

Stacey L. Papp
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January 23, 2007

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514

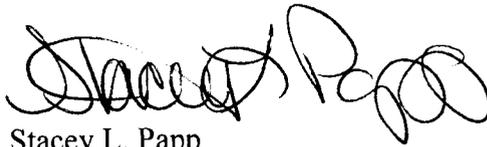
Re: *Becker Designs, Inc. v. Biker Design, Inc.*
Opposition Number 91168610
Application Number 78512395

To Whom It May Concern:

Enclosed for filing in the above-referenced Opposition proceeding, please find Defendant Biker Design, Inc.'s *Petition to Disqualify Counsel* with exhibits thereto.

Should you have any questions regarding this matter, please contact me at 813-579-7988. Thank you for your attention to this matter.

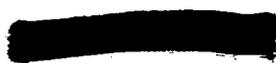
Very truly yours,



Stacey L. Papp

Enclosure

cc: Bruce Hanna, Esq.



01-31-2007

U.S. Patent & TMO/TM Mail Rcpt Dt. #30

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

BECKER DESIGNS, INC.,

Plaintiff,

Opposition No. 91168610
Application No. 78512395

v.

BIKER DESIGN, INC.

Defendant.

PETITION TO DISQUALIFY COUNSEL

DEFENDANT, BIKER DESIGN, INC., petitions this Court for disqualification of Kathryn Weston and Cobb & Cole from representing Becker Designs, Inc. ("Becker Designs") in this matter due to a conflict of interest stemming from Ms. Weston's prior representation of Biker Design. As grounds for its Petition, Biker Design states the following:

CASE BACKGROUND

Becker Designs has filed a *Notice of Opposition* (Opposition No. 91168610) to the registration of "Biker Design Ladies Collection" by Biker Design, Inc. (Application No. 78512395). Similarly, Becker Designs has filed a *Notice of Opposition* (Opposition No. 91174554) to Biker Design Inc.'s registration of "Biker Design" (Application No. 78817785). Becker Designs has also filed a civil law suit against Biker Design for copyright infringement, trademark infringement, trademark dilution, unfair competition and violation of Florida's Deceptive and Unfair Trade Practices Act. See *Becker Designs, Inc. v. Biker Design, Inc. et al.*, Case No. 6:06-cv-56 (M.D. Fla.) (the "federal

court case"). In all of these actions, Becker Designs is represented by the law firm, Cobb & Cole, and one of its attorneys, Kathryn Weston.

Prior to the Oppositions and federal court case being filed, Kathryn Weston represented Biker Design in a sales tax audit. See Affidavit of Ergun Recel, filed in *Becker Designs, Inc. v. Biker Design, Inc. et al.*, Case No. 6:06-cv-56 (M.D. Fla.), attached hereto as Ex. 1; see also Affidavit of Kathryn Weston, filed in *Becker Designs, Inc. v. Biker Design, Inc.*, attached hereto as Ex. 2. It was not until the deposition of Biker Design's president, Ergun Recel, on August 22, 2006 in the federal court case, that Mr. Recel recognized Ms. Weston as being his company's attorney in the tax-related matter. Prior to her appearance at Mr. Recel's deposition, Ms. Weston had not been a primary contact at Cobb & Cole. At the deposition, Mr. Recel raised the potentiality of a conflict of interest with his counsel, who in turn spoke with Ms. Weston about her prior representation of Biker Design. Ms. Weston stated that there was no conflict in her prior representation of Biker Design and the deposition proceeded. After conferring in greater detail with Biker Design and its principles it became apparent that there was a conflict of interest with Ms. Weston's prior representation of Biker Design and current representation of Becker Designs. Her firm, Cobb & Cole, is imputed with the conflict.

On October 13, 2006, in the federal court case, Biker Design filed a Motion to Disqualify Kathryn Weston and her firm, Cobb & Cole, from representing Becker Designs, due to the conflict of interest; namely, her prior representation of Biker Design. **On December 13, 2006, the magistrate assigned to the federal court case, The Honorable David A. Baker, granted Biker Design's motion and entered an Order**

disqualifying both Kathryn Weston and Cobb & Cole from representing Becker Designs. See Order, attached hereto as Exhibit 3. Becker Designs has since filed an Objection to the magistrate's Order in the federal court case, which is currently being reviewed *de novo* by the district court judge assigned to the case.

ARGUMENT

An attorney has a duty to maintain the confidences of her client. *State Farm Mut. Auto. Ins. Co. v. K.A.W.*, 575 So. 2d 630, 632 (Fla. 1991). That duty continues even after termination of the attorney-client relationship. *Id.* Pursuant to the Rules applicable in this tribunal, "[a] practitioner shall decline proffered employment if the exercise of the practitioner's independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve the practitioner in representing differing interests . . ." 37 CFR § 10.66.¹ Additionally, the Rules Regulating the Florida Bar² provide as follows:

A lawyer who has formerly represented a client in a matter shall not thereafter:

- (a) Represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation; or
- (b) Use information relating to the representation to the disadvantage of the former client except as rule 4-16

¹ This Rule does not apply if it is obvious that the practitioner can adequately represent the interest of each client and if each client consents to the representation after full disclosure of the possible effect of such representation. See *id.* at § 10.66(c). Neither Kathryn Weston nor any member of the Cobb & Cole firm obtained Biker Design's consent to take a position adverse to it, either in the civil action or this Opposition. Moreover, if a practitioner is obligated to decline employment based on this Rule, "no partner, or associate, or any other practitioner affiliated with the practitioner or the practitioner's firm may accept or continue such employment . . ." *Id.* at § 10.66(d).

² Ms. Weston is a Florida-licensed attorney. Cobb & Cole's sole location is in Daytona, Florida.

would permit with respect to a client or when the information has become generally known.

Rule Regulating The Florida Bar 4-1.9. The Rules go on to state that:

- (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to the interests of another client, unless:
 - (1) The lawyer reasonably believes the representation will not adversely affect the lawyer's responsibilities to and relationship with the other client; and
 - (2) Each client consents after consultation.

Rule Regulating The Florida Bar 4-1.7; see also Rule 4-1.8(b) (a lawyer shall not use information relating to representation of a client to the disadvantage of the client). These rules are in place because “[o]ur legal system cannot function fairly or effectively if an attorney has an informational advantage in the form of confidences gained during a former representation of his client’s current opponent.” *K.A.W.*, 575 So. 2d at 632.

The applicable standard to determine whether an attorney should be disqualified in conflict of interest cases requires the moving party to show that (1) an attorney-client relationship existed, thereby giving rise to an irrefutable presumption that confidences were disclosed during the relationship, and (2) the matter in which the attorney subsequently represented the interest adverse to the former client was the same or substantially related to the matter in which it represented the former client. *K.A.W.* at 633; *see also Cox v. Am. Cast Iron Pipe Co.*, 847 F.2d 725, 728-29 (11th Cir. 1988). “[C]onflict concerns arise when an attorney must prepare a case against, cross-examine or impeach a former client on a subject matter so closely connected with the earlier representation that confidentiality might be involved.” *Balda v. Sorchych*, 616 So. 2d

1114 (Fla. App. 1993) (internal citation omitted). Applying the applicable standard to the facts present in this case lead to the conclusion that “the possibility of conflict of interest and the appearance of it are too strong to ignore.” *K.A.W.* at 634.

Ms. Weston represented Biker Design as an attorney in a prior legal matter involving a sales tax audit of Biker Design. See Exs. 1 and 2. As part of her representation of Biker Design, Ms. Weston was provided with information and documents regarding Biker Design’s finances, vendors, business contacts, customers and revenues. See *id.* (Ms. Weston acknowledges receiving two binders of documents). Accordingly, an attorney-client relationship existed wherein it is irrefutably presumed that confidences of Biker Design were disclosed. See *K.A.W.* at 633. Additionally, Ms. Weston’s current firm, Cobb & Cole, is imputed with knowledge of these confidences. See *Baybrook Homes, Inc. v. Banyan Constr. & Devel., Inc.*, 991 F. Supp. 1440, 1444 (M.D. Fla. 1997) (*Rules Regulating The Florida Bar*, Rule 4-1.10, imputes the knowledge held by an attorney to all members associated with the firm).

The matters to which Ms. Weston has represented Biker Design and is now adverse to Biker Design are substantially related. “In making a determination of whether a substantial relationship exists, the court should determine the prior representation, the reasonableness of inferring that confidential information allegedly given would have been given and the relevance of the information to the issues raised in the pending litigation.” *Snapping Shoals Elec. Membership Corp. v. RLI Ins. Corp.*, 2006 WL 1877078, *6-7 (N.D. Ga.).

In the *Snapping Shoals* case, the plaintiff was represented by the law firm of Paul Hastings, Janofsky & Walker LLP (“Paul Hastings”). *Id.* The suit involved breach of

contract, fraud, negligent misrepresentation and conspiracy to defraud. *Id.* One defendant, L-3 Titan asserted it was a current client of Paul Hastings. The other defendants, Cayenta, asserted that Paul Hastings previously represented it, by virtue of having restructured Cayenta for tax benefits to L-3 Titan and preparing SEC filings. *Id.* Relying on *Ga. R. Prof. Conduct* 1.9, which is identical to *Rule Regulating The Florida Bar* 4-1.9, the court disqualified Paul Hastings from representing the plaintiff in the subsequent case, due to the conflict of interest attributed to its prior representation of the Cayenta. *Id.* The court disqualified Paul Hastings, employing the following analysis:

Despite Paul Hastings' argument that the scope of its representation of [its former client] was limited to tax matters, 'a tax lawyer must, at least as a general proposition, be familiar with all aspects of a client's business to give sound advice.' This familiarity imparts a knowledge of 'filing systems, responsibilities of specific employees and their habits, which employees would have what information, and a myriad like pieces of unconsciously absorbed information [that] can have a great value to an attorney engaged in discovery. It is, therefore, reasonable to infer that Paul Hastings gained knowledge of the internal workings of [its former client] that could aid it in the instant representation, particularly in the discovery process.

Id. at *6 (citations omitted).

In the federal court case, Ms. Weston's prior representation of Biker Design became an issue with respect to discovery. In taking Mr. Recel's adversarial deposition, Ms. Weston specifically inquired about the tax audit in which she represented him. See Deposition Transcript of Ergun Recel, attached hereto as Exhibit 4, at 137:21 through 138:4. As discussed by the court in the *Snapping Shoals* case, Ms. Weston also inquired about Biker Design's record-keeping, inventory, file retention, decision-making process and employees' responsibilities and scope of knowledge of information. See

Snapping Shoals at *6; see e.g., Ex. 4 at 26:14-25, 29:24-36:8, 38:22-41:20, 42:16-23, 43:13-46:22, 48:5-51:2, 61:7-62:13, 78:16-80:20, 90:24-91:4, 111:19-115:6, 126:7-127:13, 136:6-139:17, 140:3-141:3, 143:24-144:1, 145:4-146:22. Thus, in the discovery that occurred in the federal court case, it became clear that Ms. Weston, through her prior representation of Biker Design, had an “informational advantage” with respect to Biker Design’s internal business dynamics, which were relevant and at issue in the federal court case. See *K.A.W.*, 575 So. 2d at 632.

Similarly, Ms. Weston has an informational advantage with respect to this pending Opposition.³ This Opposition involves nearly identical trademark issues present in the federal court case. A federal magistrate has found that Ms. Weston has a conflict of interest in her representation of Becker Designs in the federal court case, which conflict is imputed to her firm. The Rules do not allow for Ms. Weston to undertake representation where this type of conflict occurs because it would be unfair to Biker Design. As a result, Biker Design respectfully requests the Board disqualify Kathryn Weston and Cobb & Cole from representing Becker Designs in this Opposition.

Respectfully submitted,



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Stacey L. Papp
Virginia Bar No. 47258
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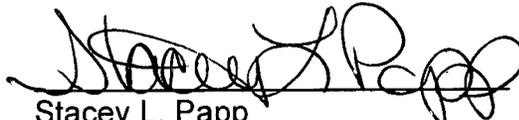
³ Biker Design is contemporaneously filing a Petition for Disqualification of Counsel in the other Opposition (to the mark “Biker Design”), Opposition Number 91174554.

CERTIFICATE OF MAILING

I HEREBY certify that the foregoing Petition to Disqualify Counsel was deposited with the United States Postal Service with sufficient postage as First-class mail in an envelope addressed to:

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514

on January 23, 2007

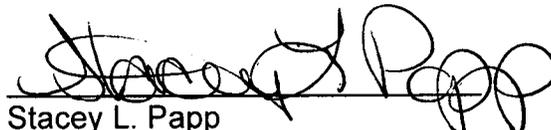


Stacey L. Papp

CERTIFICATE OF SERVICE

I HEREBY certify that on January 23, 2007, I served a copy of the foregoing Petition to Disqualify Counsel by first class mail, postage prepaid on the following counsel for Plaintiff:

Bruce A. Hanna, Esq.
Kathryn Weston, Esq.
COBB & COLE
150 Magnolia Avenue, Post Office Box 2491
Daytona Beach, FL 32115-2491
Attorneys for Plaintiff



Stacey L. Papp

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
Case No.: 6:06-cv-56-ORL-22 DAB

BECKER DESIGNS, INC.,

Plaintiff.

vs.

BIKER DESIGN, INC., ERGUN RECEL;
and NIR GIIST,

Defendants.

AFFIDAVIT OF ERGUN RECEL
IN SUPPORT OF MOTION TO DISQUALIFY COUNSEL

STATE OF SOUTH CAROLINA

COUNTY OF HARRY

Before me, the undersigned authority duly authorized to administer oaths, and take acknowledgments, personally appeared ERGUN RECEL who, after being first duly sworn, deposes and says as follows:

1. I am over the age of 18 years, competent to testify as to the matters set forth herein and I have personal knowledge as to the matters set forth herein.
2. I am authorized to speak on behalf of BIKER DESIGN, INC., a Florida corporation, a named defendant in the above styled civil action, and I hold the position of President with said corporate defendant.
3. In approximately 2004, Biker Design retained the firm Smith, Hood, Perkins, Loucks, Stout, Bigman, Lane & Brock, with respect to a sales tax audit of Biker Design by the Florida Department of Revenue. Attorney Kathryn Weston was assigned as the primary



attorney at that firm to represent Biker Design in the legal matters regarding that sales tax audit.

4. Ms. Weston was involved in the sales tax audit as counsel for Biker Design for several months during which time she and I communicated telephonically and in person numerous times regarding Biker Design's internal business operations. As part of her representation of Biker Design, I provided Ms. Weston with information and documents regarding Biker Design's finances, vendors, business contacts, customers and revenues.

5. Biker Design seeks to disqualify Ms. Weston and her current law firm, Cobb & Cole, from representing the plaintiffs in this case, because an inherent conflict of interest arises out of her prior, legal representation of Biker Design, wherein she gained knowledge of confidential information.

6. Ms. Weston did not obtain Biker Design's consent prior to her representation of the plaintiffs in this case, and Biker Design does not consent to her representation of any party adverse to Biker Design in this case.

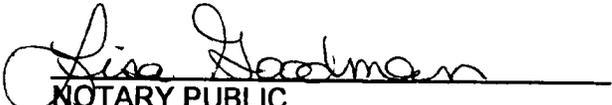
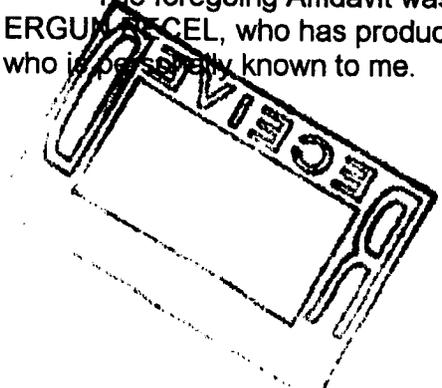
FURTHER AFFIANT SAYETH NAUGHT.



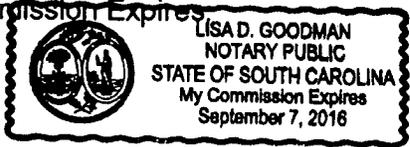
ERGUN REZEL, as President
of BIKER DESIGN, INC., a
Florida Corporation

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

The foregoing Affidavit was signed in my presence this 5th day of October, 2006, by ERGUN REZEL, who has produced FLORIDA DRIVERS LICENSE or who is personally known to me.



NOTARY PUBLIC
State of _____
My Commission Expires _____



UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

BECKER DESIGNS, INC.,

Plaintiff/Counterdefendant,

v.

Case No. 6:06-cv-56-Orl-22DAB

BIKER DESIGN, INC.; ERGUN RECEL;
and NIR GIIST,

Defendants/Counterplaintiffs.

**DECLARATION OF KATHRYN D. WESTON IN SUPPORT OF MEMORANDUM IN
OPPOSITION TO MOTION TO DISQUALIFY COUNSEL**

BEFORE ME, personally appeared Kathryn D. Weston, who after being first duly sworn, stated as follows:

1. All statements made herein are based upon of my personal knowledge.

2. I am employed by Cobb & Cole, P.A. ("Cobb & Cole") as an Associate Attorney.

3. I joined Cobb & Cole in March 2006, after previously working at Smith, Hood, Perkins, Loucks, Stout, Bigman, Lane & Brock, P.A. ("SHP") from June 2004 through February 2006.

4. At SHP, I was responsible for 90 to 115 pending matters at any one time. One of the matters assigned to me at SHP was a sales tax audit of Biker Design, Inc. ("Biker"). I do not recall when, during that 22 month period, I worked on the Biker sales tax audit.

5. As best I can recall, a Florida sales tax auditor inspected, at my office, two binders of documents provided by Biker. Biker dropped off the documents at my office the morning that the auditor arrived. I do not recall reviewing all of the documents and have no recollection of the types



of documents, the categories of documents, or any specific documents that were included in the binders. I recall having one meeting with ERGUN RECEL ("Recel"), shareholder and President of Biker, and with Biker's accountant, Mark Topol, but I have no recollection of the substance of that meeting. I have no recollection of any facts whatsoever pertaining to Biker's business other than generally available information, such as the fact that Biker is engaged in selling motorcycle-themed apparel.

6. I passed along the auditor's request for additional information to Biker and to Biker's accountant. Biker's accountant handled any follow-up with the sales tax auditor.

7. I have no recollection of the specific issues or concerns, if any, involved in the sales tax audit.

8. When I was asked to participate in this case in March 2006, I conducted the analysis similar to that set forth in the memorandum in opposition to Biker's motion for disqualification and determined that there was no conflict that would prevent me from assisting on this case. Any knowledge of Biker's business that I currently possess is solely as a result of participating in discovery in this case.

9. I filed a notice of appearance in this case in March 2006, and my name has been included on all pleadings since that time.

10. Immediately prior to my taking the deposition of Recel on August 22, 2006, counsel for the defendants advised me that her client thought he recognized me as an attorney that had represented Biker in the past. I advised defendants' counsel that I had represented Biker with regard to a sales tax audit at my prior firm.

11. Counsel for the defendants then conferred privately with Recel for several minutes. Upon their reentering the room, I asked if either had any questions or concerns. Neither Recel nor his attorney indicated that they had any questions or concerns and we proceeded with the deposition.

12. On August 28, 2006, the defendants did not raise the potential conflict and I took the videotaped deposition of NIR GIIST ("Giist").

13. The defendants or their counsel first raised the issue of a conflict of interest with respect to my representation of Becker Designs, Inc., in this case immediately prior to filing their motion for disqualification on October 13, 2006.

FURTHER AFFLIANT SAYETH NOT.

Kathryn D. Weston
Kathryn D. Weston

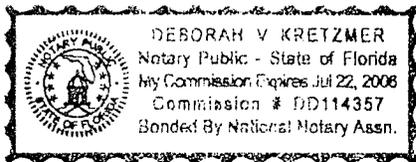
STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 24th day of October, 2006, by Kathryn D. Weston, who is personally known to me or has produced n/a as identification.

NOTARY PUBLIC:

Sign: [Signature]
Print: _____

State of _____ At Large
(Seal)



My Commission Expires:
Title/Rank:
Commission Number:

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

BECKER DESIGNS, INC.,

Plaintiff,

-vs-

Case No. 6:06-cv-56-Orl-22DAB

**BIKER DESIGN, INC.; ERGUN RECEL;
and NIR GIIST,**

Defendants/Third-Party

Plaintiffs,

-vs-

ROBERT BECKER and SUSAN BECKER,

Third-Party

Defendants.

ORDER

This cause came on for consideration without oral argument¹ on the following motion filed herein:

MOTION: MOTION TO DISQUALIFY COUNSEL (Doc. No. 47)

FILED: October 13, 2006

THEREON it is ORDERED that the motion is GRANTED.

