores and be part of raffles or drawings
17 where we give away concert tickets.

18 Q. Earlier, you mentioned a car giveaway
19 contest in connection with Macy's South, I believe
20 it was?

21 A. Yes.

22 Q. Could you tell us about that?

23 A. Yes. For our tenth anniversary, we got
24 involved with Macy's South down in Atlanta. And we
25 customized an -- I believe it's a 1973 Chevrolet

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2 Impala. We worked with hip-hop --
3 multiplatinum-selling hip-hop artist T.I. He has a
4 car automotive shop down there, and they customized
5 a classic Chevrolet Impala with our Enyce trademark.

6 We customized the paint job of the car,
7 and we also put our ten-year anniversary logo
8 embroidered on the headrests. And for a couple
9 weeks, people had a chance to put their name in for
10 a drawing, and we did -- the winner actually got a
11 chance to meet T.I., and T.I. actually passed the
12 keys off to the lucky winner in Atlanta.

13 (Exhibit U was received and marked for
14 identification, as of this date.)

15 BY MR. DOYLE:

16 Q. I'm handing you now what's been marked as
17 Exhibit U. It says across the top, "Enter for a
18 chance to win."

19 MR. DOYLE: Mr. Berman, here's your copy.

20 BY MR. DOYLE:

21 Q. Could you tell us what that is?

22 A. Yes. It's the poster that you would see
23 during this event -- during this Macy's promotion,
24 had you walked in there, explaining basically the
25 drawing and the opportunity to win this car.

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2 MR. DOYLE: And what I'm marking here is
3 Exhibit V.

4 (Exhibit V was received and marked for
5 identification, as of this date.)

6 A. That's artwork of the signage that was
7 actually above the car that was on display.

8 MR. DOYLE: Here's Mr. Berman's copy.

9 BY MR. DOYLE:

10 Q. Was that a banner?

11 A. It's a banner. In big bold letters, it
12 says "Win This Ride!" getting people interested
13 about the car. And it also shows our Enyce
14 trademark, the special version we did with the
15 ten-year anniversary. That was also on the
16 headrests of the car.

17 Q. Was the word "Enyce" part of that ten-year
18 anniversary logo?

19 A. Yes. In script letters, it was there.

20 Q. And that mark, the "Enyce" word mark,
21 appeared on the headrest, you said?

22 A. Yes.

23 MR. DOYLE: I'm marking as Exhibit W, a
24 document that's Bates-numbered EN000342.

25 There's your copy, Mr. Berman.

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2 (Exhibit W was received and marked for
3 identification, as of this date.)

4 BY MR. DOYLE:

5 Q. Could you please identify that?

6 A. Yes. That's a detail of the car, to show
7 the detail of the customized paint job. In the
8 diamond shapes, you'll see the interlocking Es,
9 which is our trademarked logo for Enyce. And you'll
10 also see the interlocking lowercase Es, which is our
11 other trademark logo that we market the Enyce
12 Junior's brand with.

13 MR. DOYLE: Exhibit X, I'm marking.

14 That's Bates-labeled EN000341.

15 Mr. Berman, here's your copy.

16 (Exhibit X was received and marked for
17 identification, as of this date.)

18 BY MR. DOYLE:

19 Q. Could you identify what that's a picture
20 of?

21 A. Yes. That's a picture of the sign along
22 with the car and the big profile of the car that was
23 the prize for the sweepstakes.

24 Q. Where was this on display?

25 A. This was on display right outside of the

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2 mall entrance at Lenox Mall in Atlanta at the Macy's
3 that we held the contest at.

4 Q. Is that a major mall?

5 A. Lenox Mall is probably the most popular
6 mall in Atlanta.

7 Q. And above the car, that's the banner ad
8 that had been depicted in Exhibit V?

9 A. Yes, it is.

10 Q. And that says "Win This Enyce Ride!"?

11 A. Yes.

12 Q. And then to the left of that is the
13 ten-year anniversary logo, which says "10 year
14 anniversary." Then it says '96 to '06 with the --

15 A. Classic Enyce.

16 Q. -- words "Classic Enyce" below that?

17 A. Yes.

18 MR. DOYLE: And Exhibit Y, which I'm
19 marking right now is Bates-numbered EN000338.

20 Mr. Berman, here's your copy.

21 (Exhibit Y was received and marked for
22 identification, as of this date.)

23 BY MR. DOYLE:

24 Q. Could you tell us what that's a picture
25 of?

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2 A. Yes. That's a picture of the lucky winner
3 that actually won the car, along with the sign that
4 was in Macy's, as well as him sitting in the car.

5 Q. That's the contest winner right there?

6 A. Yes.

7 Q. And Exhibit Z is Bates-labeled EN000339.

8 (Exhibit Z was received and marked for
9 identification, as of this date.)

10 BY MR. DOYLE:

11 Q. Could you take a look at that, please?

12 A. (Witness complies.)

13 MR. DOYLE: Mr. Berman, here's your copy.

14 BY MR. DOYLE:

15 Q. Could you tell us what's depicted in that
16 picture?

17 A. That is a picture of the rapper, a music
18 artist, T.I.

19 Q. And tell us again what we had to do with
20 this car.

21 A. He owns an auto shop in Atlanta where they
22 customize cars. They'll take classic cars, and
23 they'll customize the car with -- whether it's paint
24 jobs or audio/video systems or new rims, they'll
25 customize. And they customized the car to make it

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2 the Enyce Special Edition car.

3 Q. And he has a business that customizes cars
4 generally, not just for you for?

5 A. Yeah. He has his business aside from
6 Enyce. It has nothing to do with Enyce, but we did
7 a collaboration with him.

8 Q. What's his name again?

9 A. His stage name is T.I.

10 Q. Okay. What was the thinking behind this
11 contest?

12 Well, first, let me ask: Were you
13 involved in the creation of this contest?

14 A. Yes, I was.

15 Q. And what was the thinking behind it?

16 A. The thinking behind it, Macy's wanted to
17 have some type of promotion to generate business in
18 February, and they wanted to give away roses during
19 Valentine's Day. And we thought that that had
20 nothing, really, to do with our consumers' lifestyle
21 and culture. And they asked us to come up with some
22 ideas.

23 And when we, you know, talked to our
24 contacts in the urban and hip-hop world, we got in
25 contact with T.I., and T.I. is interested in

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2 automobiles, which is pretty common in this world.

3 Q. What world is that?

4 A. Where the hip-hop music world interrelates
5 with the fashion world, interrelates with the
6 automotive world. And we put together a
7 collaboration where his auto company, his
8 customization company customized a car for Enyce's
9 behalf.

10 And that's directly relevant to our
11 consumers' lifestyle. Nice cars, nice fashion,
12 urban lifestyle -- all three of them go together and
13 are interrelated.

14 Q. Was this a successful contest?

15 A. Yes, it was very successful.

16 Q. Have you ever done any other -- or can you
17 think of any other car-related contests related to
18 the Enyce mark?

19 A. Contests? Well, I mean --

20 Q. Or any promotional -- car-related
21 promotions?

22 A. There have been -- like car
23 collaborations? Or are we saying, like -- I'm --

24 Q. Well, let's start with contests.

25 A. Okay. With contests. Yeah. I'm guessing

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2 we're not the first person to give away a car.

3 Q. No. I mean -- let me clarify.

4 Contests in which Enyce may have been
5 involved with magazines or with other companies that
6 related to cars or car shows or anything of that
7 sort.

8 A. Okay. What we've done -- any car contests
9 in the --

10 Q. Well, contests that relate to -- have you
11 ever done contests that related to folks being sent
12 to car shows?

13 A. We've done that with DUB magazine where
14 we've done ticket giveaways to the DUB car show.

15 Q. And how many tickets did you give away
16 through your --

17 A. I would say a dozen.

18 Q. Was that done to promote the Enyce mark?

19 A. Yes.

20 Q. Does Enyce sponsor events or
21 organizations?

22 A. Yes.

23 Q. Do you have a budget for that?

24 A. Yes, we do.

25 Q. What's that budget?

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2 A. It averages. I mean, the -- I'd say that
3 that budget is around a hundred to possibly a
4 125,000 annually.

5 Q. Can you give some examples of events or
6 groups that you sponsor?

7 A. Yes. We've sponsored a lot of things. We
8 may sponsor -- it may be a nightclub promotion where
9 we'll sponsor a party in conjunction with a
10 nightclub or a promoter. Or we may sponsor -- we've
11 sponsored baseball teams in Harlem where -- we're
12 involved with Harlem RBI, where we sponsor community
13 service projects.

14 We also sponsor -- we sponsor event-driven
15 projects which happen throughout the year. A lot of
16 the -- let's see. Sponsorships -- we sponsor
17 concert tours. We sponsor -- we've sponsored auto
18 show tours. We've also sponsored -- it's -- we've
19 gone --

20 Q. When you sponsor an event or an
21 organization, is the Enyce mark promoted at those
22 events?

23 A. Yes.

24 Q. By those organizations?

25 A. Yes.

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2 Q. Tell me about the auto show tours that you
3 sponsored?

4 A. It's been more of, like, ticket giveaways
5 where we've -- DUB will approach us, and as an
6 advertiser, they'll give us opportunities to get
7 involved with whatever they're doing.

8 And since DUB promotes an auto show tour,
9 as an advertiser, they'll often give us some
10 tickets. And we'll turn around and pass those to
11 retailers to give those as giveaways.

12 Q. Connected with your mark?

13 A. Connected with our mark.

14 Q. How many times has that happened?

15 A. It's happened occasionally.

16 Q. You mentioned that the Enyce mark was
17 first used on clothing. Has that mark also been
18 used on sneakers?

19 A. Yes, it has.

20 Q. Shoes?

21 A. Yes, it has.

22 Q. Scarfs?

23 A. Scarfs. Yes, we've produced scarfs.

24 Q. Key rings?

25 A. Yes, we've produced key rings.

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1

Q. Umbrellas?

2

A. Umbrellas, we've done umbrellas.

3

Q. Action figures?

4

A. Action figures, we've done action figures.

5

Q. Luggage tags?

6

A. Luggage tags, yes.

7

Q. Cuff links?

8

A. Cuff links, we'd made cuff links.

9

Q. Flight bags?

10

A. Yes, we've made flight bags.

11

Q. Blankets?

12

A. We've made travel blankets, yes.

13

Q. Beach towels?

14

A. We've made beach towels, yes.

15

Q. Sleep masks?

16

A. Yes, we've made the eye masks for --

17

travel eye masks. We've done a whole travel theme

18

where we have a travel bag, travel blanket, neck

19

pillow, eye masks.

20

Q. All of which bear the Enyce mark?

21

A. Yes.

22

Q. Can you tell me what your approximate

23

total sales have been of Enyce products since 1997?

24

A. Since 1997?

25

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2 Q. Well, including 1997 and onward.

3 A. In excess of over \$600 million.

4 Q. And would you say that the Enyce mark is
5 famous?

6 A. Yes.

7 Q. What makes you say that?

8 A. You could pretty much go into any major
9 mall across America and find Enyce products. You
10 could turn your TV on and watch almost -- if you're
11 watching an hourlong show of hip-hop or urban music
12 videos, you'll, at least, see us a couple of times.
13 You'll see our logo a couple of times.

14 You'll see our brands in TV shows. You'll
15 see our brands -- you'll see the Enyce mark in
16 movies. You'll see we're in close to 2,000 points
17 of distribution in America alone. You'll find our
18 product available throughout Europe, throughout
19 Japan, throughout the U.S.

20 Q. You mentioned movies. What movies?

21 A. Movies such as Austin Powers. Movies --

22 Q. The marketing chain was featured?

23 A. You'll find our actual products.

24 Q. Can you describe the mark, like in Austin
25 Powers?

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2 A. Yes. Yes.

3 Q. What other movies?

4 A. Movies such as The Fast and the Furious.

5 The first two movies of that series, you'll find our
6 products being worn by characters in the movie.

7 Q. Is the product mentioned in the movie?

8 A. Not verbally mentioned but worn.

9 Q. But the mark is discernible?

10 A. Yes, the mark is discernible.

11 Q. Tell me, with what brands does Enyce
12 compete most directly.

13 A. Our major direct competitors would be
14 Rocawear, would be Phat Farm, Ecko, FUBU, Mecca,
15 Akademiks, Sean John.

16 Q. Ecko, is that Marc Ecko?

17 A. Yes, yes.

18 Q. You mentioned Phat Farm. How is that
19 spelled?

20 A. P-H-A-T, F-A-R-M.

21 Q. Is that a misspelling, the word "Phat"?

22 A. It's a slang spelling.

23 Q. Is that common in merchandising of urban
24 gear?

25 A. Oh, I would say that urban has its own

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2 slang, and it's not uncommon to use slang in urban
3 culture.

4 Q. You mentioned Mecca. Was that the Mecca
5 which you were affiliated when you were with Fila?

6 A. Yes. Prior to Fila days, yes.

7 Q. Oh, that was prior to Fila days?

8 A. Yes.

9 Q. Were you involved in the selection of the
10 Mecca mark?

11 A. With the selection of the mark, yes.

12 Q. Can you explain that process?

13 A. Once again, inspired by urban culture. We
14 felt that urban culture spawns from hip-hop culture
15 and hip-hop culture spawns from New York City. And
16 we've always looked at "mecca" as the affectionate
17 term of Uptown, which is -- mecca is the -- and we
18 have always looked at Uptown, South Bronx, and
19 Harlem as the mecca of hip-hop.