¹Although Plaintiff's attorney seeks an evidentiary hearing, the matters pertinent to disposition of the motion are fully set forth in sworn Affidavits and are not in material dispute. Even accepting Plaintiff's version of the facts, the Court finds disqualification to be appropriate here. As such, there is no need for evidentiary hearing.



Defendants (collectively "Biker") move for an Order disqualifying attorney Kathryn Weston and her firm, Cobb & Cole, from representation of Plaintiff ("Becker") in this matter, due to an alleged conflict of interest arising from Ms. Weston's prior representation of Biker. For the reasons set forth herein, the motion is **GRANTED**.

FACTUAL BACKGROUND

This is an action for copyright infringement, trademark infringement, trademark dilution, unfair competition, and for violation of Florida's Deceptive and Unfair Trade Practices Act. As part of the relief sought, Plaintiff seeks monetary damages, including profits from certain sales.

From the Affidavits of Biker's principal, Erqun Recel, and that of Ms. Weston, the Court finds the following facts to be undisputed:

1. Weston was an attorney with the firm of Smith, Hood, Perkins, Loucks, Stout, Bigman, Lane & Brock, P.A. ("the Smith firm") from June 2004 through February 2006.
2. In 2004, Biker retained the Smith firm with respect to a sales tax audit of the company by the Florida Department of Revenue. Attorney Weston was assigned as the primary attorney for the representation.
3. Biker, through Recel, avers that Weston was involved in the sales tax audit as counsel for several months during which time "she and I [Recel] communicated telephonically and in person numerous times regarding Biker Design's internal business operations." Recel Affidavit at p. 2. Recel provided Weston "with information and documents regarding Biker Design's finances, vendors, business contacts, customers and revenues." *Id.* Recel claims Weston "gained knowledge of confidential information."

In her Affidavit, Weston “does not recall” when she worked on the audit, but “as best [she] can recall,” a Florida sales tax auditor inspected, at her office, two binders of documents provided to her by Biker that morning. Weston does not recall reviewing all of the documents and has “no recollection” of the types of documents or any specific documents contained therein. She does recall one meeting with Recel and Biker’s accountant, but has “no recollection of the substance of that meeting.” (Doc. No. 51-2). Weston states that she has “no recollection of any facts whatsoever pertaining to Biker’s business other than generally available information.” Apparently following the audit, Weston “passed along the auditor’s request for additional information” to Biker and the accountant and the accountant handled the follow-up with the auditor. Weston avers that she has “no recollection of the specific issues or concerns, if any, involved in the sales tax audit.”

4. This lawsuit was filed January 12, 2006, with Cobb & Cole representing Plaintiff. Weston left the Smith firm in February 2006 and joined Cobb & Cole in March 2006. Her firm filed a Notice of Substitution of Co-counsel on March 14, 2006, (Doc. No. 25), noting the appearance of co-counsel “Kathryn D. Weston of Cobb & Cole.” Although Weston avers that “[her] name has been included on all pleadings since that time,” the record establishes that, in fact, after the Notice of substitution as co-counsel, she did not appear on any papers filed by Plaintiff (Doc. Nos. 31, 41) until docketing what she termed a Notice of Appearance on August 29, 2006 (Doc. No. 43). It is undisputed that Weston is not the lead counsel on this matter (Doc. No. 29).

5. Weston appeared to take the deposition of Recel, on August 22, 2006. At that time, Recel recognized Weston as being the company’s attorney and told this to his current counsel. Both parties agree that immediately prior to the deposition, Biker’s counsel raised the issue of the prior representation with Weston, but Weston stated there was no conflict. Weston states that she disclosed

the tax audit representation to defense counsel; who then conferred privately, returned without incident, and the deposition proceeded. (Doc. No. 51-2).

6. The deposition is of record and reflects that Weston examined her former client on many issues relating to his business affairs and those of the company (Doc. No. 46). Weston inquired regarding the corporate structure and employees, dividends and loans the corporation may have made (pp. 25-27, 30, *et seq.*) and salient details regarding the corporation's record-keeping, books and sales (*see, e.g.*, Doc. No. 46 at 39-46; 61-2; 85; 99-100; 125-128; 136-147).

7. Prior to appearing for Plaintiff, Weston did not inform Biker that she planned to represent its adversary; nor did Weston obtain consent from Biker.

THE APPLICABLE LAW

The professional conduct of members of the Bar of the Middle District is governed by the Model Rules of Professional Conduct of the American Bar Association, as modified and adopted by the Supreme Court of Florida. United States District Court, M.D.Fla.L.R. 2.04(d).² Biker seeks disqualification based on alleged violations of several Florida Bar rules:

Rule 4-1.6(a)

(a) Consent Required to Reveal Information. A lawyer shall not reveal information relating to representation of a client except as stated in subdivisions (b), (c), and (d),³ unless the client gives informed consent.

As noted in the Commentary to the Rule, however, this particular rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. There is no dispute that Weston is not currently representing Biker. Thus, this Rule is

²Plaintiff mistakenly cites to Local Rule 2.04(c), which is inapplicable to the matter at bar.

³None of the exceptions noted are relevant to this case.

of limited utility to the Court's analysis. Rather, as noted in the Commentary, the Court must consider Rule 4-1.9(b) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client, and rules 4-1.8(b) and 4-1.9(b) for the lawyer's duties with respect to the use of such information to the disadvantage of former clients.

Rule 4-1.8(b)

(b) Using Information to Disadvantage of Client. A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these rules.

Rule 4.1-9(b)

Conflict of Interest; Former Client

A lawyer who has formerly represented a client in a matter shall not thereafter:

- a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation; or
- b) use information relating to the representation to the disadvantage of the former client except as rule 4-2.6 would permit with respect to a client or when the information has become generally known.

As the Commentary to the Rule notes:

For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client. Information that has been widely disseminated by the media to the public, or that typically would be obtained by any reasonably prudent lawyer who had never represented the former client, should be considered generally known and ordinarily will not be disqualifying. The essential question is whether, but for having represented the former client, the lawyer would know or discover the information. *** In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a

prior representation that are relevant to the matter in question ordinarily will preclude such a representation.

Plaintiff relies on a similar Rule in asserting that disqualification is not appropriate:

Rule 4.1-10

(b) Former Clients of Newly Associated Lawyer. When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by rules 4-1.6 and 4-1.9(b) that is material to the matter.

Commentary to this Rule provides, in part:

Application of subdivisions (b) and (c) depends on a situation's particular facts. In any such inquiry, the burden of proof should rest upon the firm whose disqualification is sought. Subdivisions (b) and (c) operate to disqualify the firm only when the lawyer involved has actual knowledge of information protected by rules 4-1.6 and 4-1.9(b). Thus, if a lawyer while with 1 firm acquired no knowledge or information relating to a particular client of the firm and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the 2 clients conflict. Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See rules 4-1.6 and 4-1.9.

Generally speaking, when one lawyer is disqualified from representation of a client, the disqualification is imputed to all members of the firm. Fla. Bar Rule 4.1-10(a).

The Eleventh Circuit has developed a two-pronged test for disqualification of counsel: 1) the party seeking disqualification must prove that it once had an attorney-client relationship with the opposing lawyer; and 2) the movant must show that the matters embraced within the pending suit are substantially related to the matters involved in the previous representation. *Cox v. American Cast Iron Pipe Co.*, 847 F.2d 725, 728-9 (11th Cir. 1988). The Florida Supreme Court has noted that whether two legal matters are substantially related depends upon the specific facts of each particular situation

or transaction. *The Florida Bar v. Dunagan*, 731 So.2d 1237, 1240 (Fla. 1999). Close cases under Rule 4-1.10(b) will be decided in favor of disqualification to preserve the integrity of a fair adversary system. *Koulisis v. Rivers*, 730 So.2d 289, 292 (Fla. 4th DCA 1999). "Our legal system cannot function fairly or effectively if an attorney has an informational advantage in the form of confidences gained during a former representation of his client's current opponent." *State Farm Mut. Auto. Ins. Co. v. K.A.W.*, 575 So.2d 630, 632 (Fla. 1991).

ANALYSIS

Weston represented Biker in matters relating to a sales tax audit. An attorney-client relationship was clearly established. As such, Weston owed Biker a duty to maintain confidentiality which survived the conclusion of the representation. Nonetheless, Weston and Plaintiff contend that her current representation of Plaintiff, while undeniably adverse to Biker, is not precluded because the instant matter (a suit for copyright infringement) is unrelated to the sales tax audit.

While the sales tax audit is not the same matter as this litigation in the *res judicata* sense, the strict interpretation argued by Plaintiff is not warranted on these facts. "As frequently expressed, conflict concerns arise when an attorney must prepare a case against, cross-examine or impeach a former client on a subject matter so closely connected with the earlier representation that confidentiality might be involved." *Balda v. Sorchych*, 616 So.2d 1114 (Fla. 5th DCA 1993) (internal citation omitted). The record is clear: Weston received confidential and comprehensive information on Biker's internal business operations. Those business operations are at issue in this suit. As such, Weston and her firm have the kind of informational advantage prohibited in the rules. Disqualification is appropriate.

Weston contends that her prior representation of Biker was limited and she has no recollection of the documents produced or any facts pertaining to Biker's business, other than generally available information. Importantly, Weston does not deny that she received confidential information, and, indeed, considering the nature of the representation of Biker, the Court finds every reason to credit Biker's sworn Affidavit that sensitive and comprehensive information was disclosed to her.

Weston says only that she does not now have a present recollection of what was disclosed in her meetings and conversations with Biker, Biker's accountant, and upon a review of documents. As the Florida Third District Court of Appeal noted, on similar facts: "A failure to remember, however, does not rebut clearly set-out assertions." *Gaton v. Health Coalition, Inc.*, 745 So.2d 510, 511-512 (Fla. 3rd DCA 1999). (In *Gaton*, the affidavits submitted in support of the disqualification motion stated that the subject attorney [Lipton] was provided with "extensive background on all aspects of the case," as well as other thoughts regarding liability, damages, and discovery of the case. Lipton's affidavit, on the other hand, did not deny that he acquired such confidential information during his prior representation, but merely stated that he had "no present recollection." *Id.*) It is undisputed here that Weston was in charge of the representation of Biker in an investigation into Biker's business operations. In the process of that representation, she spoke and met with corporate representatives, she reviewed confidential business records, she spoke and met with the corporate accountant. This was not a "limited" representation, in that Weston received access and information that is not "generally available." The failure to rebut the clearly set-out assertions of the client establishes that Weston received confidential information. As such, she is under a duty not to use that information

to Biker's disadvantage, absent Biker's consent. The fact that she claims to have no recollection of that information now is of no moment. Under the Rules, that is not a risk a former client must bear.⁴

Weston appears to contend that even if she had confidential information, she is not to be disqualified in that the matters are not substantially related. "Matters" however, encompasses more than merely the nature of the suit. While the tax on Biker's sales may not be at issue in this case, the amount and nature of Biker's sales certainly are, and it is undisputed that Weston has had access to business information regarding those sales she normally would not have, but for the representation. This is sufficient to find that the issues are substantially similar, warranting disqualification. *See McPartland v. ISI Inv. Services, Inc.*, 890 F. Supp. 1029, 1031 (M.D. Fla. 1995) (For purposes of motion to disqualify defendants' counsel, prior representation of plaintiff in obtaining funding through drafting and issuance of offering memoranda was substantially related to present action involving agreement to pay plaintiff specified amounts for services and products provided by plaintiff to defendant, in that it was not unreasonable that customer might consider financial stability and wherewithal of supplier when contracting to purchase goods and services over extended period. Since "any doubt is to be resolved in favor of disqualification," the conservative position most likely to achieve justice is to hold that the matters were "substantially related."); *The Florida Bar v. Dunagan*, 731 So. 2d at 1240 (disqualifying counsel from representing party in a divorce, when he had previously represented both parties in a business matter: "Similarly, here Dunagan represented

⁴The Court does not doubt that Weston may not remember all the details from her prior representation, but such is not determinative here. As is clear from the Commentary, the term "actual knowledge" as used in the Rules, does not require a showing that the lawyer has complete present recollection of actual confidences. Rather, the term is meant to distinguish those lawyers who have *imputed* knowledge (for example, through being a partner of the lawyer who represented the client), from those who actually represented the client and thus, received direct knowledge. Here, Weston received direct actual knowledge of confidential information that is entitled to protection from disclosure to her ex-client's adversary. The Court rejects Plaintiff's implicit suggestion that the attorney-client privilege can be waived by the attorney, upon a claim of subsequent forgetfulness.

William and Paula Leucht in the formation of their business and, specifically, prepared a bill of sale transferring assets of the business to their joint ownership. Because the business was begun during the marriage, it was a marital asset and as such was inherently *an issue* in the divorce.”) (emphasis added);

Commentary to Rule 4.1-9 (“In the case of an organizational client, general knowledge of the client’s policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation.”)

The Court notes that this is not a case where a newly associated attorney joined a firm with existing litigation against an ex-client, and the attorney was then shielded from the litigation, after disclosure to the ex-client. Rather, Weston appeared on the adversary’s behalf, without prior notice to or consent from her ex-client, and has actively engaged in the litigation, even taking the ex-client’s deposition. While the Court’s ruling may well work a hardship on Plaintiff, any such hardship is of counsel’s own making.

The motion to disqualify Plaintiff’s counsel and her firm is **GRANTED**. Plaintiff will be given 14 days from this Order to retain new counsel. The action is stayed until a Notice of Appearance of new counsel has been filed.

MOTION: UNOPPOSED MOTION FOR EXTENSION OF TIME TO COMPLETE DISCOVERY (Doc. No. 56)

FILED: December 12, 2006

THEREON it is ORDERED that the motion is GRANTED.

In view of the foregoing, the discovery deadline is extended until January 21, 2007.

DONE and **ORDERED** in Orlando, Florida on December 13, 2006.

David A. Baker

DAVID A. BAKER
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
Counsel of Record

CERTIFIED COPY

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

BECKER DESIGNS, INC.,

Plaintiff,

vs.

Case No. 6:06-cv-56-Orl-22DAB

BIKER DESIGN, INC.,
ERGUN RECEL and NIR GIIST,

Defendants/Third-Party Plaintiffs,

vs.

ROBERT BECKER and SUSAN BECKER,

Third-Party Defendants.

* * * * *

VIDEOTAPED

DEPOSITION OF: ERGUN RECEL

DATE TAKEN: AUGUST 22, 2006

TIME: COMMENCED AT 1:15 P.M.
CONCLUDED AT 5:18 P.M.

PLACE: 150 MAGNOLIA AVENUE
DAYTONA BEACH, FLORIDA

STENOGRAPHICALLY
REPORTED BY: DENISE D. MCMULLIN, RPR
COURT REPORTER and NOTARY PUBLIC

* * * * *

VOLUSIA REPORTING COMPANY
432 SOUTH BEACH STREET
DAYTONA BEACH, FLORIDA 32114
386-255-2150-T 386-258-1171-F



1 APPEARANCES:

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ALSO PRESENT:

DOUGLAS CARLSON, JR., CERTIFIED LEGAL
VIDEO SPECIALIST

KATHERINE HURST
STACEY PAPP
ROBERT BECKER
SUSAN BECKER
NIR GIIST

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E X H I B I T S

PLAINTIFF'S/THIRD-PARTY DEFENDANTS' EXHIBITS:

EXHIBIT A	88
(Photocopies of invoices)	
EXHIBIT B	136
(Tax returns)	
EXHIBIT C	72
(Biker Design catalogs)	
EXHIBIT D	120
(Cobb & Cole letters)	
EXHIBIT E	6
(Biker Design, Inc. trademark registration)	
EXHIBIT F	51
(Notices of Taking Depositions)	
EXHIBIT G	55
(9/29/2002 invoice)	
EXHIBIT H	150
(Photocopy of T-shirt)	
EXHIBIT I	151
(Photocopy of sleeve)	
EXHIBIT J	151
(Photocopy of sleeve)	
EXHIBIT K	152
(Biker Design catalog)	

1 PROCEEDINGS

2 MR. CARLSON: The date is August 22nd, 2006.
3 This is the deposition of Ergun Recel being taken
4 in the matter of Becker Designs, Incorporated,
5 Plaintiff versus Biker Design, Incorporated; Ergun
6 Recel and Nir Giist, Defendants/Third-Party
7 Plaintiffs versus Robert Becker and Susan Becker,
8 Third-Party Defendants.

9 The time is 1:15. Will counsel please
10 introduce themselves.

11 MS. WESTON: Kathryn Weston for the Plaintiff,
12 Becker Designs.

13 MS. OONK: Lisa Oonk for the Defendants.

14 MR. CARLSON: Will the court reporter please
15 swear in the witness.

16 THEREUPON,

17 ERGUN RECEL,

18 having been duly sworn by this reporter, was
19 examined and testified upon his oath as follows:

20 MS. WESTON: For the record, I have a binder
21 of exhibits that I'm going to hand one copy to
22 counsel and one copy to the witness. I plan to use
23 the same binder of exhibits with regard to
24 Mr. Giist's deposition as well.

25 MS. OONK: Okay.

1 MS. WESTON: The -- they're labeled in the
2 binder Exhibits A through F.

3 MS. OONK: Okay.

4 MS. WESTON: And so I assume that we can refer
5 to them as actually Exhibit A or Exhibit B or
6 Exhibit C, as needed.

7 MS. OONK: That -- that sounds great.

8 MS. WESTON: Okay.

9 DIRECT EXAMINATION

10 BY MS. WESTON:

11 Q Mr. Recel, have you ever been deposed before?

12 A Yes.

13 Q In what case were you deposed?

14 A What are you referring to, name of the case
15 or what?

16 Q Yes, sir.

17 A I don't -- I don't remember the name of the
18 case.

19 Q Okay. Do you recall when the deposition was
20 taken?

21 A Approximately a couple years ago, right here.

22 Q Here in Daytona or here in my office?

23 A Here in Daytona.

24 Q Okay. Have you only had your deposition taken
25 one time before?

1 A No. I had it taken before, one more time, one
2 or two more times before.

3 Q Okay. It may be easier for the court reporter
4 to understand if you would move your hand down.

5 A I'm sorry.

6 Q She's trying to take down everything that
7 you're saying.

8 A Oh, I'm sorry.

9 Q Another one of the -- we'll go over a couple
10 of the rules that make it easier for the court reporter
11 to --

12 A Okay.

13 Q -- take down what we're saying. One of them
14 is that it's hard for her to take -- take down talking,
15 if we're both speaking at the same time. So I'll try to
16 be sure that I don't interrupt you and I would ask that
17 you do the same for me as well.

18 The other thing is that she can't take down a
19 shake or a nod of the head. So I'd ask that you answer
20 questions with a yes or no, rather than uh-huh or huh-uh
21 or a head shake.

22 With regard to that first deposition that you
23 had mentioned that was a couple years ago, were you
24 individually involved in the lawsuit?

25 A I believe I have.

1 Q Do you recall whether you were the plaintiff
2 or the defendant in the lawsuit?

3 A I was -- I was the plaintiff.

4 Q And briefly, if you would, explain to me or
5 tell me what that lawsuit was about.

6 A Landlord versus tenant matters.

7 Q Okay. And you were suing the tenant?

8 A Yes.

9 Q You mentioned that you had given a deposition
10 one other time. How long ago was that?

11 A One or two other times. Approximately maybe
12 three years ago, four years ago. I don't remember the
13 exact date.

14 Q Okay. And do you recall whether you were the
15 plaintiff or the defendant in that matter?

16 A I was the defendant.

17 Q Who was suing you?

18 A Harley Davidson.

19 Q What was the nature of the lawsuit?

20 A Nature of the lawsuit was with regards to
21 apparel that relates to the jackets of Harley Davidson.

22 Q Was it a copyright suit?

23 A Was either a copyright or a trademark. I'm
24 not sure which -- which one would relate to it.

25 Q How was that lawsuit re -- I'm sorry --

1 resolved?

2 A It was -- it was resolved between the --
3 between our company and Harley Davidson.

4 COURT REPORTER: I'm sorry?

5 THE WITNESS: It was resolved between the two
6 companies. It was settled out of court.

7 BY MS. WESTON:

8 Q Okay. Was there one other time that you had
9 your deposition taken?

10 A I don't remember if I had at any other time.

11 Q Who was the attorney that represented you in
12 the case involving Harley Davidson?

13 A Ava Doppelt.

14 COURT REPORTER: I'm sorry? Again.

15 THE WITNESS: Ava Doppelt.

16 BY MS. WESTON:

17 Q And do you recall the name of the attorney
18 that represented Harley Davidson?

19 A No, I don't.

20 Q Was it the local Harley Davidson?

21 A No, corporate.

22 Q Okay. Mr. Recel, what is your current
23 address?

24 A Home address or business address?

25 Q Home, please.

1 A 37 Sun Dunes Circle, Ponce Inlet, Florida
2 32127.

3 Q How long have you lived at that address?

4 A About six years.

5 Q Where did you live previously?

6 A 40 Sun Dunes Circle in Ponce Inlet, Florida.

7 Q And how long were you at that address?

8 A About seven years.

9 Q How long have you lived in the Volusia County
10 area?

11 A Since 199 -- since '91, I guess, '91.

12 Q Prior to 1991 where did you live?

13 A I lived in Clearwater, St. Petersburg/Tampa
14 area.

15 Q For how long?

16 A Approximately six years, from '84 to about
17 '90, '91.

18 Q Prior to 1984, where did you live?

19 A California.

20 Q How long did you reside in California?

21 A Three years.

22 Q Let's talk now about your education briefly.
23 Do you have any education, any formal education, after
24 high school?

25 A Any formal education after high school, yeah.

1 I have a Bachelor of Science Degree in Mechanical
2 Engineering.

3 Q Where did you obtain that degree?

4 A California State University at Fresno.

5 Q What year did you obtain that?

6 A '84.

7 Q Do you have any graduate work, graduate
8 studies?

9 A I went -- I took three courses at FIT.

10 Q What --

11 A MBA courses.

12 Q Okay. What is FIT?

13 A Florida Institute of Technology.

14 Q Where is that located?

15 A Florida.

16 Q Which city?

17 A Many cities. They have campuses in many
18 different cities.

19 Q Okay. Where was the campus where you took
20 classes?

21 A Near the Cape, Kennedy, near the Kennedy Space
22 Center.

23 Q Okay. Prior to attending California State
24 Fresno, where did you live?

25 A South Dakota.

1 Q I'm sorry?

2 A Brookings. Brookings, South Dakota.

3 Q Is that where you grew up?

4 A No. That was my freshman and -- my freshman
5 year was in Brookings, South Dakota or college -- I went
6 to South Dakota University for one year.

7 Prior to that I lived in Edina, Minnesota.
8 That's where I got my high school -- high school degree.

9 Prior to that I was born in Turkey. I came to
10 this country when I was 16 years old.

11 Q What is your current job?

12 A I am the president of Biker Design.

13 Q How long have you been the president of Biker
14 Design?

15 A I guess formally for 10 years. Informally for
16 about 14 years.

17 Q What is the difference between formally and
18 informally?

19 A Biker Design was formally incorporated in
20 1997. I guess that makes it nine years.

21 Q How did you operate as president of Biker
22 Design before it was formally incorporated?

23 MS. OONK: Objection.

24 THE WITNESS: I was owner.

25 COURT REPORTER: I'm sorry? I didn't hear the

1 answer.

2 THE WITNESS: I was the owner. I guess that
3 makes it informal president.

4 BY MS. WESTON:

5 Q What -- what sort of business is Biker Design
6 in?

7 A They're in apparel and clothing and T-shirt
8 business and motorcycle related apparel business.

9 Q Where is Biker Design located?

10 A Currently or ten years ago?

11 Q Currently.

12 A 777 Main Street in Daytona Beach, Florida
13 32127 -- I'm sorry -- 32118, the zip code.

14 Q How long has Biker Design been at 777 Main
15 Street?

16 A Approximately maybe two and a half years.

17 Q Where was it located before that?

18 A On Nova Road in Daytona Beach. I don't
19 remember the address -- 834 South Nova Road.

20 Q Where is that located? Is that near Beville
21 Road?

22 A It's near -- it's between Beville and
23 Bellevue.

24 Q Okay. How long was it at that location?

25 A About maybe three, four years.

1 Q And prior to 834 South Nova, where was Biker
2 Design located?

3 A It was in South Daytona Beach. I don't recall
4 the address. But it was behind Hog Wild Restaurant on
5 South Daytona Beach.

6 Q Do you know what street?

7 A Nova Road.

8 Q How long was it located there?

9 A Approximately a couple years.

10 Q Was that the first location where Biker Design
11 was?

12 A Nope.

13 Q What was the first location?

14 A First location was in Holly Hill. I don't
15 remember the address. 10 something 56, in Holly Hill.

16 Q Was that also on Nova?

17 A No. It's not on Nova. It's between Nova and
18 Ridgewood. I don't remember the name of the street.
19 It's in Holly Hill though, northern Holly Hill.

20 Q How long was it located at that address?

21 A Approximately year and a half maybe, maybe two
22 years.

23 Q Are those four locations the only places where
24 Biker Design was ever doing business?

25 A Prior to that it was my garage, 40 Sun Dunes

1 Circle.

2 Q Who was responsible for starting the Biker
3 Design business?

4 A Myself and Nir Giist.

5 Q How many employees did the company initially
6 have when you started it?

7 A With the exception of us, none.

8 Q How many employees does the company currently
9 have?

10 A More than 20. In peak sometimes up to 30, 40.

11 Q What are the actual business operations of
12 Biker Design that are conducted at 777 Main Street?

13 A Retail and wholesale of biker clothing.

14 Q Is there any --

15 A Yeah. Go ahead. I'm sorry.

16 Q I'm sorry to interrupt you. Is there any
17 manufacturing going on there?

18 A No -- well -- I will call it a light
19 manufacturing. Maybe pressing some items with the heat
20 press into -- into the ladies' garments. They're very,
21 very light manufacturing.

22 Q And when you say "pressing," that's something
23 different than ironing, correct?

24 A It's not ironing, no. You're pressing,
25 applying it with a -- with a pressure and with heat

1 combination and applying metal studs into -- into
2 ladies' garments. We do that at that location.

3 Q Okay. So you're actually applying some sort
4 of decorative item to the clothing?

5 A To the clothing, correct.

6 Q Has the retail and wholesale of Biker
7 clothing, and then this light manufacturing that you
8 just described, has that -- is that the bulk of the
9 business conducted by Biker Design?

10 A No. Our retail business is the bulk of our
11 business.

12 Q Okay. Has Biker Design's business changed at
13 all from the time that you formed the company to the
14 present time?

15 A In what way?

16 Q In any way.

17 A Change -- business changes many different
18 ways.

19 Q Okay. Specifically with regard to the retail
20 and wholesale of Biker clothing and the light
21 manufacturing, has that remained the same over time?

22 A No. I mean as far as light manufacturing, is
23 only in the last few years, last two or three years.
24 You know, as far as retail, from the inception. Retail
25 and wholesale probably only in the last four or five

1 years.

2 Q And prior to that last four or five years,
3 what was the business of Biker Design?

4 A Just retail.

5 Q I think you said that you formed Biker Design
6 in 1997; is that correct?

7 A I incorporated Biker Design in 1997.

8 Q And when did you actually begin the business?

9 A Early 1990s, '91, '92, somewhere in that time
10 frame. I don't really remember. I moved here in '91,
11 so it had to be sometimes in that time frame, like maybe
12 a year after '91, '92 time frame.

13 Q How did you meet Mr. Giist?

14 A Through my wife.

15 Q Did you know him before 1991?

16 A No.

17 Q Was Mr. Giist a part of starting the business
18 of Biker Design?

19 A Yes.

20 Q Was he involved as early as '91 or '92?

21 A Yes.

22 Q How did your wife know Mr. Giist?

23 A Through another friend.

24 Q Prior to 1991, what business were you involved
25 in or what was your job?

1 A I'm engineer.

2 Q Were you in engineering from the time that you
3 graduated in '84 through '91?

4 A Until 1998.

5 Q Where did you work between '84 and '98?

6 A I worked for Vital Technologies in Clearwater.
7 Then I worked for Unisys/Sperry until 1990. And I
8 worked for Florida Production Engineering right here in
9 this -- in this town from 1990 -- '91 until '95, I
10 believe. And I worked for U.S. Filter in DeLand from
11 '96 -- '95 to '97, some -- sometime there. I might not
12 have my exact chronologies, but --

13 Q Okay.

14 A That was my last job.

15 Q Okay. Why did you leave U.S. Filter?

16 A I took the early retirement.

17 Q But for what purpose?

18 A To continue Biker Design business.

19 Q Okay.

20 A Because I had Biker Design going at the same
21 time. And I elected to pay more attention to Biker
22 Design than U.S. Filters.

23 Q Okay. Do you have any -- any sort of
24 professional licenses or certifications?

25 A I'm a certified quality engineer by American

1 Society of Quality Control.

2 Q Are you -- are you licensed as an engineer in
3 Florida also?

4 A I don't have a state license, no.

5 Q Did you have one at one point?

6 A Maybe when I first graduated I had my
7 practical -- what they call -- I don't recall it now.

8 Q Was that in Florida?

9 A Nothing in Florida, no.

10 Q Okay. So if you -- if you had a license, it
11 may have been in California then; is that correct?

12 A Yes.

13 Q Okay. Have you ever been in the military?

14 A Turkish Military.

15 Q When was that?

16 A '98 maybe, '99.

17 Q Did you live in Turkey in '98 or '99?

18 A No. Well, I guess, practically I did for a
19 month, because I was in the military for a month.

20 Just to clarify. Every Turkish citizen has
21 to -- men, not females, but male person has to go to the
22 military.

23 Q Okay.

24 A And, you know, I just did my obligation. I
25 was, I believe, 35 years old, 35 or 36 years old.

1 Q Okay. Is --

2 A And then because I live in the United States,
3 and I'm a dual citizen, and I can do it for one month.
4 That obligation ends though. It's a once in a lifetime
5 thing you do and get it over with.

6 Q Okay. And so your obligation is now dismissed
7 essentially?

8 A Correct.

9 Q Okay.

10 A I can -- I can still go to Turkey and come
11 back. So they don't take me to military now.

12 Q Okay. All right. Do --

13 A It's a good thing these days.

14 Q Yeah. Yeah. Really.

15 This is just a routine question that I ask
16 everyone whose deposition I take. But have you ever
17 been arrested for a felony or a crime of dishonesty?

18 A No.

19 Q And so then I take it you are not currently on
20 probation or parole?

21 A No.

22 Q You told me that you had had your deposition
23 taken previously. Were there any other prior lawsuits
24 that you personally were involved in that we didn't
25 discuss?

1 A There was also another lawsuit with West Coast
2 Choppers as well.

3 COURT REPORTER: I'm sorry?

4 THE WITNESS: West Coast Choppers.

5 BY MS. WESTON:

6 Q Was West Coast Choppers suing you or being
7 sued by you?

8 A They were suing us.

9 Q And when you say "us," you mean Biker Design?

10 A Biker Design Company and --

11 Q Tell me briefly, please, what that lawsuit was
12 about.

13 A It was regarding a T-shirt that they -- they
14 had located in our retail area and they basically went
15 to every -- every location and they indicated that
16 was -- that was not a unique product that we have bought
17 from them. But in return we did. And we had -- we
18 had -- what do you call -- invoices to show that, that
19 we bought the product from them.

20 But we still ended up in a lawsuit and had to
21 go through the routine things with them again. And we
22 settled out of court as well.

23 Q Did Ava Doppelt represent --

24 A Yes.

25 Q -- Biker then?

1 A Yes. Uh-huh.

2 Q Do you recall what year that was?

3 A Probably last -- three or four years ago.

4 Q And just to make sure that I understand. West
5 Coast Choppers was accusing Biker Design of selling a
6 West Coast Choppers' product that Biker Design didn't
7 buy from West Coast Choppers; is that correct?

8 A Correct. Basically they were saying they were
9 counterfeit product.

10 Q Okay. And Biker was able to prove, through
11 the invoices, that it was an actual product?

12 A Correct.

13 Q What is --

14 A But I don't believe my deposition was taken at
15 that point.

16 Q Okay.

17 A There was no deposition or nothing like that.

18 Q Okay. What is the approximate breakdown of
19 Biker's business in terms of retail versus wholesale
20 sales of clothing?

21 A Maybe 80 -- 80 percent retail and maybe
22 20 percent wholesale. That's really -- really a
23 guesstimate.

24 Q No. I understand. Where are --

25 A Go ahead. I'm sorry.

1 Q Where are the retail sales made by Biker?

2 A Daytona Beach and other motorcycle events.

3 Q Where are the other events held?

4 A Myrtle Beach, South Carolina. Laconia, New
5 Hampshire. Sturgis, South Dakota.

6 Q Are those all of them or are those the big
7 ones?

8 A Those are mainly the main ones. I mean in
9 Daytona Beach it happens twice a year. In Myrtle Beach
10 it happens twice a year.

11 Q What about New Hampshire?

12 A No, just once a year.

13 Q And Sturgis?

14 A Once a year.

15 Q Tell me, if you would, how the retail sales
16 are conducted in Myrtle Beach by Biker. Does Biker take
17 merchandise up there and take employees and essentially
18 go up there for the week-long event?

19 A Absolutely.

20 Q How many people from Biker Designs usually go
21 up there?

22 A About -- close to 20 people.

23 Q And is it the same practice with regard to the
24 New Hampshire and South Dakota events?

25 A Give or take about another ten people,

1 approximately.

2 Q Another ten people go to those?

3 A Approximately. You know, give or take another
4 ten.

5 Q Okay. Give or take.

6 In 1997 who were the shareholders of Biker
7 Design?

8 A There were four shareholders, myself, Nir
9 Giist, Joe Levy, and Michele Bismuth, B-I-S-M-U-T-H.

10 Q Who are the shareholders currently?

11 A Current shareholders are 45 percent myself; 45
12 percent, Nir Giist; and 10 percent Taylan Iskander,
13 T-A-Y-L-A-N, Iskander is the last name, I-S-K-A-N-D-E-R.
14 Michele Bismuth is deceased. An Joe Levy still works
15 for Biker Design.

16 Q Why is Mr. Levy no longer a shareholder?

17 A He was in -- like a year after company was
18 formally incorporated, we bought him out. We bought his
19 shares out basically.

20 Q What was the first year that the shareholder
21 makeup was as it currently is with you owning 45
22 percent --

23 A Twenty-five percent each.

24 Q I'm sorry?

25 A Twenty-five percent each.

1 Q Okay. I'm sorry. I wasn't clear with my
2 question.

3 The current -- you said currently you own 45
4 percent, Mr. Giist owns 45 and then Mr. Iskander owns 10
5 percent?

6 A Correct.

7 Q When was the first year that that was the
8 composition of shareholders?

9 A This year.

10 Q Oh, okay. So what was the makeup of
11 shareholders last year?

12 A Hundred percent me, myself.

13 Q And when I say "last year," that's 2005?

14 A Uh-huh. Yes. I shouldn't say uh-huh.

15 MS. OONK: Good.

16 BY MS. WESTON:

17 Q Good catch.

18 And for how many years did you own 100 percent
19 of the stock?

20 A Approximately six years.

21 Q So is that from 1999 approximately?

22 A Approximately. I don't know -- I don't recall
23 the exact date.

24 Q Okay. What happened to Ms. Bismuth's shares
25 of the stock?

1 A We also bought his stock.

2 Q Do you recall when her stock was bought out?

3 A His.

4 Q His?

5 A Yes. Yeah.

6 Q I apologize.

7 A That's all right. Everybody thinks that.

8 I believe sometime in late '98.

9 Q Okay. As a shareholder -- well, let me back
10 up. Is Biker Design a Subchapter C Corporation or --

11 A S.

12 Q Yes?

13 A S.

14 Q S. Do you -- do you receive dividends from
15 Biker Design?

16 A Yes.

17 Q Have you received dividends the past several
18 years from Biker Design?

19 A Yes.

20 Q Has it been necessary for the past few years
21 for you to make shareholder loans to Biker Design?

22 A Make shareholder's loans? What exactly does
23 that mean?

24 Q Loan money to Biker Design.

25 A Not too many times. I'm sure there has been

1 occasions, but I don't really recall any figures or
 2 nothing like that.

3 Q Okay. So no significant loans probably?

4 A No, nothing. No.

5 Q Okay. We talked about the shareholdings.

6 What about your status as an officer, are you currently
 7 an officer of Biker Design?

8 A Yes.

9 Q What title do you have?

10 A President.

11 Q I recall that you've been president since you
 12 formed the company; is that correct?

13 A Correct.

14 Q Who are the other officers currently?

15 A Nir Giist.

16 Q What is his title?

17 A I believe vice president. I don't remember.

18 We don't pay much attention to titles.

19 Q Okay. Are there any other officers that you
 20 remember?

21 A And Iskander.

22 Q What's his title?

23 A Jack-of-all-trades; master of none, maybe.

24 Just a joke. I don't remember. Maybe -- maybe

25 secretary or --

1 Q And for how long have Mr. Giist been vice
2 president and Mr. Iskander been secretary or treasurer
3 or some other title?

4 A About a year.

5 Q About a year ago, or whenever the officers --

6 A Uh-huh.

7 Q -- changed, who were the prior officers?

8 A I was the only one.

9 Q For how long were you the only officer?

10 A Last six, seven, eight years. Since '98, '99,
11 sometime in that time frame.

12 Q Why was Mr. Giist not an officer during that
13 past six or eight years?

14 A He had some, you know, personal things that he
15 had to leave and, you know, had to get married and do a
16 few other things. So he elected not to be the officer
17 of the company. Then when he came back, you know, he
18 worked for the company and managed -- managed the
19 company and he became one of the officers of the
20 company.

21 Q Was there a period of time where Mr. Giist
22 didn't work for the company?

23 A Very short period.

24 Q When was that, if you recall?

25 A '99 maybe. Maybe 2000.

1 Q And you said it was a very short period. Was
2 it a month or a couple of weeks?

3 A Couple of weeks. He had some personal things
4 that he had to take care of back in Israel. And, you
5 know, just very short period I'm talking about. Almost
6 like -- almost like taking a vacation.

7 Q Okay. So Mr. Giist has essentially been
8 involved with Biker Design --

9 A Yes.

10 Q -- from the beginning with you?

11 A Yes.

12 Q Okay.

13 A Very much.

14 Q Okay. Who makes the day-to-day decisions at
15 Biker Design?

16 A All --

17 MS. OONK: Objection to form.

18 Go ahead. Go ahead.

19 THE WITNESS: All three officers.

20 BY MS. WESTON:

21 Q And by all the officers, you mean yourself,
22 Mr. Giist and Mr. Iskander?

23 A Correct.

24 Q Who makes financial decisions?

25 A Mainly myself and Nir Giist.

1 Q Not Mr. Iskander?

2 A He does as well, you know.

3 Q Who makes decisions with regard to sales?

4 A In terms of obtaining customers or what do you
5 mean by sales?

6 Q Well, for example, where sales are made, where
7 you're going to -- which events you will go to.

8 A We all make decisions together inside the
9 company, you know.

10 Q Okay.

11 A Everybody puts their input.

12 Q Is that a decision process that's made
13 annually which events you'll sell at?

14 A Annually and, you know, if there's some new
15 show, some new retail event pops up, then we make a
16 decision on the spur of the moment, too.

17 Q Okay. How -- just explain to me how you would
18 make that decision. Like say, for example, there was a
19 new event that you found out about it. How would you
20 make that decision?

21 A Make some phone calls to people and we ask
22 them if they know anything about the show and we check
23 it, whether it's a good show or a bad show. Then we
24 take our chances and go.

25 Q Do the -- do the three of you sit down and

1 have a discussion about whether or not to sell
2 somewhere?

3 A Yeah. I mean, that's -- those are really
4 daily -- daily conversations we have among ourselves,
5 you know.

6 Q Okay. What about decisions about products,
7 like which suppliers to use, who makes those decisions?

8 A Again, certain products -- I'm responsible for
9 certain products. Maybe Nir would be responsible for --
10 for example, Nir would take care of the hats and dealing
11 with the suppliers and maybe the children clothing.

12 And, you know, then we sit down and we talk about it.

13 And then, you know, he takes care of those. You know,
14 different product lines by different people really.

15 Q What products are you responsible for?

16 A All men and ladies' apparel goods.

17 Q But not hats?

18 A Well, I guess, I'm -- I'm still responsible.

19 But, you know, I'm not responsible for ordering them.

20 Q Okay. And then Mr. Giist is responsible for
21 which products?

22 A Mainly hats, children clothing, towels, caps,
23 coozies, cup holders, maybe pins.

24 Q Pins like pins that you put on your jacket?

25 A Yes. Uh-huh.

1 Q Okay. Anything else?

2 A Maybe -- no, not patches. Just pins. We
3 don't order patches.

4 Q Okay. What about Mr. Iskander, does he have
5 any responsibility for certain products?

6 A Yeah. He orders sometimes those metal decals,
7 we call them, metal studs, metal decals.

8 Q What are metal decals?

9 A They're decorative items that have been
10 applied into ladies' or men's garments.

11 Q Okay. Are they sticky like stickers?

12 A They're not -- well, I guess, each pin will
13 have a glue on the back of them and it's when it's
14 applied by heat and it is -- it is stuck onto the
15 garment.

16 Q Okay. And that's why it's called a decal?

17 A It's called, you know, metal decal or metal
18 studded decals.

19 Q Okay.

20 A You know, the shiny decals that you probably
21 see them in the malls, you know, and sometimes on
22 ladies' garments, maybe a flower, maybe -- maybe a
23 dolphin or something.