20 That's where hip-hop culture started, so
21 we've coined the phrase "mecca." Mecca USA is
22 actually, you know, based in New York City.

23 MR. DOYLE: Off the record.

24 (A discussion was held off the record.)

25 BY MR. DOYLE:

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1
2 Q. On what goods has the Mecca mark been
3 used?

4 A. The Mecca mark has been used on many
5 things as well, as -- from shirts, knits, knit tops,
6 woven tops, outerwear pieces, jeans, cotton and
7 woven bottoms, dress pants, dress shirts, headwear.

8 I've seen Mecca accessories. I've seen
9 them expand their product line after I left the
10 company as well, into accessories, bags.

11 Q. Is there a family of Mecca marks?

12 A. I believe so. They have Mecca Femme.
13 They market their women's brand as Mecca Femme. And
14 they market Mecca, which I'm trying to think of what
15 other. There's at least two.

16 Q. Mecca USA?

17 A. Mecca USA.

18 Q. Is the Mecca brand still in use?

19 A. Yes, it is.

20 Q. Would you say it's famous?

21 A. I would say it has some fame still, yes.

22 MR. DOYLE: Off the record.

23 (At 2:51 p.m. a recess was taken.)

24 (At 3:02 p.m. the deposition resumes.)

25 BY MR. DOYLE:

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2 Q. Okay. Mr. Felix, is there a category of
3 men's wear that's referred to as urban sportswear?

4 A. Yes, yes. There's -- I guess it's our
5 specific niche in the market of -- which represents
6 the distribution that we sell to.

7 Q. So Enyce would fall within the category of
8 urban sportswear?

9 A. Yes, it would.

10 Q. Does that refer to a geographic location?

11 A. It's -- no, it doesn't mean solely to
12 inner cities. It means urban in the sense of as an
13 urban lifestyle, which is derived from hip-hop, R&B
14 music, and the lifestyle that that refers to.

15 Q. It grew out of the hip-hop and R&B music
16 scene?

17 A. Yes.

18 Q. Does urban sportswear appeal to suburban
19 shoppers?

20 A. Yes, it does.

21 Q. Does it have a national appeal?

22 A. Urban has worldwide appeal. In fact, it's
23 probably the driving force of the mainstream pop
24 culture worldwide.

25 Q. Are some clothing lines considered

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2 lifestyle brands?

3 A. Yes.

4 Q. What is a lifestyle brand?

5 A. A lifestyle brand is a brand that
6 represents, I guess, different specific lifestyles.

7 Q. And urban lifestyle is one of those
8 lifestyles?

9 A. Urban lifestyle is, yes, one of the main
10 lifestyles.

11 Q. Is Enyce a lifestyle brand?

12 A. Enyce is a lifestyle brand.

13 Q. And the lifestyle that it's associated
14 with is urban lifestyle?

15 A. Yes, the lifestyle is urban.

16 Q. Is Mecca also considered an urban
17 sportswear brand?

18 A. Mecca, yes, it is considered an urban
19 sportswear.

20 Q. It's a lifestyle brand?

21 A. Yes.

22 Q. And what lifestyle does Mecca represent?

23 A. Mecca represents the urban lifestyle.

24 Q. Is FUBU also considered an urban
25 sportswear brand?

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2 A. Yes, FUBU is considered an urban
3 sportswear brand.

4 Q. Is FUBU a lifestyle brand?

5 A. I would say, yes, FUBU is a lifestyle
6 brand.

7 Q. And what lifestyle does it represent?

8 A. The urban lifestyle.

9 Q. What are some other urban sportswear
10 brands that you can think of?

11 A. Urban sportswear brands -- other urban
12 sportswear brands would be Sean John, S-E-A-N,
13 J-O-H-N; Phat Farm; Akademiks, A-K-A-D-E-M-I-K-S;
14 Ecko, E-C-K-O; Triple 5 Soul.

15 Q. Rocawear?

16 A. Rocawear, R-O-C-A-W-E-A-R. LRG is a new
17 popular brand that's an urban lifestyle as well.

18 Q. Have you ever heard of "driving shoes"?

19 A. Yes.

20 Q. What are they?

21 A. They're shoes made specifically for race
22 car drivers.

23 Q. Are they exclusively functional, or are
24 they also considered a fashion accessory?

25 A. I've seen them in the past few years being

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2 worn as fashion.

3 Q. Can you think of any examples of
4 cross-branding between clothing fashion and
5 automobiles? In other words, clothing brand being
6 used on or in connection with automobiles or
7 automobile parts.

8 A. There's many. Filo was a sponsor of
9 Formula One for Ferrari. They're also a -- Fila was
10 also a sponsor for Ducati, which is MotoGP. Tommy
11 Hilfiger was a Formula One sponsor at one point.
12 There's been the perennial Eddie Bauer Ford Explorer
13 edition.

14 There's been the Coach Edition Lexus.
15 Sean Diddy Combs of Sean John fame has also been
16 linked to Special Edition Lincoln Navigator. Marc
17 Ecko is actually doing an Ecko collaboration with
18 Nissan. LRG is actually doing a collaboration
19 with -- they're producing this four-wheel ATV. I'm
20 trying to think of what else.

21 Q. You mentioned Sean John and Puff Daddy, P.
22 Diddy Combs, and the Lincoln Navigator. Has he been
23 involved in any other car-related products?

24 A. He has a -- they're producing Sean John
25 automotive wheels.

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2 Q. And Sean John is a clothing line?

3 A. Sean John started as a clothing line, and
4 they're branching out and expanding into accessories
5 as well.

6 Q. And are they using that same mark, Sean
7 John, on the wheels?

8 A. The same mark.

9 Q. Are you familiar with a L.L.Bean Subaru?

10 A. I've seen that before, yes.

11 Q. How about a Louis Vuitton Mercedes?

12 A. Yes.

13 Q. And a Levi Edition of the Jeep?

14 A. Yes.

15 Q. In all these cases, is the mark of the
16 clothing brand used conspicuously in connection with
17 these automobiles and automobile parts?

18 A. Yes. There's usually their trademark
19 that's associated with it.

20 Q. Is Coach a fashion brand?

21 A. Coach is a fashion brand.

22 Q. Is L.L.Bean a clothing brand?

23 A. They're a lifestyle clothing brand.

24 Q. They're a clothing brand and they're also
25 a lifestyle brand?

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2 A. Yes.

3 Q. What lifestyle does L.L.Bean represent?

4 A. I would say outdoor, recreational, active
5 lifestyle.

6 Q. Is Eddie Bauer a clothing brand?

7 A. Yes.

8 Q. Is it a lifestyle brand?

9 A. It's a lifestyle brand in the same vein as
10 L.L.Bean, an outdoor, recreational, active
11 lifestyle.

12 Q. What lifestyle does Eddie Bauer represent?

13 A. That's what I just said.

14 Q. Sorry.

15 A. That's what I was referring to, the
16 outdoor, recreational, lifestyle. Eddie Bauer. I'm
17 from Seattle, so it's one of those things. Eddie
18 Bauer, you grow up with.

19 Q. We've talked about urban culture, hip-hop
20 culture. More or less one in the same?

21 A. Hip-hop culture and urban culture, yes.

22 Q. From the standpoint of consumer goods, are
23 there certain goods that are --

24 A. Actually, you know what? I'm sorry.
25 Hip-hop culture and urban culture, I would say urban

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2 culture is much more vast and encompassing of other
3 subcultures. And I would say that hip-hop culture
4 has become a subculture of urban culture.

5 So, no, they aren't necessarily one in the
6 same. Urban culture is much more encompassing of
7 other cultures as well.

8 Q. Hip-hop culture is a subset of urban
9 culture?

10 A. Yes.

11 Q. From the standpoint of consumer goods, are
12 there any goods that are integral to urban culture?

13 A. Yes.

14 Q. Could you tell me what those are?

15 A. Could you repeat that again?

16 Q. From the standpoint of consumer goods, are
17 there any goods that are integral to urban culture?

18 A. Yes, definitely. I mean, wow, there's so
19 many different categories. You could start off with
20 fashion. Of course, there's apparel and all the
21 aspects of apparel -- tops, bottoms, outerwear,
22 knits, wovens, headwear, accessories, time pieces,
23 jewelry.

24 Q. Certain types of jewelry?

25 A. Oh, definitely. Whether it's earrings or

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2 necklaces, the pendants that are worn on necklaces,
3 whether it's gold chains, platinum chains, diamond
4 chains. The jewel-encrusted pieces that are -- the
5 jewel-encrusted pendants that are hanging from these
6 necklaces, as well as the jewel-encrusted time
7 pieces that are worn.

8 To -- you could go into -- as far as urban
9 culture, you could go into accessories; you could go
10 to into AV accessories, audio/video accessories,
11 turntables, mixers, audio/video equipment, anything
12 that's related to music production. It could be
13 consumer goods that are marketed to the urban
14 consumer, because the urban consumer is involved in
15 music.

16 You could go into the automotive culture,
17 where there's accessories for vehicles. The
18 vehicles themselves are being marketed specifically
19 to urban culture. You have -- Toyota has started a
20 brand Scion, S-C-I-O-N. I don't know if it's Scion
21 or Scion. And that's specifically marketed towards
22 urban youth culture.

23 There's brands -- let's see. Almost every
24 type of -- I mean, you're flipping through the pages
25 of DUB, you see advertisements for almost every type

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2 of automotive accessory, the wheels, the performance
3 parts, that the magazine is geared towards urban
4 consumer and urban lifestyle.

5 Q. Who are the trendmakers when it comes to
6 clothing?

7 A. To clothing? The designers themselves,
8 the music artists that are often endorsing or
9 founding these companies. People like Jay-Z or a
10 Shawn Carter or a Diddy, Sean Combs. To music
11 producers, whether it be a Kanye West or a Farrell
12 to a Ludacris to almost everybody on those covers.

13 I guess that would be athletes. It could
14 be models, it could be designers, could be people in
15 the fashion industry, the music industry, the
16 entertainment industry.

17 Q. Are those the same trendsetters for
18 jewelry in the urban culture?

19 A. They are one in the same, yes.

20 Q. Are those the same trendsetters for
21 automobiles and automobile accessories?

22 A. Yes, they can be.

23 Q. Are certain auto brands, automobile
24 brands, favored within the urban culture?

25 A. Part of urban culture is -- let's see.

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2 Yeah, it has to do with aspiring to want more, and I
3 would say that if you listen to almost -- there's
4 not a single album, hip-hop album, with lyrics that
5 aren't making reference to certain vehicles and
6 aspirational vehicles and aspirational -- you know,
7 how nice cars and anything of that nature are pretty
8 much so.

9 Q. You say that within the lyrics, it's very
10 common to make reference to specific brands of
11 vehicles?

12 A. There's -- yeah.

13 Q. There's specific accessories for vehicles?

14 A. Specific accessories, yes. There's many
15 references towards high-end automobiles, exotic
16 cars, exotic sports cars, expensive SUVs, expensive
17 cars.

18 And many times, there are references to
19 the automotive accessories that are also placed in
20 these cars, whether it's the specific type of engine
21 or the specific type of wheels, the size of their
22 wheels.

23 Many references to the size of their
24 wheels, because often bigger wheels are more
25 expensive. There's -- ever since hip-hop has been

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2 around, there's also been an element of braggadocio,
3 and that has carried throughout.

4 Q. And that goes to the finest styles of
5 clothing, the --

6 A. Whether it's -- yes.

7 Q. -- most flashy and expensive jewelry?

8 A. Flashy jewelry.

9 Q. Flashy car accessories?

10 A. Flashy car accessories, whatever. It's
11 the most expensive bottle at a bar to buy; the
12 places -- you know, the exotic locales that people
13 travel to; the exorbitant amounts of money that's
14 being spent on a rich-and-famous lifestyle.

15 Q. Are you familiar with hip-hop music stores
16 and basketball stores owning their own custom car
17 shops?

18 A. Yes.

19 Q. Can you name a few of the folks in those
20 businesses who --

21 A. Rap artist T.I. in Atlanta, who customized
22 our Enyce car. There's Sprewell, a basketball
23 player that has his own custom shop. Let's see
24 here. There's a few people involved with 310
25 Motoring.

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2 There's also -- there's many hip-hop
3 artists, I know, throughout the South that have
4 their own custom shops.

5 Q. What we've been referring to throughout
6 this conversation as hip-hop culture and urban
7 culture and urban lifestyle brands, are these
8 race-specific?

9 A. No.

10 Q. They transcend race?

11 A. They transcend race. Just like they
12 transcend geography, they transcend race as well.

13 Q. Have you observed any relationship between
14 jewelry within urban fashion and car accessories?

15 A. I've seen the combination.

16 Q. Tell me about that.

17 A. Whether it's -- whether it's necklace
18 pendants in the form of automotive wheels, or it
19 could be -- I've seen jewel-encrusted -- actual
20 automotive wheels on cars that are jewel-encrusted.
21 There's been -- I'm trying think of other examples.

22 There have been examples where there's
23 some accessory companies that not only make -- 310
24 Motoring, which is an aftermarket motoring company
25 in Los Angeles, based in Los Angeles. They also

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2 make apparel as well. So they're both in the
3 automotive accessories as well as fashion. They
4 also do footwear as well.

5 Sean John is a fashion company that also
6 makes automotive wheels as well.

7 Q. In connection with jewelry, you've seen
8 jewelry that takes its inspiration and, in fact,
9 mimics car wheels?

10 A. Yes. I've seen pendants that look like
11 wheels.

12 Q. Watches?

13 A. I've seen watches that look like wheels.

14 Q. Bracelets?

15 A. Yes, I've seen -- yeah, I've seen a lot of
16 those as well.

17 (Exhibit AA was received and marked for
18 identification, as of this date.)

19 BY MR. DOYLE:

20 Q. I'm going to show you what I've marked as
21 Opposer's Exhibit AA, the first page of which is the
22 cover of DUB magazine, dated January 2007.

23 MR. DOYLE: Mr. Berman, here's your copy.

24 BY MR. DOYLE:

25 Q. Would you take a look at that, please?

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2 A. (Witness complies.)

3 Q. I'm going to ask you about some specific
4 pages in here. The second page of this exhibit,
5 could you tell us what that is?

6 A. Yes. LRG is a direct competitor to Enyce.
7 And, I mean, you can see -- lots of different
8 things. It's a lot of -- it's various celebrities
9 in the urban culture. I see DJ Shadow. I see
10 Groovy Lu, who is also in the music industry. I see
11 various artists also.

12 And they're showing their apparel, but
13 they're also showing the -- also their accessories,
14 their belt buckles. I also see --

15 Q. A jewel-encrusted belt buckle?

16 A. A jewel-encrusted belt buckle. I also see
17 jewel-encrusted pendants and various pendants worn
18 by models in those ads.

19 Q. And then the next page from Exhibit AA, I
20 draw your attention to the right-hand side of the
21 page.

22 Could you tell us what that is?

23 A. It's an advertisement. It's a
24 collaboration between Nissan and Ecko Unlimited,
25 which Ecko Unlimited is a direct competitor to

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2 Enyce, again, showing another collaboration between
3 the automotive world with the urban world.

4 Q. And that's something you were referring to
5 earlier, Marc Ecko putting its marks on Nissan
6 vehicles?

7 A. Yes.

8 Q. And then the fourth page of Exhibit AA,
9 could you tell us what that is?

10 A. Yes. It's pictures of the -- it's
11 pictures taken from the DUB auto show that tours
12 across the country. And it's basically an auto
13 show, and it looks like pictures from the actual
14 event. You could see that some of the cars that are
15 featured -- in the upper right, there's this car
16 (indicating).

17 It's a 1970 Coupe Deville, and it's
18 actually Slim Thug's Coupe Deville. And Slim Thug
19 is a hip-hop artist. So many of these artists do
20 own vehicles that are featured in the auto shows.

21 There's also another -- there's a picture
22 of someone at the auto show actually wearing a
23 wheel. It's so big, you can't tell if it's just a
24 huge pendant or an actual wheel being worn as
25 jewelry --

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2 Q. Around his neck?

3 A. -- around his neck. And just the general
4 other things you see at auto shows, usually nice
5 cars with a lot of aftermarket accessories and
6 customization.

7 Q. And the next page of Exhibit AA, could you
8 tell us about that?

9 A. Yes. It's a brand called Lexani, and
10 it's -- they're making footwear. It's a footwear ad
11 by Lexani.

12 Q. And the next page?

13 A. It's an advertisement for Asanti and
14 Lexani doing -- it looks like they're advertising
15 wheels and jewel-encrusted wheels.

16 Q. What is Asanti?

17 A. Asanti is a brand of wheel. There's some
18 type of -- either there's -- there's some type of
19 connection between Asanti and Lexani, because both
20 their logos are in this ad.

21 Q. And the next page, which actually is a
22 foldout of two pages, could you tell us what that
23 appears to be?

24 A. Yes. Again, it's Asanti and Lexani
25 branded together, showing the wheels that they sell.

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2 Q. And the next page, also a double, foldout
3 page?

4 A. It's a combination one. This time, the
5 Lexani logo is featured. And you see Lexani
6 footwear mixed with Lexani mobile audio products
7 with Lexani wheels, because you can see the Lexani
8 logo as the center cap of that.

9 So it's showing that there are companies
10 out there that do footwear and accessories as well
11 as automotive accessories.

12 Q. How about the next page?

13 A. The next page is an advertisement for Marc
14 Ecko. Cut & Sew is his higher brand, and he's
15 advertising in DUB magazine. He's using Spike Lee
16 as the featured model in this, because Cut & Sew,
17 they're trying to go after an older, more mature
18 consumer.

19 Q. So here we have Marc Ecko advertising
20 clothing. What we saw earlier was an advertisement
21 for Marc Ecko's joint effort in connection with the
22 specific Nissan vehicle?

23 A. Yes, yes.

24 Q. And then the final page of this --

25 A. Yeah. It's the same issue of DUB

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2 magazine. They do a dual cover, and this is an
3 issue featuring -- that side features Chris Brown,
4 and he is an R&B artist.

5 And the other side features Ciara, who is
6 another R&B artist, female R&B artist. Again,
7 showing the connection of urban culture mixed with
8 the automotive culture.

9 MR. DOYLE: I'm going to mark as Exhibit
10 BB, two pages, the first of which appears to be
11 the cover of something called Complex Buyer's
12 Guide, dated January 31.

13 Mr. Berman, here is your copy.

14 (Exhibit BB was received and marked for
15 identification, as of this date.)

16 BY MR. DOYLE:

17 Q. Could you tell what that is?

18 A. Yes. This is the cover to Complex Buyer's
19 Guide, Complex magazine. It's one of the magazines
20 we advertise in. Every six months they come out
21 with a special issue called the Buyer's Guide, which
22 is featuring the latest and greatest in footwear,
23 fashion, just products that would be of interest to
24 a male consumer.

25 And Complex is also known to be more of

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2 the urban lifestyle. So the next page is actually
3 an advertisement run by a direct competitor of
4 Enyce. The company is LRG, and it's one of the
5 things that they're developing. It's a street,
6 all-terrain vehicle. And, again, showing how urban
7 fashion is collaborating with the automotive world.

8 MR. DOYLE: I just want to take two
9 minutes.

10 (At 3:28 p.m. a recess was taken.)

11 (At 3:31 p.m. the deposition resumes.)

12 BY MR. DOYLE:

13 Q. What are "spinners"?

14 A. Spinners are the -- spinners are a popular
15 version of an automotive wheel where the -- where a
16 portion of the wheel remains spinning, you know,
17 separate of the wheel itself.

18 Q. So the car can be at a complete stop --

19 A. It can be at a stop, and then -- like the
20 spokes will still spin.

21 MR. DOYLE: I'm going to mark as Exhibit
22 CC, a two-page document, which is a printout
23 from a Web site icedoutgear.com. It says at
24 the top, "Iced Out Gear."

25 Mr. Berman, there is your copy.

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2 (Exhibit CC was received and marked for
3 identification, as of this date.)

4 BY MR. DOYLE:

5 Q. Would take a look at that, please.

6 A. Yes.

7 Q. Tell me about that. What do you see?

8 A. Those look like jewelry versions, inspired
9 by the spinners that you see on cars. And they're
10 spinners on the face of watches and spinners also
11 used as pendants on jewelry.

12 Q. Are you familiar with Iced Out Gear?

13 A. I believe it's one of the many companies
14 that are in the same vein -- as you look at the very
15 last pages of XXL and Source, there's a classified
16 ad section, and there's countless number of
17 companies that do fashion jewelry.

18 Q. Any specific style of fashion jewelry?

19 A. Jewelry that would be marketed towards an
20 urban consumer.

21 Q. And could you turn to the next page?

22 A. Yes.

23 (Witness complies.)

24 Q. Do you see halfway down, there is what
25 appears to be links to -- at least a list of several

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2 brands, starting with Akademiks?

3 A. Yes.

4 Q. Could you tell me --

5 A. Akademiks, Ecko, Enyce, FUBU, Phat Farm,
6 Rocawear, Sean John.

7 Q. And are they all --

8 A. Those are all direct competitors of Enyce.

9 Q. So that's Enyce and its direct
10 competitors?

11 A. Yes.

12 MR. DOYLE: I have no more questions on
13 direct.

14 (A discussion was held off the record.)

15 MR. DOYLE: Let's take a short break, two
16 minutes.

17 (At 3:34 p.m. a recess was taken.)

18 (At 3:37 p.m. the deposition resumes.)

19 EXAMINATION BY

20 MR. BERMAN:

21 Q. I just have a couple of questions. You've
22 been talking about this urban lifestyle, urban
23 consumer.

24 Would you call yourself an expert on this
25 urban lifestyle, this urban consumer?

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2 MR. DOYLE: Objection. He's not been
3 proffered as an expert witness, but you may
4 answer if you understand the --

5 A. As an expert? I don't know what really
6 calls -- what's -- I don't know. I don't know how
7 one becomes an expert on urban culture.

8 BY MR. BERMAN:

9 Q. That was my next question: How does one
10 become an expert? However, you were answering quite
11 a few questions with apparent knowledge of the
12 subject matter.

13 So would you say that there'd probably be
14 very few people who'd have more knowledge of the
15 subject matter than you?

16 A. I'm sure there could be people who are
17 much more experienced in that. But since it's a
18 wide and vast culture, there's probably many other
19 perspectives in urban culture. I do have my
20 perspective of urban culture, but I wouldn't be that
21 arrogant to say that I'm an expert on it.

22 Q. Would you say that you live that world,
23 let's say? Or would you say that you are, on a
24 daily basis, you are in that environment more so --
25 or where -- to the point where you might be able to

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2 speak about that culture?

3 MR. DOYLE: Objection as to form. But if
4 you understand the question, go ahead. It's a
5 compound question. You can answer if you
6 understand, though.

7 BY MR. BERMAN:

8 Q. Or I'll try to clarify if you want.

9 A. Could you clarify that then?

10 Q. Would you say that your daily activities
11 are in and amongst this urban lifestyle environment,
12 so that you have the ability to speak on behalf of
13 what this environment consists of?

14 MR. DOYLE: It's really two questions.

15 BY MR. BERMAN:

16 Q. Do you live your life on a daily basis in
17 and amongst this urban lifestyle environment that
18 you gentlemen are speaking about all day?

19 A. Yes.

20 Q. Therefore, would it be safe to say that
21 you have the knowledge and the ability to then speak
22 on behalf of what this lifestyle consists of? Is
23 that a correct statement?

24 A. Yes.

25 Q. You have a lot of knowledge with respect

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2 to what your company has done. You talk about
3 advertising, you talk about retail locations. Are
4 you familiar with what the various markets that you
5 talk about, what happens outside of your company?
6 Are you familiar with how many retail stores, for
7 example, exist in the United States?

8 Do you have any idea how many retail
9 stores exist in the United States --

10 A. No.

11 Q. -- that would sell clothing?

12 A. No.

13 Q. You spoke about 2000 store fronts or
14 something, whatever exact terminology you talked
15 about that you have your clothing being sold.

16 Do you think that's the majority of stores
17 that exist in the country? Do you think that's a
18 minority? Do you have any idea?

19 MR. DOYLE: Objection. These seem to be
20 compound questions, and I don't know that he
21 can give a single answer to a multilayered
22 question.

23 If you are able to break these questions
24 down into their multiple parts and answer them
25 each specifically, you're free to do so. If

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2 you need them broken down further, I would
3 suggest that Mr. Berman ask one question at a
4 time.

5 A. It would be easier if you asked them one
6 at a time.

7 BY MR. BERMAN:

8 Q. Okay. You spoke about the fact that your
9 clothing is in 2000 locations.

10 Do you have any idea what that represents
11 with respect to a percentage of the overall store
12 locations in the country that would be selling the
13 clothing?

14 A. It would represent a minority of the
15 stores, but that's a part of our branding, is we're
16 not trying to be everywhere; we're just trying to be
17 properly distributed. That's what brings longevity
18 to a brand.

19 Q. Okay. So, specifically, do you sell your
20 clothing to Wal-Mart?

21 A. We do not sell our clothes to Wal-Mart.

22 Q. Do you have any plans to sell your
23 clothing to Wal-Mart?

24 A. Perhaps, when we go down that road when
25 our brand becomes that accessible.

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2 Q. Do you have any immediate plans to sell
3 your clothing at Wal-Mart?

4 A. What's "immediate"?

5 Q. Within the next year.

6 A. I don't think so.

7 Q. Okay. Do you sell your clothing at
8 Target?

9 A. We do not sell our clothes to Target.

10 Q. Do you have any immediate plans to sell
11 your clothes to Target?

12 A. We do not have immediate plans to sell our
13 clothes to Target.

14 Q. Do you sell to J. C. Penney?

15 A. We do not sell our clothes to J. C.
16 Penney.

17 Q. Do you have any immediate plans to sell
18 your clothes to J. C. Penney?

19 A. We do not have immediate plans to sell our
20 clothes to J. C. Penney.

21 Q. Do you sell to Sears?

22 A. We do not sell to Sears.

23 Q. Do you have any immediate plans to sell to
24 Sears?

25 A. We do not have immediate plans to sell to

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2 Sears.