24 Q Okay.

25 A Those small little decorative items.

1 Q Okay.

2 A But, you know, we specialize -- we cater that
3 towards the -- towards the motorcycle industry. So
4 he's -- he's occasionally responsible for ordering those
5 items.

6 Q Okay. And these areas of responsibility that
7 you've told me about, does that mean that each of the
8 three of you are responsible for all orders or primarily
9 responsible, but some of the other times --

10 A We're all -- we're all responsible for
11 ordering the orders. But, you know, primarily that's --
12 that's our specialty or that's our -- someone might fall
13 into that kind of a category over the years.

14 Q Okay. Fair enough.

15 A Not by design many times. But, you know --

16 Q Is there anybody else in the company that has
17 authority with regard to sales or product decisions,
18 other than you or Mr. Giist or Mr. Iskander?

19 A No.

20 Q Has there been -- been anybody else in the
21 past with Biker Design that had decision-making
22 authority, other than the three of you?

23 A Maybe one time Joe Levy did when we first
24 formed the corporation.

25 Q Okay. How many full-time employees does Biker

1 have?

2 A I don't know.

3 Q Is it more than 25?

4 A I believe it's less than that.

5 Q If you had to answer an interrogatory about
6 how many full-time employees Biker Design had, where
7 would you look for the answer for that?

8 A Where would I look for it?

9 Q Correct.

10 A I would write their names and I count.

11 Q Does Biker Design keep personnel files?

12 A Uh-huh.

13 Q Okay. For all full-time employees?

14 A Yes.

15 Q What about part-time employees?

16 A No.

17 Q How many part-time employees does Biker Design
18 have in a typical year?

19 A On and off it could be as much as 30, 40.

20 Q Does Biker have more than ten full-time
21 employees?

22 A Yes. I believe the number is closer to 20
23 than 30.

24 Q Twenty full-time?

25 A (Witness nods head affirmatively.)

1 Q Do all of these people work in the store on
2 Main Street?

3 A Yes.

4 Q How many of those approximately 20 people are
5 involved in the sales process in terms of manning the
6 counter or making sales over the phone?

7 A Approximately five maybe, four to five.

8 Q Do those four or five include any of the
9 shareholders?

10 A No, I didn't count any of them.

11 Q Okay.

12 A But I count the secretary that answers the
13 phone.

14 Q Okay.

15 A Sometime when people that relates to taking
16 the orders, if they're not there at lunch, you know, she
17 has -- she can take the orders as well.

18 Q Okay. Did you include the shareholders in the
19 20 full-time people?

20 A No.

21 Q Okay. What did the remainder of the people,
22 the roughly 15 people, what do they do in the business?

23 A They prepare the product for retail shows.

24 Q What is involved in preparing the product for
25 retail shows?

1 A Pulling the stock from the -- for the retail
2 show, taking it to the printers, taking it back from the
3 printers, separating the product when it comes back from
4 the printer, boxing them, crating them, palletizing
5 them, loading the trucks, unloading the trucks.

6 Q And that's what the other roughly 15 people
7 do, those different items?

8 A Yes. Yes.

9 Q When you say they take items to the
10 printers --

11 A Uh-huh.

12 Q -- what does that mean? A screen printing?

13 A Screen printing operation, yes.

14 Q Who does your screen printing for Biker
15 Design?

16 A Print Art is the name of the company.

17 Q Where is that located?

18 A On Nova Road. We like Nova Road. Seems like,
19 doesn't it?

20 MS. OONK: Yeah.

21 BY MS. WESTON:

22 Q In Daytona?

23 A In Daytona, yes. Mid Florida Screen Printing.
24 Hot Action Sportswear. Sturgis Bike Week located in
25 Sturgis, South Dakota. Dynamic Design in Port Orange.

1 However, Dynamic Designs is the only one
2 that's not currently printing anything for us.

3 COURT REPORTER: I'm sorry?

4 THE WITNESS: Dynamic Design is the only one
5 that are not currently doing any kind of printing
6 in the last 12 months with us.

7 BY MS. WESTON:

8 Q I believe you said that roughly 80 percent of
9 the sales of Biker Design were retail sales. Of that 80
10 percent, what portion of that is done at the store on
11 Main Street?

12 A Very hard question.

13 COURT REPORTER: I'm sorry?

14 THE WITNESS: Very hard question.

15 I'm going to guess between one, one to -- no
16 more than one to two percent.

17 BY MS. WESTON:

18 Q Where is the remainder of the retail sales
19 done?

20 A Many other places in Daytona. And the rest of
21 the locations that we covered before, Myrtle Beach,
22 Sturgis, Laconia, New Hampshire.

23 Q At what other locations in Daytona is Biker
24 Design making retail sales?

25 A Another like approximately 15 locations. But

1 they're all temporary locations only for special events.
 2 There is -- there is no other place in -- in Daytona
 3 Beach or in any other state Biker Design make retail
 4 sales, except 777 Main Street.

5 Q On a permanent basis, correct?

6 A On a permanent basis, correct.

7 Q Okay. Where are some of the temporary retail
 8 sales locations in Daytona Beach?

9 A 504 Main Street, 609 Main Street, near Miller
 10 on Ridgewood, near Iron Horse in Ormond Beach, at the
 11 Frozen Gold Ice Cream Shop in New Smyrna Beach.

12 COURT REPORTER: I'm sorry?

13 THE WITNESS: Frozen Gold Ice Cream in New
 14 Smyrna Beach. The race track in the last couple of
 15 years.

16 BY MS. WESTON:

17 Q You mean the International Speedway?

18 A Uh-huh.

19 Q Does Biker Design rent space for a booth at
 20 these different locations?

21 A Yes.

22 Q Are all of the retail sales made at the
 23 temporary locations -- and by temporary locations I mean
 24 everything other than 777 Main Street -- are they all
 25 reported into the Biker Design Corporation?

1 A Everything, yes, reported into Biker Design,
2 goes into the same -- same account.

3 Q How do you track your retail sales at the
4 temporary locations?

5 A Via cash register.

6 Q I guess walk me through the process of how you
7 know what you've sold at a particular location. Do you
8 do an inventory beforehand?

9 A Uh-huh. I know what product I give to each
10 location.

11 Q And when you say "give to each location," is
12 it actually Biker Design conducting the sales with its
13 own employees there?

14 A Yes. Of course.

15 Q Okay. So you have an inventory that you do
16 beforehand?

17 A Correct.

18 Q And then do you just do an inventory
19 afterwards?

20 A Hopefully you don't have afterwards on
21 inventory. Hopefully you sell everything.

22 Q Okay.

23 A But if you do have very little inventory left
24 and if it looks too excessive, we count them. If it
25 doesn't, and if it's such a small amount, then we know

1 what that location is supposed to be making. You know,
2 life goes on.

3 Q How do you know when you need to order more of
4 a particular item?

5 A How do I know?

6 Just -- I just know.

7 Q Is it a case where you can go into your
8 storeroom, for example, and see that you don't have
9 anything on a shelf?

10 A No. That's -- that's -- that's a visual thing
11 we can -- we can do. And you also know, you know --
12 I've been in retail for awhile and I know if a certain
13 item sells and I know that item is a hot seller, then I
14 know to order that item.

15 Q Okay. Have --

16 A But I mean visual things we do use, yes. You
17 know, if you're referring to if I go -- go to my place
18 and I know what I have, what I don't have, yes. We
19 have -- you know, we have by -- stock by style numbers
20 and, you know --

21 Q How do you --

22 A Take inventories at certain --

23 Q Okay.

24 A -- certain times of the year.

25 Q How often do you take inventory?

1 A No more than twice a year.

2 Q Okay. And what do you do with the inventory
3 figures? Do you enter them in a computer or do you have
4 a logbook?

5 A No. I calculate them and give it to my
6 accountant.

7 Q And is that how your accountant calculates
8 your cost of sales for your taxes?

9 A Correct. Well, I think that becomes my
10 year-end inventory, what I've given as my year-end
11 inventory.

12 Q Okay. Well, you said you did it twice a year.
13 Do you do it halfway through?

14 A I do it, but it's nothing that I report to
15 anybody.

16 Q Okay. How long does it take to do an
17 inventory of your stock?

18 A Two, three days, a couple days, you know.

19 Q How many people does it require to count?

20 A About three or four people.

21 Q Roughly how many square feet is the store on
22 Main Street?

23 A Showroom is only 3,000 square feet. But it's
24 really -- amount of product in the showroom is very
25 limited. Because we only carry whatever's left over

1 from Daytona Bike Week or any other shows, you know.

2 Q Okay. Do you also store the product on Main
3 Street?

4 A Yeah.

5 Q Okay.

6 A Which is about maybe close to 10,000 square
7 feet.

8 MS. OONK: Can we go off the record real
9 quick?

10 MS. WESTON: Sure.

11 MR. CARLSON: We're off the record at 2:04.

12 (Whereupon, a break was taken in the testimony.)

13 MR. CARLSON: We're back on the record at
14 2:05.

15 BY MS. WESTON:

16 Q We were talking about the inventory that you
17 take. And you said it's taken twice a year and one of
18 those times you give it to your accountant for your tax
19 purposes?

20 A Uh-huh.

21 Q Remember the court reporter can't take a down
22 a uh-huh.

23 A Yes.

24 Q Thank you.

25 How many different temporary locations are

1 there that Biker Design conducts sales at at Sturgis?

2 A In the city of Sturgis city limits
3 approximately between 20 to 25.

4 Q And how long is the Sturgis event?

5 A Too long. Approximately ten days.

6 Q Did you say that happens twice a year?

7 A Once.

8 Q Once a year.

9 Roughly how many employees does Biker Design
10 have at the Sturgis locations?

11 A Approximately, with part time and all of this,
12 close to 30 employees.

13 Q And, I'm sorry, I need to back up and just ask
14 another couple questions about inventory that I probably
15 should have asked. What is it actually that you give
16 your CPA at the end of each year?

17 A Final figure of my inventory.

18 Q And is it a handwritten list like on lined
19 paper?

20 A Yes.

21 Q And what format does it -- what does it say on
22 the paper?

23 A It says dollar figure for year-end inventory,
24 \$50 or \$250.

25 Q Does it break it down, for example, and say

1 men's blue short-sleeve shirt?

2 A No.

3 Q No?

4 A No.

5 Q What kind of records do the three to four
6 people take when they're making the inventory each year?

7 A They -- they count different categories of
8 items, such as jackets, such as men's shirt, such as
9 ladies' tops and give me the total quantity.

10 Q And then what do you do with their figures?

11 A I multiply it with the cost and give it to the
12 accountant.

13 Q How do you come up with the cost of each?

14 A Because I know how much it cost.

15 Q How do you know how much it cost?

16 A I have an invoice.

17 Q From whoever you bought the items from?

18 A Yeah. Whoever I bought the items from, sure.

19 Q Okay. What -- so when you're doing this for
20 your accountant, do you pull invoices from throughout
21 the year to see what you were charged?

22 A No. Because usually I have a cost -- you
23 know, how much each items cost, I have a list, and I
24 multiply it and come up with a figure.

25 Q What -- what sort of list is it that you have

1 with the costs of the items on it?

2 A Let's say, item number such and such costs
3 this much, number this cost this much. That's my cost.

4 Q Where do you keep that list of costs?

5 A In my briefcase.

6 Q How often do you update it?

7 A Typically once a year.

8 Q When during the year do you update it?

9 A Usually in fall, like in November, November,
10 December time frame. Before we go into the new season.
11 Our season usually starts in February.

12 Q Why do you carry it with you in your
13 briefcase?

14 A So when I go to overseas, I can pull it and
15 compare it. I can negotiate.

16 Q Do you also need it to quote prices to
17 purchasers?

18 A Quote prices to purchasers?

19 I don't have purchasers. I am the purchaser.

20 Q I'm sorry. When you're making sales to
21 people, do you need to refer to what your costs are when
22 you're quoting a price to them?

23 A No. Our prices are in our catalog.

24 Q Okay. So everybody pays the same price?

25 A Everybody pays the same price and certain

1 customers maybe get a little bit of a discount. Depends
2 on how much I like them.

3 Q Who is it that you negotiate with overseas?

4 A I buy things from -- from two or three
5 different suppliers. So from time to time I negotiate
6 with them.

7 Q Where are the suppliers located?

8 A China, Turkey, Pakistan, Orlando. Many places
9 in the United States.

10 Q Does Mr. Giist ever do any of the negotiating
11 with suppliers?

12 A Uh-huh.

13 Q Does Mr. Giist also carry --

14 A Yes.

15 Q -- a list -- does he carry a list of the costs
16 with him?

17 A No. If he needs it, he asks me.

18 Q Okay. What about Mr. Iskander, does he do any
19 negotiating?

20 A No.

21 Q No?

22 A No.

23 Q Approximately how many temporary locations
24 does Biker Design have in New Hampshire at the event
25 there?

1 A Approximately 20.

2 Q And roughly how many employees does Biker
3 Design take to the New Hampshire event?

4 A About the same number, 30.

5 Q What about Myrtle Beach, how many retail sites
6 approximately operated there?

7 A It's usually about ten or less.

8 Q How many employees?

9 A I would say close to 20.

10 Q Are the numbers the same for both of the
11 Myrtle Beach events?

12 A Well, fall is even less. One of them is
13 better than the other one.

14 Q When are those events normally held?

15 A Spring is in May. Fall is in the end of
16 September.

17 Q And the May event is the larger?

18 A May is the largest one, larger one of the two.

19 Q You said that you had roughly 20 full-time
20 employees at Main Street --

21 A Uh-huh.

22 Q And roughly 15 were responsible for preparing
23 the product for retail shows.

24 A Uh-huh.

25 Q And the remainder included actual salespeople?

1 A Everybody is a salespeople.

2 Q Okay.

3 A I should say. One time or another we wear
4 different caps.

5 Q Okay. Other than the people that are
6 preparing the product, tell me who the current employees
7 are of Biker Design, the four or five people that aren't
8 boxing or loading or carrying product to the screen
9 designer, screen printer.

10 A I don't understand the question.

11 Q Who are those four to five people that aren't
12 working with the product at Biker Design?

13 A Maria.

14 Q I'm sorry?

15 A Maria is her name.

16 Q Okay.

17 A Thornhill is her last name.

18 COURT REPORTER: I'm sorry? The last name
19 again.

20 THE WITNESS: Thornhill. Kenneth Mundis is
21 the other person. Deborah Brown is the third one.
22 And Yunus, that's Y-U-N-U-S, Turkkan,
23 T-U-R-K-K-A-N.

24 Q Any others?

25 A And once in a while Chad Kozan, C-H-A-D, Kozan

1 K-O-Z-A-N.

2 Q What is it that Ms. Thornhill does?

3 A She deals with the sales with the wholesale
4 business basically is where her responsibility is,
5 preparing the product and get them out to the customer,
6 shipping.

7 Q Does she have particular customers that she's
8 assigned to work with?

9 A No.

10 Q How long has she been employed by Biker
11 Design?

12 A Two -- maybe -- maybe two and a half years,
13 maybe three years. I don't recall.

14 Q Mr. Mundis, what -- what is his responsibility
15 at Biker Design?

16 A He does -- he wears multiple hats, same as
17 Maria. But he's -- he also comes to the shows and he
18 also does our retail sales.

19 Q Does Ms. Thornhill travel to the shows as
20 well?

21 A No.

22 Q How long has Mr. Mundis been employed by
23 Biker?

24 A I believe it's less than two years.

25 Q Deborah Brown, what is her responsibility at

1 Biker Design?

2 A She is our -- she is our secretary and office
3 and multiple hats, I guess, and also she takes orders.

4 Q And Yunus, Mr. Turkkan, what is his
5 responsibility?

6 A All of the above. All of the above.

7 Q Okay. How long has Deborah Brown been working
8 at Biker?

9 A Same time frame, about two years.

10 Q And Mr. Turkkan?

11 A One year.

12 Q What about Mr. Kozan?

13 A I believe he's in his third year.

14 Q You said he works occasionally. Is he
15 part-time?

16 A He is -- he is part-time. He's not
17 100 percent full-time employee. But he also deals with
18 some of the customers. And 75 percent of his time is
19 with the retail.

20 Q Does he travel to the shows?

21 A Yes. Basically everybody does, except Maria
22 Thornhill.

23 Q Oh, okay. So in 19 -- I'm sorry -- in 2005
24 Ms. Thornhill, Mr. Mundis, Ms. Brown and Mr. Kozan all
25 worked at Biker; is that correct?

1 A Yes. I'm sure you mean Biker Design every
2 time you say Biker?

3 Q Yes. I'm sorry. I should have explained
4 that. I will use Biker occasionally to refer to Biker
5 Design.

6 Would you please turn in the notebook in front
7 of you to tab F. The document there on top is entitled
8 *Amended Notice of Taking Videotaped Deposition Duces*
9 *Tecum.*

10 A Uh-huh.

11 Q Would you turn to the second page of that,
12 please. Have you seen this before?

13 A Yes.

14 Q When did you see it?

15 A Few days ago and I looked at it again today.

16 Q Okay. What -- what did you do when you
17 received this Exhibit F?

18 A What did I do?

19 Q Did you take any steps to gather the documents
20 that are requested on the second page, numbered one and
21 two?

22 A Yes. We reviewed that also with my attorney
23 today and --

24 Q I'm not asking for any conversation that you
25 or your attorney had. But I just want to know what --

1 what steps, if any, that you took to gather the items
2 requested in numbers one and two.

3 A I reviewed them and I looked at them. And as
4 far as --

5 Q Did --

6 A As far as number one, we brought some samples,
7 I believe.

8 Q Okay. What -- what did you bring with you?

9 A Each banner placed and stitched onto the
10 T-shirt -- well, I didn't bring each item, because I
11 would have to fill this room.

12 Q Okay.

13 A I brought some of these items in here that was
14 related to this particular -- that was related to this
15 particular issue.

16 Q Okay. So, for the record, you brought --

17 A Four items.

18 Q -- four items with you?

19 A Uh-huh.

20 Q Would you describe each of these for me,
21 please. Like, for example, women's or men's
22 long-sleeve.

23 A All four of these items are ladies'. Two are,
24 I believe, long-sleeve. And two are tank top. They're
25 ladies' knitted goods.

1 Q Okay. With regard to the second item, which
2 requested all documents related to transactions or
3 communications between Biker Design, you or Mr. Giist
4 and Mr. Zakai Bozkurt or Biker Tekstil from January 1,
5 2000 to the present -- to the present, excuse me. Did
6 you bring any -- any documents?

7 A Well, we only found one document that relates
8 to this particular case that we elected to bring, was an
9 invoice that was found that's dated 9/29/2002. That
10 indicates an item number 55, which is this item.

11 Q And by "this" you're holding up the ladies'
12 black tank top?

13 A Either ladies' black with the red or ladies'
14 black with the orange. They're both the same tops,
15 except the colors is the only difference.

16 Q Okay.

17 A But they both have the same skull with a
18 barbwire tape attached to it. And this is item number
19 55. We located an invoice that came from Mr. Bozkurt
20 as -- on -- I don't remember the dates, 9 something.
21 9/2002.

22 Q Okay.

23 A And we also brought box that was -- it was
24 ripped off from -- showing that particular item, box 55.

25 Q It's just a box that this M55 was packaged in?

1 A Correct.

2 Q Okay.

3 MS. OONK: This document, the invoice
4 document, we did not produce previously because we
5 just found it today.

6 MS. WESTON: Okay.

7 MS. OONK: This is -- this -- a copy of this
8 was produced to you, but we brought the original
9 along so you could see what it looked like. That
10 it was -- because I looked at the photocopy and I
11 couldn't tell what it was.

12 MS. WESTON: Okay.

13 MS. OONK: There were two documents that were
14 together in that part of the production. One is a
15 copy of the label, which is from the outside of the
16 box. And then the second piece of paper is a copy
17 of the tag that was inside of the bag that came
18 with the items in the box.

19 MS. WESTON: Okay.

20 MS. OONK: We have not been able to find --
21 relocate the original --

22 THE WITNESS: Original of the tag.

23 MS. OONK: -- of the tag. But the copy of the
24 tag is what's attached to this. If you want me to
25 dig out the Bates numbers. I don't know if you put

1 them in your notebook or not. But I wanted to be
2 able --

3 MS. WESTON: Okay.

4 MS. OONK: -- explain those.

5 MS. WESTON: Okay.

6 MS. OONK: That's the extent of what we got.

7 MS. WESTON: The production in its entirety
8 should be in these binders.

9 MS. OONK: Okay.

10 MS. WESTON: So we'll be able to figure --

11 MS. OONK: Okay.

12 MS. WESTON: That out when we take a break.

13 MS. OONK: Yeah. But this is not in those
14 binders.

15 BY MS. WESTON:

16 Q Okay. Let's mark this invoice that we're
17 referring to as Exhibit G. Okay.

18 So, Mr. Recel, I think you were saying on this
19 Exhibit G, M55 refers to those ladies' tank tops, either
20 orange or red?