3 Q. Do you sell to Kmart?

4 A. We do not sell to Kmart.

5 Q. Do you have any immediate plans to sell
6 your clothing to Kmart?

7 A. We do not have immediate plans to sell to
8 Kmart.

9 Q. Do you sell to the Gap?

10 A. Nobody sells to the Gap. The Gap produces
11 its own clothes. It's a direct retailer.

12 Q. Would you say that a considerable portion
13 of the United States buys their clothing at The Gap
14 or one of their other outlets, Old Navy, or what
15 other names they go by?

16 MR. DOYLE: Objection, compound question.

17 Again, it's too many questions stacked up.

18 BY MR. BERMAN:

19 Q. Would you say that the Gap sells a
20 considerable amount of clothing in the United
21 States?

22 A. Yes. The Gap does not buy a lot of
23 clothes from branded companies either, though.

24 Q. Okay. Let's talk about your advertising.
25 You talked about a considerable amount of magazine

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2 advertising that your company has done.

3 A. Can -- actually, can we go back to the
4 brands, the stores that you talked about, the Sears,
5 the Targets, the Wal-Mart's, the J. C. Penneys?

6 Q. Sure.

7 A. We have no plan to sell them immediately.
8 Part of keeping our brand integrity is keeping it
9 away from certain stores, and those stores are
10 lower-tiered price point stores. By making Enyce
11 accessible to those stores, that lowers the brand
12 integrity, and that is why we do not sell to those
13 stores.

14 Q. Would you say that's because you want only
15 a select group of people to be purchasing your brand
16 of clothing?

17 A. No. It's more of a business play. Once
18 you end up lowering your price points, it's hard to
19 keep -- it's hard to ask for higher price points.
20 So while we have -- while the brand has some
21 integrity and cachet at higher price points, there's
22 really no need to have to sell to those retailers.

23 If the brand loses it's cachet and loses
24 its marketability, then those avenues become much
25 more plausible. As the brand is dying, chances

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2 are -- such as the case with Mecca. When the brand
3 lost its popularity, it started opening its
4 distribution to places such as J. C. Penney.

5 At this point, those retailers are not in
6 our distribution plan. But should the plan --
7 should our popularity start to die and we need to
8 use that as a measure to stay in business, we would
9 exercise that measure.

10 Q. Okay. I'd like the talk to you about the
11 advertising, if I may. You talked a great deal
12 about the various different magazines you advertise
13 in.

14 And which one has the largest circulation
15 of all the magazines that you advertise in?

16 A. Out of the magazines in the media plan,
17 and I'm not sure which exhibit it was, VIBE
18 magazine.

19 Q. And you stated that they have a
20 circulation of approximately a million --

21 A. Just short of a million --

22 Q. Just short of a million?

23 A. -- copies per month.

24 Q. Are you familiar with how many people live
25 in the United States today?

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2 A. I estimate it's under 300 million.

3 Q. Recently, they estimated it went over
4 300 million. So we're in agreement it's around 300
5 million?

6 A. Right.

7 Q. So would say that this magazine reaches
8 less than 1 percent of the population as the biggest
9 magazine?

10 MR. DOYLE: Objection to the term
11 "reaches."

12 MR. BERMAN: Well --

13 MR. DOYLE: Do you want me to elaborate on
14 my objection?

15 MR. BERMAN: Please.

16 MR. DOYLE: We talked before about not
17 just straight circulation but pass-through.
18 And since the witness has already testified he
19 doesn't know the pass-through figures for this,
20 he's not in a position to testify as to how
21 many readers this magazine actually reaches.

22 BY MR. BERMAN:

23 Q. Well, we talked about if you -- you have
24 the circulation figure.

25 Is that what you were just referring to

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2 with VIBE, a million; is that correct?

3 A. Yes.

4 Q. So would it be safe to say that this
5 magazine does not reach the majority of the United
6 States?

7 A. That's --

8 MR. DOYLE: Are you asking whether it is
9 safe to say this magazine does not reach more
10 than 150 million people per month?

11 BY MR. BERMAN:

12 Q. Do you have any reason to believe that
13 this magazine -- that is, your largest magazine --
14 reaches any more than 1 percent of a population in
15 the United States? Do you have any reason to
16 suspect that?

17 A. It depends on how that's calculated. If
18 we're saying -- if it's one million -- if 1 percent
19 equals three million, and there's a pass-through
20 rate of three, then that would be 1 percent right
21 there.

22 Q. Okay. So, at best, are you saying that
23 this magazine may reach 1 percent of the United
24 States?

25 MR. DOYLE: Objection. Again, Mr. Berman,

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2 the witness has already testified that he
3 doesn't know the past-through rates for these
4 magazines. He's in a position to testify,
5 based on the knowledge, as to the circulation
6 rates, but he's not in the position to testify
7 as to the pass-through rates.

8 And I don't think you want him to guess or
9 speculate on something about which he's already
10 testified he has no knowledge. The numbers
11 speak for themselves.

12 BY MR. BERMAN:

13 Q. You spoke about the urban lifestyle and
14 the urban consumer.

15 Would the individuals in that lifestyle be
16 listening to, let's say, sports radio, in your
17 opinion?

18 A. I would say there are people that are in
19 urban lifestyle, that are involved in the urban
20 lifestyle, that do listen to sports radio.

21 Q. Would you say they would watch the nightly
22 news?

23 MR. DOYLE: Objection. This is just vast
24 speculation as to what an individual may or may
25 not --

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2 MR. BERMAN: I have a point, and you were
3 able to ramble on with all of your ridiculous
4 questions. And I have a point that I'm getting
5 to.

6 MR. DOYLE: My objection is as to this
7 witness's ability to testify with any knowledge
8 as to the questions you're asking.

9 MS. COHEN: He can answer?

10 MR. DOYLE: Yes.

11 A. What was the question?

12 BY MR. BERMAN:

13 Q. Let's get more specific with your
14 advertising.

15 Have you ever advertised on a television
16 news show?

17 A. No.

18 Q. Have you ever advertised on sports radio?

19 A. No.

20 Q. So, then, would it be safe to say that the
21 average American that watches television news,
22 listens to sports radio, goes to Wal-Mart to buy his
23 clothes, may have never heard of your brand of
24 clothing?

25 MS. COHEN: Objection.

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2 MR. DOYLE: Objection as to who this
3 average American is and the basis for this
4 witness to testify as to what this theoretical
5 person may or may not have seen or known.

6 These are points which you are free to
7 make in your papers, but this witness cannot
8 testify as to that which he doesn't know.

9 BY MR. BERMAN:

10 Q. Have you ever advertised on any news radio
11 stations?

12 A. No.

13 Q. Mr. Doyle ran through a list of other
14 products that he asked if you had ever made with the
15 E-N-Y-C-E name on them.

16 Do you recall Mr. Doyle running through a
17 list of 12 to 15 different items, handkerchiefs, et
18 cetera?

19 A. I don't know if he mentioned
20 handkerchiefs, but he mentioned a list.

21 Q. Do you recall when -- we can go back on
22 the record and get that list if you need it, but do
23 you recall --

24 A. I do recall that, yes.

25 Q. You recall the list?

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2 A. Yes.

3 Q. When would you say the first of those
4 items was produced? Give me the year.

5 MS. COHEN: You mean the first on the
6 list? He'd have to know which order the list
7 went in.

8 A. I would have to see the list.

9 BY MR. BERMAN:

10 Q. We can either get it off the record, or if
11 you have that list in your notes, I'd like to refer
12 to the list.

13 MR. DOYLE: Off the record for a minute.

14 (A discussion was held off the record.)

15 MR. BERMAN: Back on the record.

16 BY MR. BERMAN:

17 Q. Earlier in the testimony, you stated that
18 other items had been produced with the E-N-Y-C-E
19 name. And I'm just curious if you can tell me the
20 year that the items were produced. The first item
21 was referred to as sneakers.

22 A. Sneakers. And the next item is shoes.

23 Q. Yes.

24 A. Sneakers and shoes were produced, I'd
25 estimate, '99. 1999.

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Q. Scarfs?

A. Scarfs, 1998.

Q. Key rings?

A. Key rings, 1997.

Q. Umbrellas?

A. Umbrellas, '98 or '99.

Q. Action figures?

A. '99, 2000.

Q. What does that refer to, an action figure?

A. Action figure, a toy figure of a -- an action figure. It's -- we produced them for our Lady Enyce brand, and it was actually a little doll that all our products were shipped with, we called our Lucy doll.

Q. Luggage tags?

A. Luggage tags was '97 or '98.

Q. Cuff links?

A. 2000 -- 2003, 2004.

Q. Flight bags?

A. Flight bags was 2004.

Q. Blankets?

A. 2004.

Q. Beach towels?

A. 2004.

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2 Q. Flight masks?

3 MR. DOYLE: I don't think there was a
4 flight mask referred to. Maybe you're thinking
5 sleeping mask?

6 MR. BERMAN: Sleeping mask. I'm sorry.

7 A. It's the same year as the flight bag.

8 BY MR. BERMAN:

9 Q. Same year as the flight bag, 2004?

10 A. Yes.

11 Q. Earlier today, certain exhibits were
12 produced that showed some additional trademark
13 filings. And previously in this case --

14 A. We also did a skateboard too.

15 Q. You did a skateboard?

16 A. In 2006.

17 Q. And we have Exhibit G, H, and I, which are
18 trademark registrations, dated November 14, 2006.

19 MR. DOYLE: Just to clarify, what you're
20 seeing that's dated November 14, 2006 is the
21 certification from the board, the PTO, the
22 Patent and Trademark Office. The registrations
23 themselves each bear their own date on the
24 second page in the upper, right-hand corner.

25 BY MR. BERMAN:

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2 Q. I guess my question to you is: Would you
3 say that you have trademarks for all of these
4 different items that you are or have produced?

5 MR. DOYLE: Objection as to form. "Have
6 trademarks" is a loose term.

7 Are you asking whether he owns trademark
8 registrations that cover all of these goods?

9 MR. BERMAN: Thank you for clarifying the
10 question. Yes, that is the question.

11 A. Are you asking me if we have the trademark
12 that cover all these things?

13 BY MR. BERMAN:

14 Q. Trademark --

15 A. Sounds like a legal issue. I don't know
16 every single area that we're protect as.

17 Q. So it's very possible that you're
18 producing product without having any sort of
19 trademark registration for some of these products.
20 Would that be a correct statement, to the best of
21 your knowledge?

22 A. Yes.

23 Q. Okay. Is it a practice of your company to
24 go ahead and produce products outside of the scope
25 of your trademark registrations?

1 R. FELIX - 12/5/06

2 A. Yes.

3 Q. I refer to Exhibit U, which is the car
4 that has certain E-N-Y-C-E identification on it.

5 Do you recall this exhibit, sir?

6 A. Yes.

7 Q. Do you have any trademark registration to
8 allow you to put the E-N-Y-C-E name onto car
9 products?

10 A. I don't know.

11 Q. Do you recall having your deposition taken
12 on April 6 of 2005 in this same matter?

13 A. Yes, I remember the deposition being
14 taken.

15 Q. Do you recall responding to a question as
16 to whether you had previously or in the future come
17 up with any other names for trademarks other than
18 E-N-Y-C-E?

19 A. I'm sorry?

20 Q. Okay. During this deposition, as well as
21 today's deposition, you stated that you were the
22 inventor, I believe I'm using the correct
23 terminology, or the creator of E-N-Y-C-E; is that
24 correct?

25 A. In my deposition, yes, I had said that I

1 R. FELIX - 12/5/06

2 coined the trademark "Enyce."

3 Q. Okay. Well, a question was asked of you
4 previously, whether you have come up with any other
5 names that had been trademarked. And at that time,
6 you responded that you had not?

7 MR. DOYLE: Objection. This is not a
8 memory test. If you want to refer to a
9 specific place in that record, that's what we
10 should do.

11 And I'll get my copy of the transcript as
12 well, and we can look at it together. But to
13 ask questions as to what he did or did not
14 recall, you know, months ago --

15 MR. BERMAN: Well, it's really not that
16 difficult a question.

17 BY MR. BERMAN:

18 Q. Have you come up with any other names
19 since, because it is a year and half ago?

20 A. Have I come up with names since?

21 Q. Have you filed for trademarks for any
22 other names other than E-N-Y-C-E?

23 A. Other than E-N-Y-C-E, no.

24 Q. And prior to the E-N-Y-C-E trademark
25 application, had you come up with any other names

R. FELIX - 12/5/06

prior to that?

MR. DOYLE: In his life?

MR. BERMAN: Yes.

A. I have been part of the creative process of coming up with a trademark, but I haven't necessarily been the one, the specific person, that has actually personally filed for a trademark.

BY MR. BERMAN:

Q. You know what, can you get your copy of this?

A. Yes.

MR. DOYLE: Off the record, please.

(At 4:04 p.m. a recess was taken.)

(At 4:05 p.m. the deposition resumes.)

MR. BERMAN: Back on the record.

Mr. Doyle, do you have your exhibits that came with this?

MR. DOYLE: From that? From that deposition?

MR. BERMAN: Yes.

MR. DOYLE: I don't. At least, I don't have them readily available. If they're somewhere in the files, you know, I assume they are. But we did take this over from another

1 R. FELIX - 12/5/06

2 firm, and I can't say for sure that we have
3 everything.

4 MR. BERMAN: Okay. Well, I'm going to
5 refer to an exhibit. You can make a copy of
6 it. Do you want to make a copy of it first?