21 A Uh-huh.

22 Q And is this M55 a number that you used for
23 inventory purposes at Biker as well?

24 A No. I don't use it for inventory control
25 purposes. Because this item was only produced once for

1 three hundred and some odd pieces, 393 pieces. It
2 was -- it was tried out. It was never been deemed as an
3 item that is successful enough for Biker Design to
4 carry. And it was never brought into production after
5 that.

6 Q Okay.

7 A Because we usually -- we typically, you know,
8 we bring an item if we choose -- from the samples that's
9 provided to us, we choose, we elect certain items.
10 Let's say you provide me 20 samples. Maybe I choose
11 five of them. This became one of those five items.

12 Q Okay.

13 A With the Biker Design label on it.

14 Q Okay.

15 A I asked him to do a pre-production run, less
16 than 50 dozen typically. Once that 50 dozen comes, I do
17 the trial run in one or two shows. When I say two
18 shows, it's retail shows. If I see the item moving,
19 then I go into production.

20 Q Okay.

21 A This item was never made it to the production,
22 never even made it to the catalog.

23 Q Okay. Were there any other colors ordered,
24 other than red or orange?

25 A I don't believe so.

1 Q So --

2 A But I'm not 100 percent certain. I don't
3 remember.

4 Q Okay. You don't recall ordering this M55,
5 other than this one instance?

6 A I know it has not been ordered besides that.

7 Q Okay. Okay. So you're just not certain about
8 the colors, but you are certain that there was never
9 another order of them?

10 A I don't believe there was another order, no.

11 Q Okay. So then --

12 A I mean, it never made it to our catalog. So I
13 mean I have to believe -- again, if -- if there wasn't a
14 run, it was not done with -- you know, maybe there was
15 some irregulars left in -- from the production, they
16 might have made it into the irregular boxes and those
17 irregular boxes will never have what's inside them. So
18 we might have maybe five or ten pieces inside those.

19 Q And when you're saying the M55 never made it
20 to the catalog, is it a catalog that you're referring
21 to, that's the only --

22 A It's a Biker Design catalog, I should -- I
23 should rephrase it.

24 Q Okay. But that catalog is only used with
25 regard to the 20 percent of your business that's

1 wholesale sales, correct?

2 A No. That catalog is also -- I mean, I pull
3 from that catalog, I pull from that inventory what I
4 need for retail.

5 Q Okay. But do you provide your catalog to
6 retail customers at the different events that you travel
7 to?

8 A No. Wholesale only.

9 Q Okay. So the catalog is primarily for the
10 wholesale part of Biker Design's business?

11 A Correct.

12 Q Okay. Where did you get the, what I'm going
13 to call the items M55, the ladies' tank tops with the
14 skull and cross bone -- or skull and barbwire design?

15 A Where did I get them?

16 Q Correct.

17 A I got them from -- from Turkey.

18 Q And where -- where did you find them to bring
19 to this deposition?

20 A Where did I -- one of them was sent to my
21 attorney.

22 Q Uh-huh.

23 A The other one is still sitting in my -- in my
24 warehouse as an item.

25 Q Okay. How many others do you have in your

1 warehouse?

2 A This item?

3 Q Yes.

4 A Talking about pieces. Not even dozens. Maybe
5 a few pieces I still have it in my warehouse. I mean
6 very --

7 Q Less than a dozen?

8 A Yeah. Less than a dozen. I don't believe I
9 have any more than that.

10 Q The other two items that you brought, I think
11 you described as ladies' long-sleeve --

12 A Yes.

13 Q -- shirts with the skull and barbwire --

14 A Uh-huh.

15 Q -- design on the sleeves?

16 A Uh-huh.

17 Q Are they represented on this invoice, Exhibit
18 G?

19 A No.

20 Q From whom did you order the ladies'
21 long-sleeve shirts?

22 A Same company.

23 Q Same company as --

24 A Biker Tekstil.

25 Q When were they ordered, approximately?

1 A No answer. I can't remember the dates.

2 Q Was it before or after you got the tank tops
3 in 2002?

4 A It has to be after that.

5 Q How many of the ladies' long-sleeve shirts do
6 you have remaining in your warehouse at Biker Design?

7 A I don't remember. In the inventory we're
8 talking about maybe one box. No more -- no more than --
9 no more than a box or so.

10 Q How -- how many are in a box?

11 A Approximately -- these are long-sleeve, there
12 has to be like 72 pieces maybe. I didn't count them
13 before I came here, so I don't know.

14 Q Okay. Was the order placed over a year ago?

15 A These?

16 Q The long-sleeve shirts.

17 A No. This came in probably at least a couple
18 years ago, maybe 2004.

19 Q Do you recall how many orders of the women's
20 long-sleeve shirts were placed with Biker Tekstil?

21 A No idea. With regards to this particular
22 design?

23 Q Correct.

24 A I have no clue.

25 Q Who would have that information?

1 A I will have to dig it for you and try to find
2 it.

3 Q Is there somebody at Biker Design that would
4 have that information?

5 A No. Because I will have to find the invoice
6 like this to be able to find it.

7 Q Okay. Do you have an in-house accountant?

8 A No.

9 Q Do you have somebody that --

10 A I mean that does -- we have our -- Kitty or
11 Deborah Brown, is the person that takes orders, answers
12 the phone and does day-to-day, you know, writing checks,
13 bookkeeping and that kind of stuff.

14 Q What sort of bookkeeping does she do?

15 A She does invoices -- so does Maria -- to the
16 customers.

17 Q How do they keep track of the invoices?

18 A It's done on Quick Books.

19 Q How long has Biker used Quick Books?

20 A Three years, I believe.

21 COURT REPORTER: I'm sorry?

22 THE WITNESS: Three, three years. Two or
23 three years, something like that.

24 BY MS. WESTON:

25 Q So roughly since 2003?

1 A 2002 or 2003, I believe so. 2003 would be a
2 better estimate, I believe.

3 Q Okay. And who enters the information into
4 Quick Books?

5 A Either Maria or Kitty, or Deborah Brown.

6 Q Is Kitty the same person as Deborah Brown?

7 A Kitty is the same person as Deborah Brown.

8 Q What do you keep track of in Quick Books? Do
9 you keep track of accounts payable in Quick Books, the
10 bills that come into Biker?

11 A Accounts payable and accounts receivable.

12 Q Do you balance your checkbook on Quick Books?

13 A No. I think my accountant does all that.

14 Q How did you first become aware of the design
15 that's on the four shirts that you brought with you, the
16 barbed wire and skull design?

17 A How did I become aware?

18 Q Right. How did you find out about it?

19 A Sample showed up from overseas from Biker
20 Tekstil, uhm, like it happens every year. We receive --
21 I just received right now another two boxes of samples
22 with, you know -- with the item numbers on them. These
23 samples came and we tried -- that was the very first
24 time we had become aware of this -- these particular
25 items.

1 Q What was it about the design on the tape, the
2 barbwire and skull design, that made you decide to order
3 the product?

4 A Barbwire and the skull.

5 COURT REPORTER: I'm sorry?

6 THE WITNESS: Barbwire and the skull and --
7 and the tape itself. I mean, I seen the same tape.
8 I use the same tape with different things on them.
9 Might have some things on -- and I have samples of
10 it, I can provide it. I have like 50 different
11 items just like this, except it has different items
12 on them.

13 BY MS. WESTON:

14 Q Different tape?

15 A Same tape, different -- different logos on
16 them.

17 Q Okay. Was -- was the tape something that you
18 thought that your customers would like, is that why you
19 ordered it?

20 A Well, no, it's -- I mean, I -- I mean, a skull
21 and a barbwire is a very common thing on biker industry
22 or biker apparel goods. So -- and I also had -- I also
23 had a T-shirt that was being done by another company
24 that has a skull and a barbwire too, which was Hot
25 Action Sports. But it was -- was the one that was doing

1 the T-shirt design for me.

2 Q Uh-huh.

3 A Okay. So we thought it was a good idea to
4 have this kind of thing on them, too. And when we first
5 saw it, we liked it. We tried it on this first. It
6 didn't work. Then -- then they had a sample of this,
7 these long-sleeves. These last a little while longer
8 until we became aware of this situation.

9 Q Okay. Did you have any discussions with Biker
10 Tekstil about how it became aware of the design on the
11 tape?

12 A Apparently this tape -- and I seen it
13 myself -- this tape and similar to these tapes are being
14 sold in overseas in, they call them, narrow woven
15 garment districts. And, apparently, somebody over there
16 have -- have created something like this, is my -- my
17 answer from them is -- and they just buy it, sew it into
18 a garment and send them over here as a sample and it
19 became an item.

20 Q So Biker Tekstil explained to you that they
21 purchased that tape in a garment district somewhere?

22 A In Istanbul.

23 Q Okay.

24 A Now whether that company got it from someplace
25 else is another story.

1 Q Did they tell you the name of the company from
2 whom they purchased that tape in Istanbul?

3 A No, they haven't.

4 Q Who was it at Biker Tekstil that you spoke
5 with about this?

6 A Mr. Bozkurt. B-O-Z-K-U-R-T is his last name.

7 Q And where is he located?

8 A He's located in Istanbul.

9 Q Did you discuss this with him verbally or did
10 you exchange letters or E-mails.

11 A No. I just discussed it with him verbally.

12 Q Do you recall when you talked with him about
13 this?

14 A No, I don't.

15 Q Is it after the lawsuit?

16 A Discussed with him what? The --

17 Q The origin of the design.

18 A Yes, of course. After I became aware of this,
19 there was a problem with another company, I discussed it
20 with him.

21 Q On what other products did Biker Design --
22 well, let me start over.

23 Biker Design sold women's tank tops and
24 women's long-sleeve shirts with this design that's the
25 source of this lawsuit on the sleeve; is that correct?

1 A This isn't a sleeve. This is not on a sleeve.
2 This is in the chest area.

3 Q Okay. What other products --

4 A Might have had some with the short-sleeve,
5 same -- same format just, you know, cut the sleeves.

6 Q Uh-huh.

7 A We might have some short-sleeves done with it
8 as well.

9 Q What about cropped tops?

10 A Not that I know of.

11 Cropped tops? I don't believe so, no.

12 Q How would you determine for certain whether
13 there were any cropped tops produced with that design on
14 them sold by Biker?

15 A I don't remember any. If there was,
16 somebody -- somebody should -- better show me one.

17 Q Would anybody else with Biker Design have more
18 knowledge than you about what --

19 A No.

20 Q -- products there were?

21 A No.

22 Q What about a long-sleeve, zip-up product with
23 that design on it, do you recall that?

24 A Long-sleeve, zip-up?

25 Q Right.

1 A No, I don't.

2 Q Was the women's tank top that you brought with
3 you, was that the very first product that you received
4 from Biker Tekstil that had the design on it?

5 A I received both of them approximately the same
6 time --

7 Q Oh, okay.

8 A -- as a sample.

9 Q As a sample.

10 Did you order both of them at the same time
11 from Biker Tekstil?

12 A Approximately, yes.

13 Q When you say "approximately," what do you
14 mean? It could have been a week apart or it could have
15 been months apart?

16 A It could be. It could be months apart. It
17 could be week apart. I mean I might have only ordered
18 the tank tops first. Then I might do an event -- and
19 looking at the date in here, this is 9/27, very close to
20 Myrtle Beach and other time frames. I might have
21 ordered a long-sleeve a month apart. I -- I don't
22 remember.

23 Q Okay. What tells you on Exhibit G that this
24 M55 refers to the women's tank top with the design on
25 it?

1 A I know what it is. I know it's part of this
2 item.

3 Q Okay. What is the phrase *Easy Rider* next to
4 M55 refer to?

5 A That was the style num -- style name.

6 Q Okay. What are these other products on here?
7 M36, what does that say?

8 A M36 was Southern Steel.

9 Q What kind of a product was that?

10 A Is -- 36 has to be a tank top. M10 is a --
11 M10 is approximately -- it's a lace-up, either
12 short-sleeve or a long-sleeve item. And M29 is a --
13 it's a -- it's an item with three or four buttons in
14 there and three quarters of a sleeve. M57 is a buckle
15 tank top with a bra on the inside. M45B is a -- is a --
16 it's a satin trim short-sleeve. How I know that is B is
17 a short-sleeve. Usually A is a tank top. And the C is
18 a long-sleeve on my abbreviations typically. And this
19 item -- not every item comes with a tank top,
20 short-sleeve and a long-sleeve.

21 Q Okay.

22 A But this 45 does. That's how I know.

23 Q So A you said is a tank top, B short-sleeve, C
24 long-sleeve?

25 A Ninety percent of the time.

1 Q Okay.

2 A Not every time, but 90 percent of the time.

3 Q Okay. What is the notation down at the bottom
4 here?

5 A That's how many boxes on that shipment is, 20
6 boxes in men's denim, cut-off.

7 Q Right.

8 A Nineteen boxes is these items, which is 19
9 plus 20 is equal to 39 boxes.

10 Q Okay. And then this is the total price over
11 here?

12 A Correct.

13 Q These are all U.S. dollars; is that correct?

14 A Correct.

15 Q You said that you received both the
16 long-sleeve shirt and the tank top around the same time
17 as samples. Who was involved in the decision to sell
18 those products, to make the order, I guess, let me start
19 with that? Who was involved in making the decision to
20 order those products from Biker Tekstil?

21 A Probably both myself and Nir.

22 Q Okay. Where were those products sold?

23 A Where were they sold?

24 Q Correct.

25 A First it was sold in some retail operations.

1 Q I'm sorry. Did you say first --

2 A Some -- some retail operations.

3 Q But neither of them made it into the catalog;
4 is that true?

5 A No. This never made it to the catalog.

6 Q Okay.

7 A This did.

8 Q Okay.

9 A This has more success than this did. So this
10 made it to the catalog we decided to carry over to the
11 next year.

12 Q Okay. What about the short-sleeve product
13 that you said --

14 A There is no short-sleeve -- oh, short-sleeve
15 of this?

16 Q Correct.

17 A It was only done maybe one -- one production
18 run. But it never made it to the catalog, so we
19 eliminated.

20 Q Who produced the catalogs for Biker Design at
21 the time that product -- the long-sleeve product was
22 sold?

23 A Produced the catalog, generated the catalog or
24 designed the catalog? There's three different people
25 involved with it.

1 Q Uhm, let's start with designed it. Who
2 designed it?

3 A Who designed the catalog?

4 Q Correct.

5 A Myself, Maria, Nir. And we all put our sense
6 in it; not dollars. And David from Graphic Group did
7 the layout of the catalog.

8 Q Is Graphic Group a company located here?

9 A Uh-huh. In Daytona Beach. The answer was
10 yes; not uh-huh.

11 Q Did -- did Graphic Group run the catalog for
12 you and make copies of it?

13 A No.

14 Q Who did that?

15 A It was done overseas.

16 Q Okay. Who -- who did the actual copying for
17 you overseas?

18 A I have no clue. I don't remember the name of
19 the company.

20 Q Was it just a color copy service essentially?

21 A No. It was offset printing company.

22 Q Okay.

23 COURT REPORTER: I'm sorry?

24 THE WITNESS: Offset printing company.

25

1 BY MS. WESTON:

2 Q Do you still use the same company?

3 A Well, I -- I used them once or twice so far.
4 So if I make another catalog, yes, I will use them.

5 Q Do you make a catalog every year?

6 A We make a catalog just about every year. But
7 we're not making one for 2007 season.

8 Q Why not?

9 A Because we have enough products for 2006.
10 Plus, some cost-savings activities.

11 Q Do you keep copies of the old catalogs?

12 A Uh-huh. Yes.

13 Q In the binder in front of you at tab C, if you
14 would turn to that, please. The first page is Bates
15 Numbered 0345.

16 A Yes. That's one of our catalogs, few years
17 ago.

18 Q I think there's two catalogs here. But I'd
19 like for you to tell me exactly what these documents
20 are.

21 These are documents, by the way, that you
22 produced to us --

23 A Yeah.

24 Q -- in response to our request.

25 It looks like the first catalog runs from page

1 345 to 372. Can you just tell me if that's --

2 A How do you know the page numbers?

3 MS. OONK: It's down lower.

4 THE WITNESS: Okay.

5 No. This is our first catalog. Page 363 and
6 364 is our very first page -- very first catalog we
7 had. This was produced. And here's your address
8 in Holly Hill, 1526 State Avenue.

9 BY MS. WESTON:

10 Q Okay. Do you recall what year this was
11 produced?

12 A '96 or '97. Now page 365, 66, 67, 68, 69 and
13 70 is the next generation of catalog. 65 through 66,
14 67, 68, 69 and 70 -- now there's a catalog missing in
15 between, which is very similar to this third generation,
16 that's actually a second generation.

17 Q And when you say the third generation, you're
18 talking about pages 365 to 370, correct?

19 A 365 through 370 is our third generation.

20 Q When was this catalog produced?

21 A '99 maybe. Maybe. Maybe '99. No, maybe
22 2000, I don't know. Some --

23 Q It's showing a Sun Dunes Circle address on the
24 front, if that helps you.

25 A That means I'm still operating out of my house

1 then.

2 Q Okay. And which catalog came after that?

3 A After the third generation, I would have to
4 say, this number -- the page that start with 345. I
5 believe that was the next one. That goes all the way to
6 page 362, I believe, 345 to 362.

7 MS. OONK: And let me just -- just interject
8 something, too.

9 THE WITNESS: That's not our catalog.

10 MS. OONK: I'm looking at this. From 373 to
11 404 is not their catalog. That's somebody else's
12 catalog.

13 BY MS. WESTON:

14 Q Okay. So 345 to 362 you said?

15 A 362, but you're going to have include page
16 372.

17 MS. OONK: Somehow it got separated.

18 THE WITNESS: Yeah. Somehow it got separated.

19 372 should be part of the catalog that adds to 362.

20 BY MS. WESTON:

21 Q And should 371 also be part of it?

22 A Yeah, it should be. Yes.

23 Q What year was this catalog produced?

24 A Maybe 2000. Maybe 2001. And the other
25 catalogs are not --

1 Q What is the significance of the catalog that's
2 numbered 373 to 404?

3 A I'm sure there was some designs with the
4 barbwire and skull on it.

5 Q Are either of the two shirts that you brought
6 with you, the women's long-sleeve or the tank top, are
7 either of those two styles in the catalogs that are
8 numbered pages 345 through 372?

9 A No.

10 Q How did you make orders or give instructions
11 to ship products to you to Biker Tekstil?

12 A Typically I either verbally tell them or I get
13 them in writing. And I -- I go and either fax it to
14 them -- typically it's been just the fax orders.

15 Q Do --

16 A And then once the order is in, it's in. And
17 I'm done.

18 Q Did anyone else communicate with Biker Tekstil
19 from Biker Design or just you?

20 A Myself and once in a while Mr. Iskander does.

21 Q On the --

22 A Ninety-five percent or 99 percent of the time
23 I'm the contact person and, you know, I do the
24 contacting.

25 Q Do you retain copies of those faxed orders to

1 Biker Tekstil?

2 A No, I don't.

3 Q What do you --

4 A Once the order is delivered, I don't retain
5 copies of that.

6 Q Do you keep the faxes until you get the order
7 in?

8 A Yes.

9 Q Where do you keep them?

10 A In my office.

11 Q Where in your office?

12 A In a binder right above my head. In a shelf.

13 Q Okay. In your interrogatory response to the
14 question asking about which -- what sorts of items
15 contain the design, and by the design I mean the design
16 on these shirts that you brought with you --

17 A Barbwire and skull, yeah.

18 Q -- the skull and barbwire design. When we
19 asked you which items containing those designs -- that
20 design were purchased by Biker, the answer was that
21 ladies' short-sleeve shirts, ladies' cropped tops,
22 ladies' tank tops and ladies' long-sleeve shirts were
23 purchased.

24 A This is almost like a cropped top and a
25 short-sleeve, you know. Short-sleeve and a long-sleeve,

1 as I indicated.

2 Q So the reference to ladies' cropped tops is
3 incorrect; is that right?

4 A Yeah. You can call it that, if you want. I
5 guess it is incorrect. It should only be three styles.

6 Q Okay. And what are the three styles then?

7 A Let's call this a tank top from now on.

8 Q Okay.

9 A Not a cropped top.

10 Q Okay.

11 A The same item, long-sleeve.

12 Q Okay.

13 A And the same item in a short-sleeve.

14 Q Okay. Do you recall what the item number was
15 at Biker Design for each of those three?

16 A I believe 55. 5 and 5A possibly. I'm 99
17 percent positive it's 5. But I don't remember which one
18 is 5, which one is 5A.