7 MR. DOYLE: How many exhibits do you have
8 that you want to put in the record?

9 MR. BERMAN: At the moment, just this one.

10 MR. DOYLE: I asked because I don't want
11 to keep running back and forth. So whatever
12 you want --

13 MR. BERMAN: I have this here. I'll just
14 give this to you.

15 BY MR. BERMAN:

16 Q. But during the previous deposition, and
17 then again today, you talked about how you created
18 the E-N-Y-C-E trademark.

19 A. Trademark.

20 Q. And, specifically, you talked about how
21 you were alone when you came up with this trademark;
22 do you recall that?

23 A. Uh-huh.

24 Q. Stating that today as well as previously?

25 A. Uh-huh.

1 R. FELIX - 12/5/06

2 MR. BERMAN: I'm referring to, previously,
3 Exhibit No. 6 from the deposition of 4/6/05,
4 which I guess we'll put in -- do you want to
5 put in today as an exhibit for today as Exhibit
6 No. DD as well? Okay. We'll call this DD.

7 MR. DOYLE: As a numbering standpoint,
8 what you'd want to do, Mr. Berman, is start
9 with your own numbers, as opposed to letters.
10 And all mine, although we started abbreviating
11 them as A, B, AA, whatever, they really are
12 Opposer's Exhibit such and such.

13 I think you'd want to call this
14 applicant's exhibit.

15 BY MR. BERMAN:

16 Q. Applicant Exhibit 1. It's a document
17 taken off a Web site from Look magazine where a
18 Mr. Tony Shellman --

19 A. Yes.

20 Q. -- is quoted as saying that the name
21 E-N-Y-C-E originated from a bet, because he couldn't
22 copyright the abbreviation NYC. And he states that
23 after brainstorming, he won the bet by wisely
24 deciding to place an E on the front end of the
25 N-Y-C-E.

1 R. FELIX - 12/5/06

2 Do you recall this exhibit from the
3 previous deposition, sir?

4 A. Yes, I recall this.

5 Q. And have you had a chance to talk to
6 Mr. Shellman about this matter since this previous
7 deposition?

8 A. We talk about many matters. We've talked
9 numerous times about how often Tony Shellman could
10 tell stories.

11 Q. Can you elaborate on the actual origin of
12 the name E-N-Y-C-E, please?

13 A. Yes. I elaborated on it previously. I've
14 told the story about that.

15 MR. DOYLE: You can go ahead and tell it
16 again.

17 A. I mean, it's this story of whatever Tony
18 did and whatever he'd come up with and whatever it
19 was exactly, I guess it's what Cecil Cross, the
20 writer, wrote.

21 And if that -- I wasn't at that interview,
22 so I don't know what came out -- what really came
23 out of Tony's mouth, and I don't know what really
24 Cecil wrote. And I know my story, and I stand
25 behind it.

R. FELIX - 12/5/06

1
2 BY MR. BERMAN:

3 Q. You told us your title earlier?

4 A. Yes.

5 Q. What was that title?

6 A. Cofounder and executive vice president.

7 Q. Of what company?

8 A. Enyce, LLC.

9 Q. Enyce, LLC. And does Mr. Shellman have a
10 title in this company?

11 A. Tony does not have a title in this
12 company.

13 Q. Do you see Mr. Shellman often?

14 A. I see him occasionally.

15 Q. Does he have any involvement in the
16 company today?

17 A. Tony has no involvement with Enyce today.

18 Q. Were you involved --

19 A. Tony Shellman was not an employee of Enyce
20 when my deposition in April of last year was taken
21 either, so. He hasn't been an employee for quite
22 some time.

23 Q. Can you tell me the circumstances that led
24 to your change of attorneys in this matter?

25 MR. DOYLE: Objection. It's

1 R. FELIX - 12/5/06

2 attorney-client privilege, to the extent that
3 it calls for disclosure of attorney-client
4 communications.

5 BY MR. BERMAN:

6 Q. Were you involved in this? Was this your
7 decision?

8 A. No. I personally don't own the trademark,
9 so.

10 MR. BERMAN: I'm done.

11 MR. DOYLE: Redirect.

12 FURTHER EXAMINATION

13 BY MR. DOYLE:

14 Q. Who is Tony Shellman?

15 A. Tony Shellman is a -- Tony Shellman is one
16 of the cofounders of Enyce. He no longer works with
17 Enyce, though.

18 Q. In 1996, what was his job?

19 A. In 1996 -- Tony Shellman, in 1996, was --
20 well, at that time also. At that time, it wasn't
21 Enyce, LLC; it was Enyce, Inc. And Tony helped
22 found the brands. And when he had a title as an
23 employee for Enyce, Inc., he was a vice president of
24 marketing.

25 MR. DOYLE: All right. Just move into

R. FELIX - 12/5/06

evidence, Opposer's Exhibit A through CC. And
that's all.

(Time noted: 4:13 p.m.)



ROLANDO FELIX

Subscribed and sworn to
before me this day
of ~~2006~~.

16 JANUARY 2007 
Barbara E. McCoy

BARBARA E. McCOY
NOTARY PUBLIC, State of New York
No. 01MC4792941
Qualified in Suffolk County
Certificate issued in New York County
Commission Expires October 31 ⁰⁹

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OPPOSER'S EXHIBITS (CONT'D)

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Exhibit BB	Document - two pages, the first of which appears to be the cover of something called Complex Buyer's Guide, dated January 31	93
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CERTIFICATE

STATE OF NEW YORK)

: ss

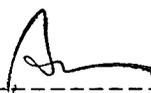
COUNTY OF NEW YORK)

I, Angela M. Shaw, a Certified Shorthand Reporter,
Registered Professional Reporter and Notary Public within
and for the State of New York and New Jersey, do hereby
certify:

That ROLANDO FELIX, the witness whose deposition
is herein before set forth, was duly sworn by me and that
such deposition is a true record of the testimony given by
such witness.

I further certify that I am not related to any of
the parties to this action by blood or marriage and that I
am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand
this 18th day of December, 2006.



ANGELA M. SHAW, CSR, RPR

LICENSE NO. XI00218400

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NAME OF CASE: LC Licensing vs. Carey Berman

DATE OF DEPOSITION: December 5, 2006

NAME OF WITNESS: Rolando Felix

Reason Codes:

- 1. To clarify the record.
- 2. To conform to the facts.
- 3. To correct transcription errors.

Page 25 Line 16 Reason 3
From 902,000 to 2,000

Page 56 Line 14 Reason 3
From permanantly to prominantly

Page 72 Line 22 Reason 3
From marketing chain to mark itself

Page 72 Line 24 Reason 3
From describe to disown

Page 86 Lines 15 and 16 Reason 3
From stores to stars

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From _____ to _____

Page _____ Line _____ Reason _____
From _____ to _____

Page _____ Line _____ Reason _____
From _____ to _____


ROLANDO FELIX

**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

Opposition No. 91162330
Serial No. 78320850

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

**APPLICANT'S THIRD NOTICE OF RELIANCE
PURSUANT TO TRADEMARK RULE 2.122(e)**

Pursuant to Trademark Rules 2.122(e) , Applicant, representing himself pro se hereby gives notice of its reliance upon information contained in the Deposition of EVAN T. DAVIS taken April 7, 2005.

Two copies of the Deposition are attached hereto.

SUBMITTED this 1st day of February, 2007.

TO: Kieran Doyle
Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the Americas
New York, NY. 10036-6799

CARY BRETT BERMAN



CARY BRETT BERMAN

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

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

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

BARRISTER REPORTING SERVICE, INC.
120 Broadway
New York, N.Y. 10271
212-732-8066

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

KRAMER LEVIN NAFTALIS & FRANKEL, LLP

Attorneys for Opposer

919 Third Avenue

New York, New York 10022

BY: CAROLE E. KLINGER, ESQ.

CARY B. BERMAN

Applicant, Pro Se

1917 Lafayette Road

Gladwyne, Pennsylvania 19035

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3

2 E V A N T. D A V I S,

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

7 EXAMINATION BY

8 MR. BERMAN:

9 Q. Please state your name for the
10 record.

11 A. Evan T. Davis.

12 Q. What is your address?

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

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

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

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E. Davis

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Is that okay?

A. Certainly.

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

Would you try to do that?

A. Certainly.

Q. Have you ever been deposed before?

A. No.

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

A. Yes.

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

MS. KLINGER: Objection.

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

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E. Davis

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He's a fact witness.

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

A. Yes.

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

Would you agree to do that?

A. Certainly.

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

Do you understand that?

A. Yes.

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

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E. Davis

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

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

6 MS. KLINGER: I am going to
7 object.

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

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

16 A. Yes.

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

21 Is that okay?

22 A. Yes.

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

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E. Davis

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

8 Is that okay with you?

9 A. Yes.

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

16 Would you agree to do that, sir?

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

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

24 A. Yes.

25 Q. I am going to ask you a few

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E. Davis

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

Are you ill today?

A. No.

Q. Do you feel fine physically?

A. Yes.

Q. Are you under any medication?

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

Q. Are you taking any other
medications?

A. No.

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

A. No.

Q. Does it affect your memory?

A. No.

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

MS. KLINGER: Objection to the

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E. Davis

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form of the question.

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

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

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

(Requested portion was read back.)

A. At the present time, yes.

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

A. I will ask for the break.

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

A. No.

Q. Have you had any alcohol today?

A. No.

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

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E. Davis

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accurate testimony today?

A. No.

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

A. Yes.

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

Is that okay, sir?

A. Not a problem.

Q. Did you have any formal education?

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

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

A. No.

Q. Did you go to a college, university?

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

Q. I'd just like to run through some

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of your former jobs.

A. Not a problem.

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

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

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

A. '87, yes.

Q. At which time you did what, sir?

A. I took a job with International News Corporation.

Q. Where are they located?

A. They were based out of Seattle, Washington.

Q. Who long did you work there?

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

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Corporation when we started the brand Mecca.

Q. So from 1987 to 1996 --

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

Q. So it was a --

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

Q. Was MA Associates owned by International News?

A. Yes.

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

A. As far as I know.

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

2 what you said?

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

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

7 A. Right.

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

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

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

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

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

23 A. Yes.

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

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E. Davis

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Compound question.

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

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

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

A. Yes.

Q. -- clothing retails? Is that correct?

A. Clothing retails, yes.

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

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

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

A. MA Associates?

Q. Yes.

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

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You can answer the question if
you understand it.

Q. Do you understand the question?

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

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

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

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

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E. Davis

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

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

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

14 A. No.

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

18 A. (No verbal response.)

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

22 Did you have any ownership?

23 A. (No verbal response.)

24 Q. I don't understand.

25 MS. KLINGER: I am just going

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E. Davis

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to interrupt to remind the witness to

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please answer in full words. You're

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saying uh-hmm, but you should say yes

5

or no.

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THE WITNESS: Yes. I'm

7

sorry.

8

Q. Please clarify what you meant by

9

backing you in this new venture.

10

A. They would give us the financial

11

support and the operational support to

12

establish a company together, although they

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would own the mark and we would be paid in

14

a certain agreement. We were going to try

15

and put together a clothing line that we

16

were going to try and distribute to

17

retailers.

18

Q. Again, you're terminology may be

19

different than my terminology, so I

20

apologize.

21

A. Not a problem.

22

Q. When I hear the term backing you,

23

I generally assume that you would have some

24

ownership, so what did you --

25

A. We didn't have ownership. We

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didn't have ownership.

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

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

MS. KLINGER: Objection.

Asked and answered.

Q. Did you have other financial incentives?

A. I was financially incentivized, yes.

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

A. No.

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

A. Yes.

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

A. They were commissions based on

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sales.

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

A. Yes.

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

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

Q. Okay.

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

Q. Merchandizing?

A. Yes.

Q. What is involved in
merchandizing?

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

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

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

Q. Is production included in merchandizing?

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

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

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

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

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

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

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

A. Myself and Tony and Lando.

Q. Tony is Tony Shellman; is that correct?

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E. Davis

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A. That's correct.

3

Q. Rolando is Rolando Felix; is that

4

correct?

5

A. Yes.

6

Q. The three of you were together

7

during this entire Mecca venture; is that

8

correct?

9

A. Yes.

10

Q. When did you first meet Tony

11

Shellman?

12

A. While I was working for

13

International News Corporation, Tony

14

Shellman was going to school at Parsons and

15

he worked in a retail operation at

16

International News Corporation owned by a

17

company called the Zebra Club. And they

18

asked if I would hire him as an intern

19

while he's going to school to use him for

20

various projects and stuff like that, if he

21

could help out. And basically, we paid him

22

a little bit, and while we worked, we got

23

to know each other and established a

24

relationship.

25

Q. What year was that, if you

1 recall?

2 A. No, I don't.

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

6 A. Yeah, 'cause I met him, say, from
7 '98 -- you're saying for an exact year.
8 It would be '92 to '93. I don't recall
9 offhand --

10 Q. Okay.

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

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

16 A. Right.

17 Q. -- the beginning of this other
18 venture?

19 A. Right.

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

22 A. Rolando didn't work for us. He
23 moved from Seattle with Tony, and they were
24 going to school together. And I met Lando
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by him coming to the office and visiting Tony. He'd stop by, say hello and we established a relationship. But, he was in no shape or form employed by International News.

Q. You're referring to him as Lando?

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

Q. I just want to clarify.

A. Okay.

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

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

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

1 A. No. He just was Tony's friend.
2
3 They came from Seattle together. They were
4 friends. Lando would -- Rolando would
5 visit Tony at work, and, you know, he'd be
6 there, he'd say hi, how are you doing,
7 how's it going. I'm Lando. We met and
8 established a small friendship. That's how
9 I met Lando.

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

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

25 Q. So would you say that the date

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E. Davis

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

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

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

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

16 Q. No problem.

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

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

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

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company International News Corporation, MA Associates, and we joined Fila USA in order to start a new venture.

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

A. Is there a reason why we left? We weren't liking the direction that the brand was going, so we needed to -- decided to try this again, a new clothing brand. We were naive enough to think it was easy to do again.

Q. Did you receive compensation when you left?

A. I received my outstanding commissions.

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

A. I don't understand the question.

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

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

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E. Davis

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2 you -- did the venture become successful?

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

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

7 A. I'd like to think so.

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

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

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

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

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

19 A. Yes.

20 Q. Did you all leave in the same
21 day?

22 A. I left first.

23 Q. Then when did the other two
24 gentlemen leave?

25 A. I think like two weeks later.

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

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

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

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

A. Agreed.

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

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were made?

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

Q. Did this MA continue to be in business?

A. Yes.

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

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

Q. Are there still products that bear this trademark?

A. Of Mecca USA, yes.

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

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

Q. Do you understand the question? You can answer it, although I will rephrase

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it.

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

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

A. Yes.

Q. -- bearing the Mecca trademark?

A. Yes.

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

A. Yes.

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

A. Yes.

Q. Were you upset?

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

A. Can you rephrase?

Q. Tell me what happened in 1996, please.

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

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A. Yes.

Q. What was that, sir?

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

Q. What was that?

A. That was the ENYCE brand.

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

Is that okay?

A. Yeah, certainly.

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

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

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

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

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

A. Yes.

Q. Who is that entity?

A. Fila.

Q. How did you come to know this
entity?

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

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

A. No.

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

A. Yes.

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

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A. Two months.

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

A. Shellman.

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

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

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

A. Yeah.

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

A. Yeah.

Q. What happened next?

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

Q. Was there a business plan with Fila?

A. Yes.

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

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

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

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

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A. Young men's industry.

Q. Young men's --

A. (No verbal response.)

Q. I sat with your associate

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

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

MS. KLINGER: Objection.

Compound question.

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

Very general, it is a young men's

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

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

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

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

17 Is that okay?

18 A. Certainly.

19 Q. We have Exhibit 1, which we used
20 in yesterday's deposition, which is a
21 trademark for the letters E-N --

22 MS. KLINGER: I'm going to
23 object to your characterization of the
24 document.

25 The document speaks for

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itself. If you want him to look at
the document, that's fine.

MR. BERMAN: Agreed.

Q. The letters E-N-Y-C-E are on the
document.

Could you please tell me the
first time that you heard of this, saw this
or however else you want to describe it,
the first time that you saw this group of
letters together.

MS. KLINGER: Objection for a
lack of foundation.

You can answer the question.

A. Mr. Felix -- when we started a
new venture, we were kicking around several
ideas and several names. And Lando came in
one day to work and we were working
preparing our next clothing line, and he
said, "I have something to show you guys."
He wrote those five letters down that you
presented in front of me. He wrote those
five letters down, and he said, "What do
you think that spells?" He asked myself.
You know, I said "Eh-Nees." I think Tony

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had another answer. I don't recall offhand. We also -- Fila being owned by an Italian company, we reported to Alberto Verdi. He then asked him what he thought said. He said "Eh-Nee-Chay," like that. So we thought that -- you know, we thought that it sounded kind of good. It was sort of a blank canvass, and we gave it some serious consideration.

Q. As far as you know, is it a word?

A. No.

Q. As far as you know, is it a name?

A. No.

Q. As far as you know, does it have any meaning?

A. To me, yeah. I mean, I've been working for nine years. It has a lot of meaning, but it doesn't have a specific meaning. It's up for interpretation.

Q. What meaning does it have to you, sir?

A. It's a clothing company that we started that I'm very proud of.

MR. BERMAN: This is

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Applicant's Exhibit number 6 that I'm going to show to the witness.

Q. Within this document, this author, there is --

MR. BERMAN: Is it okay with opposing counsel?

MS. KLINGER: You can read the title, certainly.

Q. This is an article called Building the E-N-Y-C-E Empire by Cecil Cross in Look Magazine.

MS. KLINGER: It purports to be an article, okay.

Q. Whereby this Cecil Cross has claimed to have interviewed Tony Shellman. I believe it would be the same Tony Shellman, but I have no knowledge whether it is or it isn't, but it's Tony Shellman.

MS. KLINGER: Rather than your characterization of the document, do you want to have the witness look at the document and then you may want to ask him questions about the document because that seems to be -- rather

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than have you tell him what the document is.

The document speaks for itself, so I object to your characterization on that ground. Why don't we have the witness look at the document.

MR. BERMAN: That's fine.

MS. KLINGER: Why don't you take a look at Applicant's Exhibit 6.

A. Is there anything you would like me to read in particular?

MS. KLINGER: I'm sorry, Applicant's Exhibit 6.

A. Was there a particular paragraph you'd like me to read or the whole thing?

Q. There's a particular paragraph that starts "Shellman didn't waste any time," however, please feel free to read the entire article, if it's what you'd like.

A. Okay.

Q. Again, the article is what it is. Please comment on what is stated in

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the article versus what you've just stated
in this deposition.

MS. KLINGER: Objection to
form as vague and ambiguous.

Are you asking him about this
specific paragraph to comment on?
You know, I'm sorry, you can answer
the question if you understand what
he's asking.

A. I understand, but -- I think I
understand, but I would like to be a little
clearer. You know, this is -- do I want to
speak about Tony locks getting re-twisted
while watching South Central, no. I mean,
are you talking more specifically about his
bet in self-promotion here?

Which paragraph would you like me
to speak on?

Q. If it's okay with counsel, you
were not here yesterday --

A. Right.

Q. -- for the deposition of
Mr. Felix. Mr. Felix did state that he
brought these letters in and showed it to

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you as you stated here similarly.

A. One hundred percent is my recollection. Tony Shellman I think is --

Q. Yet this article contradicts those occurrences and, therefore, I just would like to try to get some clarification on what actually occurred.

Mr. Shellman in this article said that he came up with this, and I would just like to understand from you to tell us what actually did occur.

A. What I stated before is actually what did occur.

Q. Are you stating that this article is incorrect? With respect to that paragraph, are you stating that this --

A. I don't have knowledge of the -- first, I don't have knowledge of this being the sequence of events that took place for the starting of the brand ENYCE. You know, I don't recollect this being the way it happened.

Q. Would you --

A. Sometimes a journalist, they'll

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E. Davis

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2 take a play on something to make an
3 interesting article on somebody. This
4 could be faulty reporting here. It might
5 be Tony, you know, making a statement
6 without giving a lot of thought. I don't
7 think that Tony trying to win a bet is
8 really the way that ENYCE was developed.
9 The way I stated before, Mr. Felix coming
10 into the room and writing five letters
11 down, was the way that name was started.

12 Q. Again, you were not here for
13 yesterday's deposition, but Mr. Felix did
14 state that to a certain degree -- and I
15 don't have the exact words -- the letters
16 N-Y-C did stand for New York City.

17 Did some portion of it, being the
18 initials of N-Y-C, stand for New York
19 City? Do you have any knowledge of that?

20 A. Of what?

21 MS. KLINGER: I am going to
22 object to the form of the question.

23 Mr. Felix's testimony speaks
24 for itself. You can answer the
25 question.

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E. Davis

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A. I am not going to speculate what Lando was thinking, but I do know that one of the things he was excited about was that it did present -- was that it presented the phonetic spelling of N-Y-C. But with that, we decided to take it in a different direction and create it on its own word onto itself.

Q. Let me be more specific with the question because I don't think you understand the question.

Prior to the day that Mr. Felix presented this --

A. To me?

Q. -- to you, as you previously stated, was there any conversation regarding the use of the letters N-Y-C in this brand that you generally were trying to put together?

A. No, I don't believe so. I can't say we kicked around a lot of names. I can't recall what happened nine years ago.

I know that the goal in starting a new brand name was to take things from

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E. Davis

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2 the opposite end of the spectrum of Mecca
3 USA, which had a lot of meaning behind it.
4 The goal was to have something a little bit
5 more, you know, obscure and more of a blank
6 canvass. Trying to create a new word was
7 one of the goals of it. I don't recall
8 there being this marriage towards New York
9 City.

10 But, I think once it was
11 developed and that's what was come up with,
12 we felt that, you know -- yeah, we're in
13 New York City. We did have a company
14 called Mecca, which Madison Square Garden
15 is the mecca of, you know, basketball, and
16 you know, we saw that this new word had a
17 few different meanings to it. It can be
18 interpreted in different ways.

19 Q. Do you have any knowledge of why
20 we're here today?

21 MS. KLINGER: I'm just going
22 to caution the witness not to reveal
23 any attorney/client privilege
24 communications in answering the
25 question, but you can go ahead and

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E. Davis

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answer.

A. Yeah. I've heard that yourself -- you have wanted to use the name E-N -- not the name, rather the likeness of ENYCE or E-N-Y-C-E to use that as your company name for auto products and electronics that relate to auto products.

Is that correct?

Q. I'm taking the deposition.

A. I just wanted to flip it for a second.

Is that --

Q. Yeah, that's correct.

Did you ever have any thoughts about using these letters on automobile products?

A. Yeah. We -- as a matter of fact, we've, you know, come across all different licensing or different venture opportunities. Coincidentally, some of the -- you know, when you break down the demographics, our consumer, a lot of the interest that's had for a discretionary income right now -- the most important

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E. Davis

48

2 things are anything to deal with MP3's and
3 electronics, car accessories and clothing.
4 So it is not unfamiliar for us to realize
5 that a lot of those things, speaking from a
6 discretionary income, go together and take
7 up the market share for teens and people
8 out of college.

9 So we've, you know, we've thought
10 of things like rims and we've had
11 discussions. We haven't done any of these
12 ventures, but they have been topics of
13 conversation. We've actually advertised in
14 an advertisement called "Dub," which is --
15 are you familiar with that?

16 Q. (No verbal response.)

17 A. "Dub" is a magazine. It stands
18 for dubs, meaning twenties, rims, devoted
19 to rims. So we've been approached by
20 people and had, you know, very minute
21 discussions about it, but I can't say the
22 thought hasn't been there.

23 Q. Are you aware of the fact that
24 there is actually a trademark that has been
25 issued?

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E. Davis

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MS. KLINGER: Objection to the
characterization of the terms issued.

Q. There's a trademark that has been
issued and it is now being opposed.

Are you aware of that?

MS. KLINGER: I believe that
it's been allowed -- I'm sorry, yes,
it's been allowed. It's been
published. It's not been allowed.
It's been published. It's not been
issued.

Q. The exact terminologies you can
go back and talk to your counsel and you
can look at the paperwork. We don't have
to go into that anymore.

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

(Discussion held of the
record.)

Q. Do you currently have a position
with any company?

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

Q. Let me apologize again.

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Yesterday there were some issues with respect to what these different corporate entities are actually called.

So my question is, are you currently employed by one of these various corporate entities that control this E-N-Y-C-E line of --

A. I'm employed by ENYCE, which is a division of Liz Claiborne.

Q. Is it a division or is it a subsidiary?

A. I'm not sure.

Q. Do you know the corporate name that pays you?

A. Yes.

Q. Could you please tell us that corporate name?

A. ENYCE.

Q. ENYCE, Incorporated, ENYCE, LLC?

A. I don't.

Q. ENYCE what?

A. I have direct deposit. Honestly, I don't really don't know.

Q. You must receive some fact

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information to file your taxes?

A. As you said, and as you stated in your opening statements, you said if I wasn't sure of something that I don't have to answer. So I'm telling you that I can find out the information for you, but if I say even LLC or whatever it is and it's wrong, I probably won't be doing justice to what this exercise is, so I don't know the answer to that.

Q. What is your job title?

A. President.

Q. So you're president of a company that you don't know the name of; is that correct?

MS. KLINGER: Objection to the question.

It's argumentative.

A. I do know the name of the company. I don't know the exact title. There is something called direct deposit. Honestly, I have not received a pay stub since I've been employed with Liz Claiborne. Everything is direct

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deposited.

My taxes I get and I send it to my accountant. I don't even open it. They give me my 1099 or my W-2, whatever it may be, you know. I just get it, put it in a pile and send it to my accountant. I put it in a pile and I don't even know what it is. I send it to him.

As I said before, I am not a hundred percent positive. I can provide the information to you. It will be correct. I could speculate right now, but I wouldn't be -- I wouldn't be a hundred percent sure of my answer.

Q. Do you ever write a letter to a customer or to any corporation that you do business with?

A. For a company, I usually e-mail.

Q. Have you ever written a letter on behalf of your company?

A. In the past five years, no. Maybe a quick hand jotted note "nice meeting," but anything in the business format has been done via e-mail.