19 Q Okay. So it's 5, 5A. And then what's the
20 third number?

21 A Fifty-five.

22 Q And the 55 is the reference on there to the --

23 A Tank top.

24 Q -- tank top?

25 A Yes.

1 Q When we asked you in the interrogatories to
 2 identify the costs of all of the items that Biker Design
 3 purchased that contained that design, you gave a
 4 response of \$5.50.

5 A On the short-sleeve and a long-sleeve
 6 approximate cost was 5.50.

7 Q What documents did you look at to come up with
 8 that number?

9 A An invoice something similar to this.

10 COURT REPORTER: I'm sorry?

11 THE WITNESS: Invoice very similar to this.

12 And also the document in our -- in our Quick Books,
 13 the cost is written there. The cost is in the
 14 Quick Books.

15 BY MS. WESTON:

16 Q What sort of cost information is in Quick
 17 Books?

18 A What each -- each item approximately costs.

19 Q And is it in there because when you get an
 20 invoice in, it goes in through your accounts payable?

21 A Uh-huh.

22 Q That was yes?

23 A Yes. But the Quick Books somehow it has a
 24 tendency to -- I've been battling with this thing -- it
 25 has a tendency to average things out. Because every

1 time you get them one day it might be 5.25, the next
 2 time the cost goes up to 5.50. It has a tendency to
 3 average it. So when I answered that question on the --
 4 I came up with the \$5.50 as a -- as a number. Then it
 5 could be 25 percent less or more, up to --

6 MS. OONK: And I think when you -- you meant
 7 25 cents not --

8 THE WITNESS: And that's the reason for
 9 that -- 25 cents.

10 MS. OONK: -- not 25 percent.

11 THE WITNESS: Not 25 percent. Be 25 cents.

12 BY MS. WESTON:

13 Q And why -- and why would it vary?

14 A Because Quick Books has a tendency to average
 15 it. So my latest cost I believe I pay 5.50.

16 Q Okay.

17 A Okay. But when I start buying them, it might
 18 have been \$5.

19 Q And is it possible that if you checked again
 20 today, it could be a different number?

21 A I can only give you what's the -- what's the
 22 last time I bought this. I haven't bought this for a
 23 while.

24 Q Do you recall --

25 A If I asked them to give me another price, it

1 could be a different number, yes.

2 Q If you asked who?

3 A If I asked the manufacturer to give me a
4 number --

5 Q Okay.

6 A -- what it would cost to manufacture this item
7 today, it could be a different number as well.

8 Q Okay. But if you checked on Quick Books
9 today, would it still be 5.50 or roughly 5.50?

10 A It should be -- it should be anywhere between
11 5 and 5.50, yes.

12 Q Okay. On Quick Books do you keep the
13 information for each style separately?

14 A Yes.

15 Q So you could inquire as to the cost of item 5A
16 separately from the --

17 A Uh-huh. Yes. Sure, you can.

18 Typically just for your -- just for your
19 information, typically an item, be short-sleeve and a
20 long-sleeve, cost variation is no more than 50 cents.

21 COURT REPORTER: No more than?

22 THE WITNESS: Fifty cents.

23 BY MS. WESTON:

24 Q Who is the principal of Biker Tekstil?

25 A I have no clue.

1 Q Who is it that you deal with at Biker Tekstil?

2 A Mr. Bozkurt.

3 Q How did you become acquainted with
4 Mr. Bozkurt?

5 A He's a manufacturer. And he's married to my
6 sister.

7 Q So how long have you known him?

8 A Fifteen years, 17 years.

9 Q Do you own any part of Biker Tekstil?

10 A No.

11 Q Do you know if Mr. Bozkurt is an officer or a
12 shareholder?

13 A I have no clue.

14 Q Do you know what sort of corporate, or what
15 business form, Biker Tekstil is? Is it a corporation?

16 A I really don't have any idea.

17 Q Is there anyone else, other than Mr. Bozkurt,
18 that you dealt with at Biker Tekstil?

19 A No.

20 Q How long has Biker Design been doing business
21 with Biker Tekstil?

22 A Seven, eight years.

23 Q How -- explain to me how the business
24 relationship started between Biker Design and Biker
25 Tekstil.

1 A Were looking for -- to manufacture a certain
 2 item and I was -- we were looking for, you know, myself
 3 and Nir, were looking for places to manufacture it.
 4 And -- and I asked Mr. Bozkurt to see if they would be
 5 interested in manufacturing this item like this. And --
 6 and they tried it. And this was not an item that we're
 7 talking about. This was a completely different item.

8 Q Okay.

9 A And it manufactured -- they made us samples
 10 and we liked it and we negotiated a price. And that's
 11 how our business relationship started.

12 Q Do you recall what the item was that you were
 13 looking for?

14 A Yeah. It was sleeveless denim.

15 COURT REPORTER: I'm sorry?

16 THE WITNESS: It was sleeveless denim.

17 BY MS. WESTON:

18 Q So your relationship -- or I'm sorry. Is
 19 Biker Design's relationship with Biker Tekstil the same
 20 as it is with other suppliers in terms of payment,
 21 pricing --

22 A Of course.

23 Q -- the way business is conducted?

24 A Yes. Definitely.

25 Q You said that you placed orders either by

1 telephone or by faxing them to Biker Tekstil. Are the
 2 orders then confirmed by Biker Tekstil or do they just
 3 produce the product for you?

4 A No. They just -- if they have a question,
 5 they call me. Otherwise, it's -- it's produced.

6 Q Does Mr. Giist own any part of Biker Tekstil,
 7 that you know of?

8 A No.

9 Q How does Biker Tekstil ship the orders to
 10 Biker Design?

11 A Through air or through -- via boat or ship,
 12 ship line, steam line.

13 Q When they go by air, do you -- are they sent
 14 Federal Express or how are they sent?

15 A No. Just through -- through airline.

16 Q What delivery process do they use or what
 17 delivery service?

18 A They use -- they use either different
 19 airlines, you know, whoever is -- whoever is -- they
 20 have room in their -- in their cargo and gets -- gets
 21 delivered by cargo.

22 Q Do they mail them?

23 A Mail?

24 Well, they might mail a sample to me, but --

25 Q Okay. When they ship the products, do the

1 products go through customs?

2 A Certain products go through customs. Certain
3 products don't.

4 Q Which ones go through customs?

5 A Denims go through customs. And sleeveless
6 denims go through customs and ladies' stuff goes through
7 customs.

8 Q Which products do not go through customs?

9 A All the decorative items don't go through
10 customs. Because they get -- they get shipped by DHL
11 Lines and -- and I don't believe those go through
12 customs. Unless DHL does it by themselves, I don't
13 know.

14 Q Okay. What are the decorative items that
15 you're referring to?

16 A These metal studs that we referred earlier.

17 Q The metal studs and decals?

18 A Yes.

19 Q Has Biker Design ever ordered just the tape
20 that has the design involving this lawsuit on it from
21 Biker Tekstil?

22 A Never, but it could.

23 Q It could?

24 A If it wants to, yeah. We never did it. But I
25 could order it.

1 Q Does Biker Tekstil supply Biker Design with
2 certain tapes for products?

3 A No. We only buy the item that is in this
4 particular format. We don't buy components of an item.

5 Q Okay. Do you know if bills of lading were
6 prepared for the products that were shipped that went
7 through customs?

8 A I'm sure they were.

9 Q Does Biker have copies of them?

10 A I'm sure I could probably find you some of
11 them.

12 Q Do you recall what the delivery service is
13 that used -- was used by Biker Tekstil to deliver them
14 by air or steam liner?

15 A It was -- in some occasions they were both
16 used. Some airliner. Some -- some steam liners, I'm
17 sure.

18 Q But do you remember the brand of the delivery
19 service?

20 A No.

21 Q Where would you have kept copies of any of the
22 bills of lading, if you have them?

23 A If I have them, I have to dig through them.

24 Q Where would you dig through?

25 A Wherever I keep all of my records.

1 Q Which is where?

2 A Some in my warehouse. And -- and I believe
3 some located -- I might even have some old ones in my
4 garage from 1990 -- 1999 and 19 -- 2000 even.

5 Q And when you say your warehouse, you mean the
6 warehouse at 777 --

7 A At 777 Main Street, yes.

8 Q Okay. Would anybody else have any copies of
9 bills of lading or shipping documents?

10 A I'm sure Mr. Bozkurt might have them.

11 Q What is Mr. Bozkurt's phone number?

12 A 0 -- 011905325508476.

13 Q What time is it in Istanbul relative to
14 Daytona Beach?

15 A Seven hours ahead.

16 Q Are the invoices from Biker Tekstil sent
17 typically with the order when it's shipped to Biker
18 Design?

19 A Typically or shortly after -- thereafter.

20 Q If they come separately, are they generally
21 faxed?

22 A Yes.

23 Q How does Biker Design pay Biker Tekstil?

24 A We pay them via wire transfers.

25 Q U.S. dollars?

1 A U.S. dollars.

2 Q Any payments by check?

3 A Any payments by check?

4 Nope. Not unless I'm instructed. But I don't
5 really recall any -- any payments that was made by
6 check. I don't believe.

7 Q Who do you contact at Biker Tekstil if you
8 have a complaint or a problem with the products?

9 A Mr. Bozkurt.

10 Q Do you know if Biker Tekstil has supplied
11 these products, or any products, that contain this
12 design with the barbwire and skull to anybody other than
13 Biker Design?

14 A I'm not aware of it. But they might have.
15 They have many customers.

16 Q Where does Biker Tekstil do business, if you
17 know?

18 A They do -- they do business in Turkey and they
19 also do a lot of business in Europe.

20 Q Is it a large company?

21 A What determines large company?

22 Q Do you have any idea how many employees Biker
23 Tekstil has?

24 A No.

25 Q How long has Mr. Bozkurt been -- been employed

1 by Biker Tekstil?

2 A No idea.

3 Q Would you turn please in the notebook in front
4 of you to tab A. And I'd ask you to look at the
5 document that's page number 0001, please.

6 A Okay.

7 Q What is this document?

8 A It's an invoice.

9 Q Is this an invoice that was printed off of
10 Biker Design's Quick Books program?

11 A I believe -- I believe it is.

12 Q Who would be able to tell me for sure whether
13 it was printed from Quick Books or not?

14 A I can and Kitty can.

15 Q Well, you said you weren't sure.

16 A I didn't say I wasn't sure. I said I believe
17 it is.

18 Q Okay. It says under the model number column,
19 5A black.

20 A Uh-huh.

21 Q Black, long-sleeve, silver skull stripe.

22 A Okay.

23 Q What product is it that that describes? Is
24 that one of the shirts that you brought with you today?

25 A I believe so. I believe now -- says 5A,

1 black, long-sleeve. So I guess A refers to as a
2 long-sleeve.

3 Q Okay.

4 A I have to believe that now A is long-sleeve.
5 So either this item or that item. 5 is referring to as
6 a black, so it must be this one.

7 Q Okay. And by "this one," you're talking about
8 the one --

9 A The long-sleeve black ladies' top with the
10 barb and skull wire on it.

11 Q Okay. The tape that's black in the
12 background, correct?

13 A I should have some other indication if it's
14 orange tape.

15 Q Okay.

16 A It might be black slash orange.

17 Q Okay.

18 A Type of abbreviation.

19 Q So does this invoice, which is page number
20 0001, is this reflecting that you were selling these
21 products for \$6.50 each to Towl World?

22 A That's correct.

23 Q So is the profit that Biker Design was making
24 on one of these long-sleeve shirts with the tape, with
25 the design down the sleeve, a dollar a shirt roughly?

1 A Roughly. But that item should be close to \$7,
2 isn't it? Let me see. 6.50 -- close to 7 typically or
3 6.50.

4 Different invoices for 6.75 in the foregoing
5 pages. And there's another invoices on page number 0063
6 is \$7.50.

7 Q Why would some customers be paying 7.50 and
8 some be paying 6.50?

9 A I believe we increased the price or something
10 might have happened. Looks like the first one is on
11 7/22. And invoice on 2/14 is 7.50. We might have
12 increased the price at that point. I'm not sure.

13 Q How often does Biker Design look at prices to
14 decide whether --

15 A Typically once a year.

16 Q What time of year is that adjustment made?

17 A Usually around -- right before the season
18 starts. Usually in, you know, November, December or
19 when we're working on the new catalog.

20 Q Who does --

21 A You have to write down the cat -- the prices
22 on the catalog. So that's when we really take a look at
23 it.

24 Q Who is involved in making a decision about
25 pricing?

1 A Myself, Nir and, you know, Maria gets small
2 bit -- because whether she has any receptive phone
3 customers on the pricing and all of this, and we ask for
4 her input.

5 And this item I've seen it as high as 8.50,
6 but that was an oversize item.

7 Q Which page is that?

8 A Page 0086.

9 Q What does oversize mean? It's an extra large
10 size?

11 A It's a 2X.

12 Q Okay. Who gathered --

13 A Looks like we -- we -- we increased the price
14 on February to 7.50 -- no. Beginning of the year we
15 increase it to 7.50, that's what it looks like. It's
16 quite possible.

17 Q Who gathered all of these documents that are
18 collectively Exhibit A?

19 A Kitty pulled it out of the computer.

20 Q Do you know what steps she took to print these
21 out, what the query was that she entered into the
22 computer to get these?

23 A I asked her to print anywhere -- anything to
24 do with a 5 and a 5A out of the computer for you guys.

25 Q And what about 55?

1 A 55 would have never made it to the computer.

2 Q Why not?

3 A Because it wasn't a successful item. It never
4 made it to the catalog. So we never even priced the
5 item for anything.

6 Q When you say you never would have priced it,
7 you mean priced it for the purpose --

8 A For wholesale. We never -- never even tried
9 to sell that item for wholesale.

10 Q Okay.

11 A So it will never make it to the com --
12 computer. But at the time -- I mean maybe it is there.
13 I don't know. You know, I can always ask. See if it
14 ever made it there.

15 Q We certainly intended to ask for information
16 regarding long-sleeve, short-sleeve, tank tops, cropped
17 tops, whatever.

18 A My -- my, you know, first understanding was we
19 were only talking about a stripe on a shoulder, you
20 know. I didn't think we were talking about this item
21 before.

22 Q Okay.

23 A So my -- my initial research and everything
24 was strictly concentrating on these items.

25 Q Okay.

1 A 5 and 5A.

2 Q What about -- you said the tank top was 55.
3 The long-sleeve is 5A. The short-sleeve is 5. Correct?

4 A It appears that way. Try to find a five here.
5 See if I can find it.

6 Q I'll save you some time. There aren't any
7 item 5's in there.

8 A No?

9 Q No.

10 A Oh, okay.

11 Q That brings me to my next question, which is
12 what would we do to get a printout of invoices that
13 reflect model 5 on them as opposed to 5A?

14 A If it's in the computer, it's just a matter of
15 printing them tomorrow and providing it to you guys.
16 But maybe there wasn't any. I don't know.

17 MS. OONK: If I can interject something, too.
18 We probably misunderstood when we were producing
19 these to relate that 5 was an issue. Because I
20 thought it was only 5A too for some reason. And I
21 don't know why I thought that.

22 So I can go back and look at the invoices that
23 they gave us and see if there are any 5's on there.

24 MS. WESTON: Okay.

25 MR. GIIST: I think 5 is a different item.

1 The one that says --

2 THE WITNESS: But that's on the new catalog.

3 MR. GIIST: Oh.

4 THE WITNESS: On the new catalog we have studs
5 in here instead of barbwire.

6 BY MS. WESTON:

7 Q Uh-huh.

8 A So there's no images there, just little studs
9 on them. That item on the new catalog is also number 5.

10 Q Okay.

11 MR. CARLSON: Excuse me, counsel. We need to
12 go off the record to change the tape.

13 MS. WESTON: Okay.

14 MR. CARLSON: We're off the record at 3:16.

15 (Whereupon, a break was taken in the testimony.)

16 MR. CARLSON: We're back on the record at
17 3:32.

18 BY MS. WESTON:

19 Q Mr. Recel, does Mr. Bozkurt speak English?

20 A Very little.

21 Q And I think you said that he's married to your
22 sister?

23 A Correct.

24 Q How long has he been married to your sister?

25 A Got to be close to 25 years.

1 Q And so you've known him for at least 25 years
2 then; is that correct?

3 A I know of him for 25 years. I know him
4 personally only in the last probably 15 years or so.
5 Because I was in this country when the -- (inaudible) --
6 took place.

7 Q Okay. And during that entire 15 year period
8 has he worked for Biker Tekstil?

9 A I don't know.

10 Q When is the earliest time that you became
11 aware that he worked at Biker Tekstil?

12 A '99, 2000 maybe.

13 Q And how did you find out that he worked at
14 Biker Tekstil?

15 A Because invoices -- invoices start coming
16 under Biker Tekstil.

17 COURT REPORTER: I'm sorry?

18 THE WITNESS: Invoices were coming with Biker
19 Tekstil name on it.

20 BY MS. WESTON:

21 Q Were you -- was Biker Design ordering from
22 Mr. Bozkurt before the invoices showed Biker Tekstil?

23 A No. Showed some other company.

24 Q Do you recall the name of the other company?

25 A No, I don't.

1 Q Approximately what year was that when the
2 invoices began showing Biker Tekstil?

3 A I really don't know. I mean, I don't want to
4 guess it and give you the wrong information.

5 Q Was it earlier or later than 2000, do you
6 think?

7 A I believe it's later than 2000.

8 Q And so how long has Biker Design been ordering
9 from Mr. Bozkurt's company, whichever company that might
10 be?

11 A No more than, you know, six, seven years that
12 we've been doing the wholesale.

13 Q And how did the relationship, the supplier
14 relationship with Mr. Bozkurt's company, whichever
15 company it was, how did that come about?

16 A Again, we were looking for a supplier to
17 manufacture an item, which was sleeveless denim and --

18 Q Okay.

19 A And we gave it to about four or five different
20 suppliers. Some responded. Some didn't. And his was
21 one of the -- one of the companies that responded
22 saying, yeah, I can make this. And they provided a
23 sample. And then we negotiated a price. And we started
24 our relationship at that point.

25 Q Okay. But that company wasn't Biker Tekstil,

1 it was the other company?

2 A No. Exactly.

3 Q Okay. I think you mentioned earlier that
4 you're not doing a new catalog. And "you" being Biker
5 Design.

6 A Yes.

7 Q Does that mean this upcoming season, beginning
8 in 2007, there won't be a new catalog?

9 A No. The same catalog -- see, last year's
10 catalog came sometimes in March, I believe, even though
11 we produced it in December time frame. So we're going
12 to continue the same catalog and have some special items
13 only for special customers.

14 Q So -- I'm sorry. You said it was produced in
15 December of 2005 and you actually got it in March of
16 2006?

17 A Uh-huh. Yes.

18 Q So there won't be a catalog for 2007?

19 A Well, we might produce it in 2007. But it
20 might be late 2007.

21 Q Okay. And then that would be the catalog that
22 you use beginning spring season of 2008?

23 A Yes.

24 Q Okay. If you were going to try to determine
25 the purchasers of products containing the design -- of

1 products that were sold by Biker Design that contained a
2 design at issue in this lawsuit, how would you go about
3 doing that with regard to the retail sales made at
4 different events?

5 A Got to rephrase the question. I didn't quite
6 understand.

7 Q Okay. I'm sorry.

8 That was a bad question. Let me try again.

9 What sorts of records does Biker Design have,
10 if any, of retail sales by product at the events?

11 A We have -- we only have records only probably
12 by design of the T-shirts. But not really design of the
13 items. And I phrase it as like this. If this item gets
14 a design in front of it -- obviously it's going to get
15 some decoration, let's say.

16 Q Uh-huh.

17 A And so I have my list. I don't have my list
18 by design by item. I have it design -- I have it by
19 design, not by the item.

20 Q Okay.

21 A So I pay more attention to the decoration of
22 the item, rather than the item itself.

23 Q Rather than the item number?

24 A Yes. Let's say I'm going to put flowers on
25 this thing, my records will only say flower design for

1 such and such an event. I will know what -- what my
2 quantities in there. You will not -- you will not
3 specify which items were sold the most.

4 Q Okay. What -- what sorts of records like that
5 do you keep?

6 A I only keep it for -- from event to event. I
7 mean, I usually prepare a list to our, you know -- our
8 people in the warehouse and then I give them the list
9 and they pull it -- they pull from the stock what I
10 want -- what I want them to pull out of the stock.

11 Q Okay. And then how do you track those sales
12 with regards to Biker Design, say, for income tax
13 purposes?

14 A Just the sales that I reported after every
15 event, just about in every -- every state.

16 Q But -- but how are they reported? Do you
17 bring back the amount of cash and credit card sales that
18 you made at a retail event?

19 A Whatever goes into our bank, that's -- and,
20 you know, we keep track of our sales from every -- every
21 location. Then we report those sales from every
22 location as a total sales for that event.

23 Q Okay.

24 A So, let's say, I have ten locations, let's
25 say, they each made \$10, at the end of the event I have

1 \$100 in sales.

2 Q So Biker Design doesn't keep any sort of
3 running inventory?

4 A Not during the special events, no.

5 COURT REPORTER: Not during what? I'm sorry?

6 THE WITNESS: Not during special events.

7 BY MS. WESTON:

8 Q During the rest of the year does it?

9 A No.

10 Q Were all of the sales proceeds that you
11 mentioned did they go into Biker Design -- Biker
12 Design's account, bank account?

13 A Everything goes into the Biker Design bank
14 account.

15 Q Okay. And then is -- are all of the sales
16 proceeds reported on Biker Design's federal income tax
17 returns?

18 A That's correct.

19 Q Are you able to determine exactly how many
20 items are in Biker Design's inventory that have the
21 design on them?

22 A I don't understand the question again. I'm
23 sorry.

24 Q Are you able to go to the warehouse --

25 A Uh-huh.

1 Q At Biker Design and figure out a number of how
2 many shirts, for example, Biker Design has in stock that
3 have the design on them?

4 A Are you talking about decoration designs?

5 Q Right. Right. I'm sorry. By design, I'm
6 talking about the design at issue in this lawsuit that
7 has the barbwire and skull on it?

8 A Yeah. I'm sure.

9 Q Okay.

10 A Yes. Of course. As I say, kept in one area,
11 one small area.

12 Q Okay. Where -- where is that area in the
13 warehouse that they're kept?

14 A Upstairs in the warehouse.

15 Q Are they on a specific shelf or a specific
16 table?

17 A They're in a specific area, one corner --
18 corner of our warehouse, one corner.

19 Q Okay.

20 A It's not red-taped or anything like that. But
21 it is there.

22 Q When did you first start using the name Biker
23 Design on apparel?

24 A On apparels?

25 I actually start using them on T-shirts first

1 in 1993, I believe, or '92.

2 Q Okay. And was that at the time that you were
3 running the business out of your home?

4 A Yes.

5 Q What sorts of T-shirts did you use that name
6 on first?

7 A Just your regular round neck, basic T-shirt.

8 Q What -- what color were the T-shirts?

9 A Black, white, green, purple, forest green.
10 There might have been a few other colors. But I don't
11 really recall them right now.

12 Q Where did the name appear? Was it in a tag or
13 was it on the front or the back of the shirt?

14 A I change every T-shirt's label on the neck of
15 the shirt, I put Biker Design label on them.

16 Q Okay.

17 A Such as -- it was not this particular label,
18 but it says Biker Design with a cartoonish motorcycle
19 picture on them.

20 Q Okay. So the first time that you used the
21 name Biker Design was on a label like in the back of the
22 neck of a T-shirt?

23 A I tried very hard to find one of those labels.
24 I mean I think I can find wherever I bought them. But I
25 tried very hard to find one of them to give it to you

1 guys. But I can't find any.

2 Q Okay. When -- when did you first use the name
3 Biker Design on women's apparel?

4 A Probably more close to '97, '98 time frame.

5 Q We had asked you in the interrogatories to
6 describe the way that you first used the name Biker
7 Design. And you said it was on banners?

8 A Uh-huh.

9 Q What -- what sorts of banners did you mean?

10 A The banners that you would use to display the
11 name of your company and display maybe how much you're
12 selling your T-shirts for.

13 Q Okay. So are they banners --

14 A They're plastic banners, you know, the plastic
15 or rubberish banners you will see it on the -- you know,
16 on the tents or sale locations and, you know, sign
17 companies makes them.

18 Q Okay. Where -- where did you use the banners?

19 A I use them in a tent.

20 Q What did the -- what did the banners look
21 like?

22 A They were typically fluorescent colors, either
23 yellow or green. I think our old one was -- very first
24 one we created probably might have been black with green
25 and yellowish fluorescent colors. I can probably find

1 you one.

2 Q Okay.

3 A You got banners -- bunch of banners in our
4 warehouse.

5 Q Okay. Thank you.

6 The -- how did you go about transferring
7 ownership of the name Biker Design to the corporation
8 Biker Design when it was formed?

9 A Just -- just decided to do it, become a
10 company, rather than -- rather than operating out of our
11 garage basically. And, you know, we -- that very first
12 catalog that you saw over there, that was our first
13 time -- going and, you know, generating a catalog and
14 formed the company.

15 Q Okay. Was there any formal transfer of
16 ownership?

17 A No. No. No formal transfers.

18 Q Do Biker Design and Becker Designs have
19 similar customers?

20 MS. OONK: Objection to form.

21 BY MS. WESTON:

22 Q If you know.

23 A No, I don't know.

24 Q I'm sorry?

25 A I don't know.

1 Q Do you know what kind of business Becker
2 Designs is in?

3 A I've been to their shop. They're -- they
4 seems to make ladies' garments.

5 Q When were you at their shop?

6 A Few months ago.

7 Q What was the purpose of your being at their
8 shop?

9 A I never met them. I didn't know who they
10 were. I went to see what they were doing. And I
11 stopped by to talk to them about this problem,
12 basically.

13 Q Okay. Was that before Bike Week of 2006 that
14 you were there?

15 A I really don't remember. It might have been.

16 Q Was it around that time?

17 A I don't recall it. I mean, I don't know.
18 Maybe it was before or maybe it was after. Maybe it was
19 six months before that. I don't remember.

20 Q Okay. Well, I think you initially said it was
21 several months ago.

22 A It could be as late as a year, you know.
23 Before this lawsuit was filed, I can tell you that much.

24 Q Before the lawsuit was -- was filed?

25 A Filed, yeah.

1 Q Did you talk to Susan Becker when you were
2 there?

3 A I talked with both Susan Becker and the other
4 gentleman. I don't remember his name. Bob maybe.

5 Q What -- what did you discuss with them when
6 you were there?

7 A We discussed how we conduct our business and
8 how this came about. And -- and -- and discussed, you
9 know, they explained to them -- they explained to me how
10 they came up with this design and what they did. And --
11 and -- and part of the conversation is -- and I
12 basically told them, I said, tomorrow morning I'm
13 writing a check to my lawyer for \$8,000. I told them,
14 if you want I'll give you this check for \$10,000,
15 we'll -- you know, we'll shake our hands and we'll call
16 it even. That's what I proposed to them.

17 Q When you were there, did you acknowledge that
18 Biker Design had gotten the design involved in this
19 lawsuit, that is, the skull and barbwire design, from
20 Becker Designs?

21 A No. Never.

22 Q Where is Becker Designs' shop?

23 A Port Orange.

24 Q Where in Port Orange?

25 A I believe south of Dunlawton Avenue.

1 Q On what road?

2 A Ridgewood. Ridgewood. A1A. Something
3 like --

4 Q A1A is on the -- the beach.

5 A No. It would be --

6 Q US1?

7 A US1, yeah.

8 Q Okay.

9 A Because if you go to north, it becomes Yonge
10 in Ormond Beach. It changes names many times.

11 Q Do you -- do you ever see Becker Designs
12 selling their products at the same locations and same
13 events as Biker?

14 A No.

15 Q Have you ever seen Becker Designs' products in
16 the same stores as Biker -- Biker Design's products?

17 A Only store that I'm aware of, their product is
18 sold, that I personally have seen -- I personally never
19 paid attention to -- is the one right across from the
20 Corbin building on 777 Main Street. There's a brick
21 building. That's the only store that I seen their
22 products at.

23 Q And do you recall the name of that building?

24 A No idea.

25 Q And, I'm sorry, tell me again. It's directly

1 across from --

2 A Directly across from the -- our building, 777
3 Main Street. It's the only locations I've ever seen
4 their product. But it doesn't mean they -- it don't
5 sell at other locations. Maybe they do. I don't know.
6 I'm just not aware of it.

7 Q Does Biker Designs sell its product at that
8 same store?

9 A No, not at the same store.

10 Q Does Biker Design sell to -- sell its products
11 to the owner of that store?

12 A I don't even know who owns the store.

13 Q What about the operator of the store?

14 A I don't know them personally. Maybe we do
15 sell them. I probably have, you know, hundreds of
16 customers, I just don't know who the names are.

17 Q So if we went over to that store and I got the
18 name of the store from the sign --

19 A Yeah, I can -- obviously, you know, we can
20 take a look at it, see if -- if they're one of my
21 customers.

22 Q Okay. Have you used the name Biker Design on
23 all of the products sold by Biker Design since '97?

24 A No.

25 Q What other names do you use on the products?

1 A It has, for example, I sold Delta shirts that
 2 say Delta labels on them. I use Hanes T-shirts that has
 3 Hanes label on them. I've sold Gildan shirts that has
 4 Gildan labels on them.

5 Q I'm sorry. What was that last one?

6 A Gildan, G-I-L-D-A-N.

7 Q And so on those shirts Biker Design didn't put
 8 its own label into them?

9 A No.

10 Q Did the shirt say Biker Design on them
 11 somewhere?

12 A No.

13 Q Who came up with the name Biker Design?

14 A I believe Nir did.

15 Q When did he come up with that name?

16 A Sometime in the time frame, '92, '93 time
 17 frame.

18 Q Were you aware of the existence of Becker
 19 Designs in that time frame, '92, '93?

20 A No.

21 Q What documents do you have currently that
 22 would show your use of the name Biker Design back in
 23 '92, '93?

24 A Have to find the labels again where I got them
 25 from, have to find you the shirts, if I still have them

1 someplace. And I have two witnesses, my mom and dad.
2 They sit in the garage and help me change labels and I
3 hired a sewer to change the labels.

4 Q Who was doing your sewing for you?

5 A Some lady. I don't remember her name.

6 Ruby was her name. I don't remember her last
7 name. But her name was Ruby.

8 Q And so Ruby was responsible for -- for what?

9 A Changing the labels. My mom and dad cut the
10 labels, hand it to Ruby, this T-shirt. She grabbed the
11 label, she put it in the machine. She sew it on. That
12 became a blank shirt and then I used -- you know,
13 hundreds of dozens obviously.

14 Q Have you ever had any customers -- we'll start
15 with retail customers -- that would have come into the
16 store confuse Biker Design with Becker Designs?

17 A Never.

18 Q Have you ever heard of any customers at the
19 different events that Biker Designs travels to confusing
20 Becker Designs with Biker Design?

21 A I was never told that. Not even once.

22 Q Are you aware that it may have happened or --

23 A No. When I first heard about it, I thought
24 somebody copied my name.

25 Q When did you first hear about it?

1 A It was sometime in late 2000. I heard about
2 somebody is calling them Becker Design. I even called
3 it and it sounded like a Biker Design. And then I
4 didn't know what it was and I discussed it with Nir.
5 Then we found out it was actually -- company was called
6 Becker Design.

7 Q Uh-huh.

8 A Not Biker Design.

9 Q Do you recall who told you about Becker
10 Designs?

11 A I believe they used to be very close to our
12 warehouse. Nir might have told me that. I'm not sure.
13 I don't remember. And, you know, because their name is
14 Daytona Thunderwear and Nir might have stopped by there
15 and take a look at and see the name Becker Design and he
16 might have told me. I, you know -- you can -- when you
17 depose him on Monday or Tuesday, you can ask him. Maybe
18 it was and maybe not. I don't remember.

19 Q Who else was -- who else would have knowledge
20 about the first use of the name Biker Design by you?

21 A Joe Levy.

22 Q And Joe -- is Joe an employee of Biker
23 Designs?

24 A Currently, yes.

25 Q What's his job title?

1 A Special projects.

2 Q What special projects does he work on?

3 A Tent scheduling, travel scheduling.

4 What else?

5 Sales, retail.

6 Q Is he a full-time employee?

7 A Yes. He's part of our travel agency group.

8 Q Does he receive a W-2 from Biker?

9 A Yes.

10 Q What knowledge is it that Joe Levy has about
11 Biker's first use of the name Biker Design?

12 A He would know. He would remember the banners.

13 Q How long has he been working with Biker
14 Designs or with you?

15 A He's -- he worked with -- with Biker Design
16 full-time probably in the last two to three years.

17 Q And before that, did he work part-time?

18 A No.

19 Q How is it that Joe would remember the banners?

20 A He was in the same business as we were at the
21 time.

22 Q What was his business called?

23 A Rider Sports.

24 Q And what business was it that Rider Sports was
25 in?

1 A They used to sell T-shirts, just like we do.

2 Q Is Rider Sports still around?

3 A Nope.

4 Q Who is Gary Nowicki?

5 A Another special project man.

6 Q How long has he been employed by Biker?

7 A Approximately three years.

8 Q Does he receive a W-2 from Biker?

9 A Yes.

10 Q What are his job responsibilities?

11 A He's responsible to locate, search and find
12 and acquire land slash locations for special events,
13 like I mentioned, five or six different special events
14 that we go to. His job is to go out and find the
15 locations and acquire them. PR man.

16 Q Okay. Actually we only talked, I think, about
17 three special events. What are some of the other, uhm

18 --

19 A Talked about five special events. Daytona
20 Bike Week, Biketoberfest, Myrtle Beach Spring Rally,
21 Myrtle Beach Fall Rally, Laconia, New Hampshire and
22 Sturgis.

23 Q So is Mr. Nowicki then involved in finding
24 additional locations in the Daytona area as well?

25 A Sure.

1 Q What knowledge is it that you believe that
2 Mr. Nowicki has about the first use of the name Biker
3 Design?

4 A He would -- he would also know because he
5 would remember Biker Design. Because he was in the same
6 business. He had his own company.

7 Q What was his company named?

8 A Jake and the Fat Man.

9 Q Is that company still in business?

10 A No.

11 Q What business was that company in?

12 A Same, very similar to Rider Sports. Apparel
13 business, T-shirt business, clothing business.

14 Q Mr. Iskander was identified as the general
15 manager.

16 A Uh-huh.

17 Q And they're actually two persons with the last
18 name of Iskander. I will attempt to pronounce this, but
19 I apologize if I --

20 A Is it C-E-N-K or other one?

21 Q The other one.

22 A C-E-M?

23 Q I -- I have a Taylan.

24 A Taylan is the same as C-E-N-K. Taylan is his
25 first name. C-E-N-K is his last name -- middle name.

1 Iskander is his last name.

2 Q Okay. And is that Taylan Cenk Iskander is he
3 the same individual that you were discussing earlier
4 that had some responsibility for metal studs and decals
5 and owned a percentage of the stock currently?

6 A Correct.

7 Q Okay. Who is John Foyte? John Foyte or
8 Foote?

9 A John Fortney (phonetic).

10 Q I have an individual with the last name of
11 F-O-Y-T-E. He's associated with Wild Horse Trading.

12 A Yeah. He's a pin and patch person that --

13 Q I'm sorry. A what person?

14 A He's a pin -- pin guy that -- that distributes
15 pins in special events.

16 Q Okay.

17 A He knows about Biker Design. And I talk to
18 him and his recollection is a minimum of 10 to 12 years
19 he knows us. I put that as I believe a witness or --

20 Q Correct. Has he -- I'm sorry, his last is
21 Fortey?

22 A I believe it's Fortney.

23 Q Fortney.

24 A F-O-R-T-N-E-Y.

25 Q Okay. Was Mr. Fortney ever employed by Biker?

1 A No. Never.

2 Q Did he ever own or work at -- or I'm sorry --
3 manage Biker?

4 A No.

5 Q What knowledge is it that you believe that he
6 has about Biker?

7 A You know, existing of Biker Design.

8 Q Has Biker Design ever done business with
9 Mr. Fortney?

10 A We do business with him every show.

11 Q Every show you said?

12 A Every show we go to we buy pins from him.

13 Q And for how long has this been going on?

14 A I -- I -- my recollection is at least 10 to 12
15 years also.

16 Q Is Mr. Fortney's company called Wild Horse
17 Trading?

18 A Correct.

19 Q Okay.

20 A To my best knowledge.

21 Q Has he always been associated with that
22 company Wild Horse Trading since Biker has been doing
23 business with him?

24 A Might have had a different company name at the
25 beginning. I don't remember.

1 Q Okay. Are you contending in this lawsuit that
2 Becker Designs knew that Biker was using this design?
3 And by "this design" I again mean the design involved in
4 this lawsuit that has the skull and barbwire.

5 But are you contending in this lawsuit that
6 Becker Designs knew prior to sending a letter to Biker
7 that the design was being used by Biker?

8 That's a bad question. Let me try again.

9 MS. OONK: Yeah.

10 BY MS. WESTON:

11 Q When do you believe that Biker -- I'm sorry --
12 that Becker Designs became aware Biker was using the
13 design?

14 A I have no clue.

15 Q What knowledge do you have about when Becker
16 became aware that Biker Design was using that design?

17 A I'm presuming whenever they call me or
18 whenever somebody called me -- I don't remember how this
19 thing started even -- is the time that, you know, I
20 presumed they were aware that we were using this.

21 Q Okay. One of the defenses that's been
22 asserted on behalf of Biker Design in this lawsuit is
23 bad faith or unclean hands on the part of Becker
24 Designs. What knowledge do you have about any bad faith
25 or unclean hands on the part of Becker Designs?

1 MS. OONK: Objection to form.

2 THE WITNESS: I don't understand the question.

3 I'm sorry.

4 BY MS. WESTON:

5 Q Do you believe that Biker Design was deceived
6 in some way by Becker Designs?

7 A I'm not sure.

8 Q Are you --

9 A I don't think we've been deceived by anybody.

10 I mean --

11 Q Okay.

12 A I don't think so.

13 Q So you're not aware of any untrue statement or
14 misrepresentation that Becker Designs made to Biker?

15 A If they did, I -- you know, I'm not aware of
16 it. I don't pay attention to what people do.

17 Q Okay.

18 A You know. What goes around, comes around, I
19 really believe that.

20 Q You mentioned that you had been at Becker
21 Designs' shop at one point.

22 A Uh-huh. Was that the only discussion that you
23 had about this lawsuit with either Robert or Susan
24 Becker?

25 MS. OONK: Objection to form.

1 THE WITNESS: Uhm, I believe so. I never met
2 them before. If I talk to them, maybe when I
3 called them to find out whether the name of their
4 company is Becker or Biker Design. I wanted to
5 find that out. That was one other time I might
6 have called them.

7 BY MS. WESTON:

8 Q Would that call to ask about the name of the
9 company, if --

10 A I think I would just called and -- asking, did
11 you say Biker Design. They said, no. They said, Becker
12 Design. And I hung up the phone.

13 Q Would that call have been made before you went
14 to Becker Designs' shop?

15 A Oh, many -- many years ago, like two or three
16 years -- two years before this thing ever took place.

17 Q Okay. Did you ever correspond in writing,
18 send a letter to Becker Designs about this lawsuit?

19 A I don't remember. Maybe I did. But I don't
20 remember.

21 Q Would you have kept a copy of any letter?

22 A I can look in my lap top. See if I have
23 anything in there. But I really don't recall anything.
24 Maybe -- maybe I did, but I don't remember.

25 Q Okay. Did you ever see the design involved in

1 this lawsuit used, not necessarily by Biker Design,
2 prior to 2002?

3 A I don't believe so. Prior to 2002 -- I seen
4 barbwire and skull design used ever since I've been in
5 this business.

6 Q Right.

7 A This particular tape, this particular skull
8 and barbwire wire, I don't think I seen it before year
9 2002.

10 Q Okay. After you saw the design in 2002 when
11 it was sent to you on a sample from Biker Tekstil did
12 you see the design anywhere else, other than on products
13 from Biker Tekstil?

14 A No.

15 Q Would you flip -- flip please in the notebook
16 in front of you to tab D. A counterclaim and third
17 party complaint were filed on behalf of Biker against
18 Becker Designs and Mr. and Mrs. Becker. And the nature
19 of the counterclaim was tortious interference with
20 contractual or business relations.

21 A Uh-huh.

22 Q Are you familiar with that claim?

23 A Yeah.

24 Q Is the -- the activity that's being complained
25 of these letters that were sent by Cobb & Cole that are

1 at tab D?

2 A Uh-huh.

3 Q Is that a yes?

4 A Yes.

5 Q Is there anything else that Becker Designs did
6 to interfere with the business of Biker Design, other
7 than these letters?

8 A I'm not aware of it. It's just a conclusion
9 of these letters is -- was in question.

10 Q Okay. Is there anything else that Robert or
11 Susan Becker did to interfere with the business of Biker
12 Design?

13 A I am not aware of it.

14 Q Okay. The letter that has 0426 at the bottom
15 of it --

16 A Okay.

17 Q -- was sent to Carl's Speed Shop. Is Carl
18 Morrow the individual at Carl's Speed Shop that Biker
19 Design did business with?