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E. Davis

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Is that the same as writing a letter or is that a different --

Q. When you send an e-mail, are you listing your job title in your e-mail?

A. No.

Q. Are you similarly signing your name?

A. Regards Evan.

Q. Does this entity have a bank account?

A. I'm sure it does, yeah.

Q. Would you agree that if you received direct deposit, you must be receiving direct deposit via some bank account?

A. I would agree.

Q. Did you sign bank papers to open this bank account?

A. No.

Q. Forgive me, but corporate officers usually have to sign bank papers to open up a bank account.

Did other corporate officers --

A. At Fila, I signed many slips. At

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Liz Claiborne that was not required of me.

Q. Do you have a business card?

A. Yes, I do.

Q. Do you have one with you today, sir?

A. No, I don't.

Q. Does the business card have a corporate entity listed on the business card?

A. Yes, it does.

Q. What is that, sir?

A. ENYCE.

Q. Does it say ENYCE Holdings?

A. No. Just says ENYCE.

Q. Does it say ENYCE, LLC?

A. No.

Q. Does it say Evan Davis?

A. Yes, it does.

Q. Does it say president?

A. Yes.

I'm sorry, I just don't know the answer to the question. I am not trying to frustrate you. It is like you are trying to get something that I don't know the

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E. Davis

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2 answer to.

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MS. KLINGER: It is completely

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appropriate not to guess.

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Q. It's fine, sir. It's just not

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what I'm used to. I don't -- I'm trying to

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understand the corporate entity that has

8

all of these different --

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MS. KLINGER: I think we

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should move on.

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MR. BERMAN: Yes.

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A. I will be more than happy to

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provide it if you want. I mean --

14

MS. KLINGER: Let's just move

15

on.

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Q. I'd like to show you Exhibit

17

number 4.

18

MS. KLINGER: Applicant's

19

Exhibit 4.

20

A. I'm familiar with this one.

21

Q. Would you agree that this states

22

that when ENYCE was sold to Liz Claiborne,

23

it was sold for \$114 million.

24

A. Yes.

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Q. Are you aware of the

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circumstances surrounding this sale?

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

You can answer the question if you understand it.

A. You're asking me the -- can you repeat the question?

Q. Prior to this sale --

A. Yes.

Q. -- what was your position --

A. President.

Q. -- with the company?

A. I was the president of ENYCE, which was a wholly owned subsidiary of Fila USA.

Q. And after this sale, what was your position?

A. President of ENYCE.

Q. Which is --

A. A division of Liz Claiborne.

Q. You refer to a wholly subsidiary of Fila, but a division of Liz Claiborne --

A. I don't know.

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E. Davis

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Q. -- are you using the correct terminology or are you guessing?

A. I am positive about the Fila aspect.

Q. Okay.

A. As I've said, with the Liz Claiborne, I'm just not positive of how they set it up.

I know when I go in, there's thirty-one plaques on the wall of the companies that they own. I've only been there a year. I don't know the actual vernacular term, legal thing that would -- that I feel comfortable enough to speculate on.

MS. KLINGER: Nobody is asking you to speculate. If you don't know, you don't know.

Q. Is there a date that you see on here or can you refer to a date that this occurred, this acquisition?

A. The date you have down here is 4/5/2005.

Q. That's when it was printed.

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E. Davis

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Do you recall when this acquisition took place, approximately?

A. December 1st, 2003.

Q. Prior to December 1st, 2003 --

MS. KLINGER: Excuse me for a second, I just want to clarify, was that your recollection of when it occurred or are you reading that from the document?

THE WITNESS: No. I know.

MS. KLINGER: Thank you. I was just clarifying.

Q. What were your job responsibilities prior to this acquisition on a day-to-day basis?

A. Prior to this acquisition, I was responsible for the income statement and the P&L statement, profit and loss statement, for ENYCE, marketing design and sales reported to me for both men's and ladies. And my specific role was still of a merchandiser in addition.

Q. After this acquisition, did you have the same job responsibilities or have

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E. Davis

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2 they changed?

3 A. They are the same.

4 Q. Same?

5 A. (No verbal response.)

6 Q. So you are actually involved in
7 the preparation of your profit and loss
8 statement?

9 A. Of the preparation, no.
10 Actual -- what do you mean, as far as the
11 paperwork?

12 Q. I'm sorry, you said you were
13 involved in the income and P&L statement.

14 A. Well, I manage the business, so
15 I'm responsible for it, but I don't -- I
16 thought in terms of preparation, I thought
17 you meant like preparing the actual
18 statements.

19 Q. What are your responsibilities?
20 I'm sorry.

21 A. Well, if sales reports to me,
22 that's -- you know, I determine the amount
23 of sales when we have budgets and the
24 amount of sales in trying to keep the sales
25 up or down or whatever you're trying to do

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E. Davis

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with it. I'm responsible for the expenses. I'm responsible for, you know, the costs of goods sold. There's probably about thirty different things that go into the whole formula. I help manage that on a day-to-day or weekly basis.

Q. Are these numbers reported to a parent company or the -- again, we don't know whether it's a subsidiary or division.

A. No.

Q. Are they presented to Liz Claiborne?

THE WITNESS: Is that a proper term so I can establish what it is?

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

Could we go off the record for a second.

(Discussion held off the record.)

Q. Are you reporting these financial statements, financial information to someone at Liz Claiborne?

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E. Davis

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A. I have a finance person that was given to us by Liz Claiborne. His name is Jason Schmidt. We work the financials and P&L's together and those go to Liz Claiborne's financial people on a daily -- weekly basis.

Q. When this financial information is delivered to Jason Schmidt, are you signing off on these figures?

A. We work in conjunction. We have budgets that we establish in the beginning of the year. And when something becomes off budget, whether it's sales or expenses run to high, we analyze it together and we try to make corrections towards it. Some of which you can control, some of which you can't.

Q. Are you signing any document that's saying that you're representing these figures are correct?

A. No.

Q. Is someone signing these documents?

A. I'm not sure.

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E. Davis

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Q. Okay, you stated that you're in charge of marketing design, sales and that you're still a merchandiser.

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A. Yes.

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Q. On a daily basis, who is working with you? Who's helping you run these departments?

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

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A. You have -- Lando Felix is the Executive Vice President of Marketing. He reports to me. I have a national sales manager who is EVP of Sales. He reports then to me. We have a Vice President of Design who reports then to me. We have a Vice President of Production who reports then to me. So they control their separate entities and aspects of the business, but then report it to me.

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Q. Does Mr. Shellman help you in these fields?

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A. Mr. Shellman is an outside contractor and generally works mostly with Mr. Felix. Tony does a lot of events and

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marketing and independent marketing venues and ventures for the company. He directly reports to Mr. Felix. But, there are times when I speak directly with Tony and work with Tony since we have a ten-year relationship and history.

Q. Does Mr. Shellman have an office within your offices?

A. Yes.

Q. Does he have an assistant at your location?

A. I think there's a pool. I think there's a few people that use the same assistant. I think it's more of a departmental assistant.

Q. Is Mr. Shellman there on a regular basis at your offices?

A. Yeah, I would say so. He travels a lot.

Q. Prior to the acquisition that we are referring to in Applicant's Exhibit number 4, that's just referenced in Applicant's Exhibit number 4, was Mr. Shellman an employee of the entity when

1 it was owned by Fila?

2 A. No.

3 Q. Was there ever a time that
4 Mr. Shellman was an employee --

5 A. To the best of my --

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

8 An employee of?

9 MR. BERMAN: Well, he had all
10 these different corporation names. I
11 would like be more specific.

12 MS. KLINGER: Are you talking
13 about post-acquisition?

14 Q. Well, we can talk any piece. I
15 want to hear about it all.

16 So was there ever a time that
17 Mr. Shellman was an employee -- let's start
18 from 1996 I believe is what you said you
19 started this venture --

20 A. No.

21 Q. -- through today?

22 A. No. No, I do not believe so to
23 the best of my knowledge.

24 Q. You stated that Mr. Shellman
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E. Davis

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along with yourself and Mr. Felix together
started this venture; is that correct?

A. (No verbal response.)

Q. Does Mr. Shellman receive regular
paychecks?

MS. KLINGER: Objection. Lack
of foundation.

You can answer if you know.

A. He doesn't receive a regular
paycheck. I believe he receives a
consulting fee that is paid in the form of
check.

Q. Is that paid on a weekly basis,
biweekly?

A. Monthly.

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

Q. Do you know --

MS. KLINGER: Lack of
foundation.

You can answer the question if
you know the answer.

A. Monthly.

Q. Is it the same amount every

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month?

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

You can answer the question if you know.

A. Yes.

Q. Does Mr. Shellman receive any additional funds if the company has certain sales levels?

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

You can answer if you know.

A. I have more of -- when he was Fila, I was privy to a lot more specifics. I think Tony has been under renegotiation of his contract. I am not sure of his current status. I believe there are -- there were and I believe that there are still bonus incentives for him.

Q. Let's back up then to Fila.

When this was part of Fila, please describe what those bonus incentives were?

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E. Davis

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

You can answer if you know.

A. He would receive a bonus based on sales and he would also get one based on budget, based on, say, not going over budget of the marketing and his expenditures and allotments of his events and projects that he worked on.

Q. Does Mr. Shellman provide you with any sort of reporting or any kind of information on a regular basis?

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

A. Not in a very structured matter, no.

Q. But he does give you reports on things in a non-structure --

A. Non-structure, yes.

Q. Such as what?

A. We did a event in Miami, it was good, this is what happened, this guy performed and we had about "X" hundred

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E. Davis

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2 people. It's more of an informal
3 conversation.

4 Q. When Mr. Shellman goes to these
5 events, does he turn in an expense report?

6 A. Yes.

7 Q. And the company pays his
8 expenses?

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

11 You can answer it.

12 A. Yes.

13 Q. Have you ever been convicted of a
14 crime, sir?

15 A. No.

16 Q. Are you a party to any
17 litigation --

18 A. No.

19 Q. -- at this time that you know of?

20 A. No.

21 Q. Have you ever owned or applied
22 for a patent?

23 A. No.

24 Q. Have you ever owned or applied
25 for a trademark?

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E. Davis

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A. Yes.

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Q. What would that be, sir?

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A. Evan T. Davis, Inc.

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Q. I'm sorry, your name?

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A. Yeah.

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Q. Did you receive the trademark?

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A. Yes.

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Q. When was that, sir?

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A. I believe it was '95 -- '94,

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'95.

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Q. For what products?

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A. I am not -- actually, I am not

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sure. It was either late Mecca or -- how

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we were getting paid -- we were getting

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paid directly into -- we were paying into a

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corporation, so I established my own

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corporation. I am not sure if it was the

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end of Mecca or the beginning of ENYCE.

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Q. I'd like to go back to

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Applicant's Exhibit number 4.

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When this acquisition occurred,

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could you please describe the portion of

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this dollar amount that you received, sir?

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MS. KLINGER: Objection to the

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E. Davis

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form of the question. Lack of

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foundation and vague and ambiguous.

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A. Could you be more specific? From

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who?

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Q. Yes, whatever you could to

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describe.

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A. I'd just like you to be more

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specific.

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MR. BERMAN: I'd like to

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introduce a new --

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MS. KLINGER: Exhibit?

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MR. BERMAN: -- exhibit.

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(Two-page document was marked

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as Applicant's Exhibit 7 for

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identification as of this date.)

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Q. Let's refer to Applicant's

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Exhibit 7.

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Is that okay, sir?

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A. Certainly.

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Q. Previously you referred to

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various different corporate names and this

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document here now refers to a name that

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appears to not have been brought up, Sports

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Brands International.

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E. Davis

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A. Yes.

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Q. Do you know who that is, sir?

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A. Certainly. I believe six months

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to nine months prior to the sale of ENYCE

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to Liz Claiborne, Fila based out of Biella,

7

Italy sold their interest or sold their

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company to Sports Brands International,

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which I guess is a division of Cerbus.

10

Q. So could you please describe --

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A. For me, I still work for Fila

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Sports Brand. International now owned

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Fila, but we were still a wholly owned

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subsidiary of Fila. So for me, there was

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no change. The same people were there

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before as there were after. There was no

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change in the day-to-day business for me.

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Q. So the sale that we're referring

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to in Applicant's Exhibit number 4, is it

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the same sale that we're looking at that's

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described here in Applicant's number 7,

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sir?

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A. No. It's two different sales --

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I'm sorry, I apologize. Okay, yes. You're

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correct. They're discussing the same sale,

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E. Davis

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but prior to that, there was a different sale. A lot of selling going on.

Q. Do you know the terms and conditions of the prior sale that took place that you just referred to, Fila/Sports Brand International sale?

A. Just hearsay.

Q. Please describe that hearsay, sir.

A. \$225 million.

Q. \$225 million?

A. Yeah, they bought Fila, ENYCE and I believe Ciesse, three separate entities of Fila.

Q. So for clarification, Sports International, therefore, owned other things other than this E-N-Y-C-E; is that what you're saying?

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

You can answer it if you know.

A. I believe they owned Fila, which

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E. Davis

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owned ENYCE and Ciesse.

Q. Okay, when that sale occurred, were you involved in the due diligence of that sale?

A. No.

Q. When that sale occurred, did you receive any funds associated with that sale personally?

A. No.

Q. Now, let's go to the following sale that's referred to in these two exhibits.

MS. KLINGER: What two

exhibits?

MR. BERMAN: Exhibit number 7

and Exhibit number 4.

Q. Again, let me just clarify because you made a previous statement that I believe you retracted.

These two exhibits are referring to the same sale; is that correct, sir?

A. Yes.

Q. I understand how confusing this can be.

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E. Davis

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A. There is a lot of sales, a lot of different companies, a lot of different entities.

Q. Right. This sale did occur; is that correct, sir?

A. Yes.

MS. KLINGER: What sale?

MR. BERMAN: The sale that's in Exhibit 7 and --

A. Yes.

MR. BERMAN: -- and Exhibit 4.

Q. Let's talk about --

A. Liz Claiborne --

Q. -- this sale.

A. -- purchased ENYCE from SBI.

Q. Okay. Was there a period of time that there was due diligence that occurred? Are you familiar with the term "due diligence," sir?

A. Yes, I am.

Q. Was there a period of time where there was a certain due diligence that occurred in order to complete this sale?

A. Yes.

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E. Davis

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Q. Were you involved in this due diligence process?

A. Yes.

Q. Please describe your involvement.

A. They asked me questions and I answered.

Q. Questions about what?

A. Various questions.

Q. Let's give some examples.

Were there questions about inventory?

A. Yes.

Q. Were there questions about the value of the inventory?

A. Yes.

Q. Was there a question about how long the inventory may have been in inventory?

A. Every business question you can probably think of, I was probably asked.

MS. KLINGER: I'm just going to caution the witness during this line of questioning to be careful not

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E. Davis

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to divulge any attorney/client
communications.

THE WITNESS: Okay.

Q. Were you ever involved in the
production of the products that bear the
name E-N-Y-C-E?

A. Yes.

Q. You did actually decide on
production matters on behalf of the
E-N-Y-C-E?

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

A. Yeah, we've established that
already.

Q. We didn't, so let's establish it.
Did you decide where the products
were to be manufactured?

A. In some cases, yes, but not all.

Q. Are you familiar with the term
"letter of credit"?

A. Yes.

Q. Was there ever a letter of credit
involved in the production of products that
carried the E-N-Y-C-E name?

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E. Davis

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

You can answer it if you
understand it.

A. I don't really understand it.

Q. Did you ever sign a production
order --

A. No.

Q. -- to cause products to be
produced?

A. No.

Q. Let's back up to this due
diligence process.

During the due diligence process,
were there other individuals that were
asked questions about the value of the
inventory?

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

A. Not sure.

Q. Let's move on.

This acquisition, when it
occurred, did you personally receive a
portion of this acquisition fee?

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E. Davis

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A. From who, Liz Claiborne?

Q. Yes.

A. No.

Q. Did you receive a portion of the acquisition from Fila?

A. Yes.

Q. What did you receive, sir?

A. Why is my personal -- what's the relevancy?

Q. You can refuse to answer it.

A. I refuse to answer.

MS. KLINGER: Let's take a

break for a minute.

(Brief recess was taken.)

Q. You stated you had a middle initial. I forget what you said.

What's your middle initial?

A. T.

Q. T. I had an Evan E. Davis that I wanted to make sure -- I'm not looking at the same thing.

MR. BERMAN: I'm going to

introduce Applicant's Exhibit number

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(One-page document was marked Applicant's Exhibit 8 for identification as of this date.)

Q. I would like to ask the witness is this the information regarding the same acquisition that is referred to in Applicant's Exhibit number 4 and Applicant's Exhibit number 7 as far as you know?

A. Yes.

MR. BERMAN: I'd like to introduce Applicant's Exhibit number 9.

(One-page document was marked as Applicant's Exhibit number 9 for identification as of this date.)

Q. Is this picture on Applicant's Exhibit number 9 the picture of the same Tony Shellman that we have been talking about?

A. Yes.

Q. I'd like to get back into the customer.

Who is the customer? Who are you

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going after as far as demographics, as far as the customer for the product? Is that okay, sir?

A. Certainly.

Q. You previously stated it was a young men. I mean, I see where you've done some women's products as well in some of these documents.

Can we be more specific?

A. At Mecca, we only did young men's. While I was there at ENYCE, we did young men's for the first two years and then we launched a ladies' division, so it is young men's and women's now.

Q. Now, yesterday your associate talked about the fact that you are advertising in certain magazines.

Are you familiar with the type of advertising that your company does?

A. Yes.

Q. Would you name some of the magazines that you're familiar with that you would say would be substantial? Let me back up, are there other areas of

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advertising that you do other than magazine advertising?

A. Yeah.

Q. Where would that be, sir?

A. We do buses. Most print advertising is done in magazines, but we do buses, we do billboards. I believe that's all that comes to mind right now. I might be leaving something out right now.

Q. Do you do any radio advertising?

A. Not very much. Sometimes.

Q. It's not worthy of speaking of; is that what you're saying?

A. We'll do a co-op with a store where you do something in conjunction with the store, if you are having an event, but it would be very minimal of the portion of the allocated funds.

Q. Do you do any television advertising?

A. No.

Q. So let's get back to the magazines.

What would you say would be two,

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E. Davis

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2 three, four of the largest magazines? You
3 referred to some magazine earlier.

4 A. DUB I referred to earlier.

5 Q. Okay. What other magazines?

6 A. We do "Vibe," we do "Source," we
7 do "Fader," "XXL" I believe, and some
8 various other youth-related magazines.

9 Q. Now, you know, when it comes to
10 advertising, I know that you're very
11 specific with respect to demographics. I
12 mentioned to your associate yesterday when
13 I read the papers, they talk about the
14 television shows and --

15 MS. KLINGER: Objection to the
16 narrative.

17 Why don't you just ask him the
18 question.

19 Q. I would like to know specifically
20 who you're advertising to. And I believe
21 that we could agree that it's a little more
22 specific than you're saying as far as young
23 men.

24 MS. KLINGER: Objection to the
25 form.

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A. Is there a certain aspect that you would like to ask?

Q. You already talked about sex. You already talked about age.

Is there a race that you're advertising to?

A. No.

Off the record?

MS. KLINGER: Yes.

(Discussion held off the record.)

MS. KLINGER: Let the witness continue his answer.

Q. You were talking about your advertising, sir. Go ahead.

A. I think to an outsider, it seems very easy to say that we're totally being very specific to a certain -- whether, like you said, race inside a demographic. But, in our belief, it isn't. It's not targeted to a certain race. There are many kids in Franklin Lakes, New Jersey, where I live, that wear our products that are many races. And in the suburbs of America,

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E. Davis

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2 there are many kids that are interested in
3 this aspect of pop culture that we've
4 tapped into, as there are on 125th Street
5 or Fordham Road in the Bronx.

6 I think you're looking for
7 something that is very general in approach,
8 but it's really not. And I think that, you
9 know, I can understand why that is. But
10 for me to have me say why I am being
11 general is because I'm being specific when
12 I'm being general.

13 Q. I don't mean to put you on the
14 defensive.

15 A. I'm not on the defensive. I am
16 not saying -- I'm trying to answer
17 something that I don't believe -- I think
18 you would like me to say it's targeted to
19 a consumer of a certain race, and you are
20 the one that mentioned the race word. I am
21 not -- I don't believe we do that. I'm
22 saying all types of people. We're a line
23 of clothing. We are trying to target young
24 ladies and young men tapped into pop
25 culture. Yeah, I think there's many white

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people, as many black people, as many as
Latinos wearing our stuff. I don't think
it's broken down, and that's the beauty of
what our brand is. You know, that's what a
lot of retailers -- that's their feedback
to us, that we are a brand that has a very
large demographic in terms of race and
ethnicity, so it's not very specific. In
age, it's about fourteen to twenty-four.
So I don't really like to get caught up
into all of that because I don't believe in
it and I don't think it's true.

Q. This is your deposition. This is
not my deposition. I had never heard of
your product before, so I went and tried to
find out what you're doing.

A. I agree with you. And you've
asked the demographic question three or
four times and I've answered it as best as
I possibly can. You think I'm being too
general.

MS. KLINGER: Objection.

Let's see if there's a
question pending.

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Q. So I went and purchased a couple of these magazines that were referred to by your associate yesterday.

A. Right.

Q. I have the May 2005 issue of "Vibe" Magazine and I have the April 2005 issue of "Source" Magazine. I believe that the demographic that you're going after probably speaks for itself, if this is indicative of what you're doing. That's the only reason I asked the question.

A. I know, but I don't --

MS. KLINGER: I am going to object.

A. I don't agree with your question, so we can agree to disagree. I think what you are trying to say --

MS. KLINGER: Objection.

MR. BERMAN: I want to ask a question.

MS. KLINGER: Okay, fine, but I mean he's answered your question many times.

Q. Let me back up.

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E. Davis

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Did you and your two associates -- let me be more specific -- Tony Shellman, Rolando Felix and yourself get together to start this Mecca clothing line? Is that correct, sir?

A. Yes.

Q. Was that clothing line developed to target the African-American market place?

A. No.

Q. Did it, in fact, end up targeting the African-American market place?

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

You can answer if you understand it.

A. I understand it, and I'm trying -- still trying to say to you the answer is no. There's all type of consumers that like our products. You know, there's not -- we didn't go out there and say we want to create a clothing line specifically for African-Americans. We created a clothing line that would be

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dialed into pop culture and youth culture that was maybe influenced by pop, hip hop and the music life-style, but I don't delve that into African-American. I know as much about hip hop as Tony Shellman does and I'm not African-American. Rolando Felix knows more about it than both of us combined and he's Asian.

The magazines that you bring up, these are entertainment artists in the community. But, if Eminem was on the cover the previous two months, would that be a different type of question you're asking?

Q. I don't know, sir. I'm just asking the questions.

A. I am trying to respond. I responded the best I can. I think you are trying to get me to go with you on a point that I don't agree with.

MS. KLINGER: I think we've established that he's asked and answered the question many times. Let's move on.

Q. Is there anything further you

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want to add with this subject matter?

A. No.

Q. I'd like to refer to Applicant's Exhibit number 9 and Applicant's Exhibit number 8.

Just to complete this subject matter, these two documents were produced in the Network Journal of Black Professional and Small Business Magazine.

MS. KLINGER: I'm going to object to the characterization.

The documents speaks for themselves. They are what they are.

Do you want to ask him a question?

Q. Would you agree that the African-American market place --

A. I could only -- I'm sorry.

Q. -- is one, if not the main, certainly one, of the main consumers that you have for your current product as well as your previous Mecca product?

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

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A. I've already answered no.

And to speculate on this, which is speculation, I believe you found this on the network because Tony Shellman is African-American. There are also articles, you know, on Lando that appeared in A Magazine and articles on myself that didn't come up that way depending on what it is.

MR. BERMAN: I'd like to

identify this as Applicant's Exhibit number 10.

(Two-page document was marked as Applicant's Exhibit number 10 for identification as of this date.)

Q. Have you ever seen this before?

A. Yes.

Q. Again, referring to Applicant's number 10.

A. Yes, I have.

Q. Could you please describe what this is, sir?

A. I think this is a bio on our website.

Q. There's a picture of an

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individual?

A. Yes.

Q. Is that you, sir?

A. Yes.

Q. Then there are three little pictures below the picture of you.

Who are they, sir?

A. There's myself, Tony and Lando.

Q. Tony Shellman?

A. Rolando Felix.

Q. Your name is listed and your title is listed as president?

A. (No verbal response.)

Q. Is that correct, sir?

A. Yes.

MR. BERMAN: Again, I'd like to introduce Applicant's Exhibit number 11.

(Two-page document was marked as Applicant's Exhibit 11 for identification as of this date.)

Q. I refer you to Applicant's Exhibit number 11.

Have you ever seen this before,

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sir?

A. No.

Q. Do you know what it is now that you're looking at it, sir?

A. Yes, I do.

Q. Can you please tell us what it is?

A. I think it's Tony's bio on the website considering it's the same structure as mine.

Q. Are you ready to answer the next question?

A. Certainly.

Q. I'm sorry, you were looking at the document.

A. I was trying to read it in case you asked me.

Q. Help me understand please why a 1099 contract employee is listed as one of the three integral individuals on your company's website, sir?

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

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You can answer the question if
you know.

A. Because he's a cofounder.

Q. Would you please agree or
disagree that the date that this was pulled
off your website was 4/5/2005?

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

I don't know that the witness
has any knowledge of when it was
pulled off the website. I believe he
testified that he thought that it was
the same, but I don't think that he is
ever even testified that he actually
knows that this actually came from
that website.

Q. Do you have any reason to
question the fact that this is currently on
your website?

A. I've never read this before. It
looks like it's in the same format, so I
would assume that it's probably on our
website.

MR. BERMAN: We can go off the

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record for one second.

(Discussion held off the record.)

Q. You just answered a question that the reason that Mr. Shellman's picture is currently on your website would be the fact that he is a cofounder.

A. I believe this is the title page. When you navigate this, that says founder and then they have -- you can pop on I believe.

Q. All right.

MR. BERMAN: I have no further questions.

MS. KLINGER: Okay, we're done.

(Whereupon, at 3:02 p.m. the examination of this witness was concluded.)

EVAN DAVIS

Subscribed and sworn to before me
this _____ day of _____, 2005

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C E R T I F I C A T E

I, LESLIE M. PAGAN, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That the foregoing proceedings were taken down by me in shorthand and thereafter transcribed under my direction and supervision, and that the within transcript is a true record of such proceedings.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of April, 2005.

Leslie M. Pagan
LESLIE M. PAGAN

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