20 A Him and his wife we did business with,
21 correct.

22 Q And what's his wife's name?

23 A I can only say Mrs. Morrow.

24 Q Has Carl's Speed Shop continued to do business
25 with Biker Design since March of 2006?

1 A Nope.

2 Q Was there a contract in place between Biker
3 Design and Carl's Speed Shop?

4 A No.

5 Q When did Carl's Speed Shop stop doing business
6 with Becker Design?

7 A I believe starting Bike Week of 2006 or
8 shortly after or shortly before, in that time frame.

9 Q What reason was given by Carl's Speed Shop for
10 terminating its business with Biker Design?

11 A No reason was communicated to me. But through
12 the grapevine he wasn't a happy camper with these letter
13 that he was receiving from other people.

14 Q And you're talking specifically about the
15 letters from Cobb & Cole?

16 A Yes.

17 Q And who is "he" that you mentioned? Is that
18 Carl Morrow?

19 A Uh-huh. Yes.

20 Q Who was it that told you that Mr. Morrow was
21 unhappy about the letter?

22 A I don't remember.

23 Q Okay.

24 A Could be Nir. Because Nir is closer to Carl
25 than I am.

1 Q Okay.

2 A So you can depose him on Monday or Tuesday,
3 ask that question.

4 Q Does anyone, other than you or Mr. Giist, have
5 information about why Carl's Speed Shop terminated its
6 relationship with Biker Design? And when I say
7 "anyone," I mean anyone else at Biker Design, have
8 information?

9 A I'm sorry. I can't -- I missed the first part
10 of the question.

11 Q Who else, if anybody, at Biker Design has
12 information about why --

13 A Maria would.

14 Q I'm sorry?

15 A Maria.

16 Q Maria.

17 A And possibly Chad. Because Chad also deals
18 with them.

19 Q How much business in terms of dollar sales was
20 Biker Design doing with Carl's Speed Shop annually
21 before Bike Week of 2006?

22 A More than 5, less than 10,000 dollars a year.

23 Q What documents reflect that 5 to 10,000
24 dollars in business?

25 A I can generate you invoices, if you care to

1 have it.

2 Q When you say you can generate invoices, that's

3 --

4 A From Quick Books, I can just pull it by
5 customer and get you copies.

6 Q And would those invoices reflect prior sales
7 to Carl's Speed Shop, is that what you're saying?

8 A Yes.

9 Q And then are those invoices -- would those be
10 the only source of calculating what the sales are that
11 you lost?

12 A Well, I used to rent from Carl's Speed Shop a
13 location. I don't rent it anymore.

14 Q Where was the location that you rented?

15 A The alleyway right at the Carl's Speed Shop,
16 right next to his alley.

17 Q Why don't you rent from him any longer?

18 A I'm not sure we're welcome anymore.

19 Q Did Mr. Morrow tell you that you couldn't rent
20 that space?

21 A He didn't tell me personally, no.

22 Q But how did you find out that you weren't
23 welcome there?

24 A Because we didn't have a location -- Mr. Nir
25 Giist can answer that question on Tuesday most likely.

1 I assume we don't have a location there, that means we
2 don't do business with Carl. I don't take care of every
3 aspects of the business. So Nir takes care of part of
4 the location issues, dealing with the landlords and so
5 forth. I don't deal with it.

6 Q Okay.

7 A So if there's some issue with it, you know,
8 Mr. Giist can answer. Maybe there is no issue. I don't
9 know.

10 Q What other documents would reflect sales lost
11 by Biker Design as a result of the activities of Becker
12 Designs, specifically these letters?

13 A I personally have been involved -- I don't
14 remember the name of the customer -- Maria can remember
15 the name of the customer. This -- this customer was
16 irate. I mean, he said -- he says, I'm tired of dealing
17 with this and why -- why can't you do something about
18 it.

19 That was my one personal involvement with it.
20 I don't remember the name of the customer. But Maria
21 can tell you about it. I don't believe we do business
22 with that customer also now.

23 Q What was the customer irate about?

24 A Because they didn't -- you know, some -- some
25 people are afraid of getting letters from lawyers.

1 Maybe he didn't like the letters. I'm not sure. I
2 tried to explain. Says, why don't you take care of it.
3 So we took care of it in the end. We took all of the
4 merchandise back from him. You know, we gave him
5 different product and tried to keep him -- keep him as
6 happy as we can.

7 Q When you took the merchandise back from that
8 customer, how did -- how did you reflect that
9 transaction in Quick Books?

10 A Probably credit and -- credit issued and --
11 and we replaced the product, you know, should -- should
12 come back as a negative from the Quick Books. Should be
13 a credit memo maybe. I'm not sure --

14 Q Okay.

15 A -- how they did it.

16 Q Does Quick Books allow you to do an inventory
17 by item number?

18 A Yep.

19 Q Would the tax returns of Biker Design reflect
20 the lost sales caused by the activities of Becker
21 Designs?

22 A I don't know. Question for Mark Topol.

23 COURT REPORTER: Who? I'm sorry?

24 THE WITNESS: Mark Topol. He's just my
25 accountant.

1 BY MS. WESTON:

2 Q What documents would reflect those lost sales?

3 A Either some -- some form of a communication or
4 some other information he might have gotten from --
5 from -- from Quick Books, I presume.

6 Q So the Quick Books' records would show a
7 reduction in sales and the tax returns might; is that
8 correct?

9 A Well, it will show up only as a credit memo or
10 reduction in sales. I'm guessing what else it would --
11 I don't think reduction in sales would really show much.
12 You know, again I don't believe -- I don't have enough
13 knowledge to answer that question really.

14 Q Okay. What other types of damage, other than
15 lost sales, have these letters that are collect -- are
16 Composite Exhibit D caused?

17 A Well, lost sales is pretty much -- and that
18 would be really the only thing I can think of. But, you
19 know, it's very hard to put, you know, dollars and cents
20 to that item, you know.

21 Q If you'd turn to page number 0429, please.
22 It's a letter to Jimmy and Carol Christopher at
23 Bubba's --

24 A Uh-huh.

25 Q -- Bike Gifts it looks like.

1 A Yep.

2 Q Do, uhm -- do you know if Mr. and
3 Mrs. Christopher are the contact people for Biker Design
4 at that business?

5 A I refer to him as Bubba's. I'm not even sure
6 that was their name, Jim and Carol.

7 Q Okay. Was -- did Biker Design have a contract
8 with Bubba's Bike --

9 A No.

10 Q Is Biker still doing business with Bubba's?

11 A I don't believe we do.

12 Q What reason, if any, was given by Bubba's for
13 no longer buying from Biker Design?

14 A I'm not aware of the reasons on this one, on
15 this case.

16 Q Who at Biker Design would have knowledge about
17 the reasons?

18 A Maria would.

19 Q How much business was Biker doing with Bubba's
20 on an annual basis prior to --

21 A I would have to say about the same range,
22 between 5 to 10,000 dollars. And I will have similar
23 records for them.

24 Q Please turn to page 0433. It's a letter to
25 Rebecca Chipman of Spreading Ink in Missouri. Did Biker

1 Design have a contract with Spreading Ink?

2 A I don't know. I don't believe so, but --

3 Q How long had Biker Design been doing business
4 with Spreading Ink?

5 A I don't know.

6 Q Do you know if Biker is still doing business
7 with Spreading Ink?

8 A No, I don't know.

9 Q Who would have knowledge about that?

10 A Either Kitty or Maria.

11 COURT REPORTER: Either?

12 THE WITNESS: Kitty or Maria.

13 BY MS. WESTON:

14 Q Would Kitty or Maria also have information
15 about the magnitude of sales that Biker was making to
16 Spreading Ink?

17 A Yes, they would. You have multiples of the
18 same letter looks like. Or, maybe they're different
19 letters. I'm not sure. 436 is also Bubba's, it looks
20 like.

21 Q Are there any other companies that have either
22 stopped doing business with Biker Design or cut back on
23 the business that they were doing with Biker Design as a
24 result of the letter sent by Cobb & Cole?

25 A I don't remember anybody else. But I believe

1 Maria can answer that question. Because she deals with
2 them on a day-to-day basis.

3 Q Do you know what documents would reflect the
4 termination of business between any company -- any of
5 these companies and Biker Design?

6 A Unless they give something in writing, there
7 won't be any documents exist. Only documents that can
8 exist, comparable sales from previous years to this year
9 or stoppage of business from this year to last year or,
10 you know, those kind of comparable things. And most
11 likely statements from people.

12 Q How does Biker Design track any complaints
13 about quality or other complaints related to the
14 apparel?

15 A We don't have a logbook that we log in the
16 customer complaints. If it's -- if the customer has a
17 complaint, and if it's an issue with the, you know,
18 quantity or if it's something that Maria and our
19 wholesale department can take care of it, they take care
20 of it. If it is something with the quality of the
21 product, then, you know, if there's -- something rips
22 or, you know, something really defective, then they
23 communicate to me, and in return I communicate to the
24 supplier of that product.

25 Q What -- what documents do you have that

1 reflect any complaints that you've gotten?

2 A None. Verbal.

3 Q In the past 12 months, what complaints do you
4 recall receiving about quality of products as opposed to
5 quantity issues?

6 A I remember about our jackets having a
7 stitching problem. And -- and there's some problem
8 on -- on the -- one load of materials that we got from
9 Pakistan and that -- we're still holding it. And we had
10 some problems with that particular materials being
11 ripped -- ripping apart. And that -- that entire load
12 is staying isolated and segregated and being returned to
13 the customers -- I mean returned to the supplier. I'm
14 sorry.

15 Q The stitching issue with jackets, was that a
16 complaint that you received from a customer of Biker?

17 A Yes.

18 Q How many of those types of complaints did you
19 receive?

20 A This year?

21 Q Yes. In the past 12 months.

22 A I believe on the jacket matters probably close
23 to ten complaints.

24 Q Was there a defect in the stitching on the
25 jackets?

1 A Uhm, I don't believe so. I believe the
2 problem lies on the care label of the product. Care
3 label of the product indicates machine wash. A jacket
4 cannot be machine washed. It rips apart. The stitching
5 comes apart. It should be dry cleaned.

6 Q Okay.

7 A So the problem is somewhat of a design issue,
8 rather than a -- rather than a production issue.

9 Q Were the complaints about the ripped
10 merchandise, were those complaints that you received
11 from Biker customers?

12 A Yes.

13 Q And those -- those materials are the ones that
14 you said that you still have in boxes; is that correct?

15 A Correct.

16 Q How many of those complaints did you get in
17 the past year?

18 A Well, we -- we isolated the problems right
19 around the same time, because we were selling the same
20 item also. And so this complaint was only really
21 minimum, maybe two.

22 Q Do you recall if any of those complaints on
23 either topic came from Carl's Speed Shop?

24 A I don't believe so.

25 Q Who would know for certain?

1 A Maria can.

2 Q Do you know if any of those complaints came
3 from Bubba's Bike Gifts?

4 A I don't believe so.

5 Q Would Maria know for certain?

6 A I was going to recommend that.

7 Q Did any of the complaints in the past year
8 come from Spreading Ink?

9 A That I don't know.

10 Q Would Maria know?

11 A Yeah.

12 Q What did you do with the information that you
13 got in a verbal customer complaint?

14 A Complain from (sic) the supplier of the
15 problem. And in return they send me a sample of what
16 they've done. They've doubled the stitching on certain
17 areas of the jacket, because it was -- the stitching was
18 coming loose on a certain area. And they're -- when
19 they're riding their bikes and it gets filled with air,
20 that's almost maybe forcing the issue and making the
21 stitching blow. And they're also -- we also found out
22 they were washing the jackets. That was the problem.
23 And we changed the care labels.

24 Q Did -- did you make any sort of record of the
25 verbal complaints?

1 A No.

2 Q Any written record?

3 A No.

4 Q No?

5 A No.

6 Q What knowledge then would Maria have about any
7 of the verbal complaints that you received?

8 A She will have general knowledge of the
9 complaints that we might have received. And she might
10 remember who we got them from, who the customer might
11 be, maybe somebody stands out more than others. I don't
12 know.

13 Q Did you inform Maria about the complaints that
14 you received?

15 A Yes, of course.

16 Q Did you inform her about every complaint that
17 you received?

18 A If it's something crucial, yes, I do. I don't
19 inform her of every -- every -- every complaint I
20 receive. I don't inform her, no.

21 Q How do you decide what is a crucial complaint?

22 A I'm an engineer. I've been a quality control
23 manager for many years.

24 Q And what does that mean?

25 A Means I'm -- I'm qualified to know what it

1 is -- what's crucial and what is a detrimental defect
2 and what is not.

3 Q What's the difference between a crucial
4 complaint and a detrimental defect?

5 A No. Crucial and detrimental defects can --
6 they can be -- they can be avoided by correcting the
7 problems. There's certain things you cannot avoid it.
8 Because it's just natural causes of the defects just
9 happens.

10 In quality, there's common causes or -- in
11 defects when it happens, there are common causes and
12 there are assignable causes. You must eliminate the
13 assignable causes, not the common causes. Common causes
14 is not economically feasible to eliminate it.

15 Q So is it fair to say then that you would tell
16 Maria about the complaints that could be fixed?

17 A Could be assignable and, you know -- yes.

18 Q Did you tell Maria about the complaints on
19 products that could not be fixed?

20 A Not really.

21 Q Okay.

22 A I mean, I really don't make my decision on the
23 base of that, of what the causes are.

24 Q Other than the tortious interference with your
25 business relations, are there any other claims that

1 Biker Design has against Becker Designs, any complaints?

2 A Not really.

3 Q What about any other claims or complaints
4 against Robert or Susan Becker?

5 A Not really.

6 Q Would you please turn in your notebook to tab
7 B. These are the tax returns for Biker Design or
8 excerpts of the tax returns for Biker Design --

9 A Uh-huh.

10 Q -- from 2004 back to 2001.

11 A Uh-huh.

12 Q Has Biker Design filed a 2005 tax return?

13 A Not yet.

14 Q All of the copies that have been provided to
15 us are unsigned copies. Would you please look through
16 here and tell me whether these are identical copies of
17 the returns that were filed with the IRS?

18 A Without having the identical copy in front of
19 me, I cannot confirm it. But I can say sales looks
20 about right.

21 Q Well, let me ask you this. Who keeps copies,
22 signed copies, of the tax returns?

23 A Mark Topol does.

24 COURT REPORTER: I'm sorry?

25

1 THE WITNESS: Mark Topol.

2 BY MS. WESTON:

3 Q Do you sign the return in his office when you
4 pick up the return from him?

5 A Yes, I do.

6 Q Does he then go and run a copy of it and mail
7 it?

8 A No. He usually has the envelope ready and
9 puts the envelope right in front of me and mails it.

10 Q But would he make a copy of it after you sign
11 it?

12 A I believe they just generate this out of a
13 computer and not really make copies of it. They
14 probably have these on -- on some kind of a storage
15 format. I also noticed the same thing, is when I ask
16 him it comes unsigned.

17 Q Would anybody, other than Mark Topol, have a
18 signed copy of the return?

19 A I don't believe so. I can check my records.
20 Maybe I have one.

21 Q Has the IRS ever audited Biker Design?

22 A Different groups of IRS did, yes.

23 Q When was the last audit by the IRS?

24 A Year and a half ago.

25 Q Do you recall what years were audited?

1 A Up until 2004 it was audited.

2 Q Did it result in Biker having to pay
3 additional tax to the IRS?

4 A Six hundred dollars. Really minor amount.

5 Q What -- what documents specifically do you
6 give to Mr. Topol to calculate gross sales?

7 A My bank statements.

8 Q How many bank accounts does Biker Design have?

9 A Multiple. I don't know.

10 Q Ten? Five?

11 A Well, what it is we have one main bank account
12 in -- in -- in operational bank account here in the
13 state of Florida. We have other bank accounts in other
14 states. And everything gets funneled -- all of the
15 money gets deposited into those accounts, it gets
16 funneled down to this account right here in Florida.

17 Q And are all of the receipts from the events
18 where Biker's making sales out of state, do those
19 receipts all end up in the Florida bank account?

20 A Yes.

21 Q What information do you give Mr. Topol for him
22 to calculate the cost of goods sold, which is on, for
23 example, the page numbered 479, schedule A, at the top?
24 And specifically line one, he has to come up with a
25 figure representing purchases. How does he calculate

1 that number?

2 A Bank account and checks.

3 COURT REPORTER: I'm sorry?

4 THE WITNESS: Bank account and checks.

5 BY MS. WESTON:

6 Q So are you saying that he looks at checks to
7 suppliers, suppliers of Biker, during a particular year?

8 A Uh-huh. All the money goes in and out of the
9 Biker Design bank account, you know. We pay -- we pay
10 the bills from that account. All the income goes into
11 that account.

12 Q Does Mr. Topol reconcile the bank account
13 every month?

14 A Yes, he does.

15 Q The cost of labor, does Mr. Topol prepare the
16 payroll tax returns?

17 A Yes, he does.

18 Q The -- on line seven at the top there it says
19 that the inventory at the end of 2004 was approximately
20 \$850,000?

21 A Correct.

22 Q Is this the figure that you came up with after
23 your three to four people took the inventory --

24 A That's correct.

25 Q -- over a couple of days at the end of the

1 year?

2 A That's correct.

3 Q Does Biker maintain any records of that
4 year-end inventory or are they all given to Mr. Topol?

5 A Everything is given to Mark.

6 Q What does Mr. Topol give Biker Design every
7 month in conjunction with the work that he's done?

8 A Every three months he does a financial
9 statement.

10 Q And after he reconciles the bank account or
11 bank accounts --

12 A Uh-huh.

13 Q -- what does he give to Biker Design?

14 A Doesn't give me anything until the three
15 months has ended.

16 Q Does he --

17 A For that particular month he doesn't give me
18 anything.

19 Q Okay. So does he give you journal entries
20 that need to be made to Quick Books every three months?

21 A No. He does all of that.

22 Q Does he actually make the adjustments on Quick
23 Books?

24 A In my Quick Books?

25 Q Yes.

1 A No, he doesn't.

2 Q Who were the -- generally who are the entities
3 that Biker Design is paying rent to each year?

4 A I have probably over 50, 60 different
5 landlords.

6 Q And are those rents related to the different
7 events that which Biker is selling product?

8 A Yes.

9 Q Would Quick Books show under the rent expense
10 account detail who the checks --

11 A No, it won't. But Mark Topol can give you
12 that information.

13 Q Okay.

14 A He can break down even by event.

15 Q Okay.

16 A Because I just had to do that for the state of
17 Florida.

18 COURT REPORTER: I'm sorry?

19 THE WITNESS: Because I just had to do that
20 for the state of Florida.

21 BY MS. WESTON:

22 Q Would you flip back please to tab A. There's
23 a page numbered 407. And I would like you to look at
24 that, please.

25 A 407?

1 Q At the bottom it says -- says Biker 0407, on
2 the bottom right.

3 A 0147 maybe?

4 MS. OONK: No. Keep going.

5 There it is. That's it.

6 THE WITNESS: Okay.

7 BY MS. WESTON:

8 Q This document says *Sales By Item Detail* at the
9 top of it.

10 A Yes.

11 Q Is this printed off of Quick Books?

12 A Yes.

13 Q Who printed this?

14 A Kitty did. Deborah Brown, I'm sorry, I should
15 say.

16 Q Where's the computer located that the Quick
17 Books' records are kept on?

18 A At 777 Main Street.

19 Q Okay. These records begin in the middle of
20 2004 and go through the end of 2000 -- excuse me -- I'm
21 sorry -- through December 1, 2005. Were there any
22 records kept before the middle of 2004?

23 A I believe, if you look at it, the report says
24 January 1, 2003 to December 1st, 2005.

25

1 Q It does say that indeed. But the first
2 transaction is July of 2004. That's why I'm asking
3 where --

4 A Okay. That means we didn't have that item
5 prior to that time, I believe.

6 Q Okay. So Biker Design was actually using
7 Quick Books in 2004 and 2003; is that correct?

8 A I believe so, yes.

9 Q Who would know for sure?

10 A Topol can tell you for sure. Because we just
11 been through that, too. I believe we start using
12 sometime in 2002. But I might be mistaken.

13 Q Okay.

14 A We have to verify that.

15 Q Okay. Where would sales of item 55, the tank
16 top, be shown in here on these documents?

17 A It won't show up here.

18 Q Why is that?

19 A Because it never made it to the catalog, never
20 made it as a wholesale item, number 55.

21 Q Okay.

22 A Therefore, it will not be entered into Quick
23 Books as an item for us to sell.

24 Q Does Quick Books only reflect wholesale sales
25 and not retail sales?

1 A Exactly. Only wholesale.

2 Q Would you show me then on -- or turn to page
3 415, please.

4 A 415, okay.

5 Q And the first item at the top that's not
6 redacted --

7 A 415.

8 Q It's the one that's upright.

9 A Okay.

10 Q The first item under 5A I think is army green
11 and it says Biker Design?

12 A Yes.

13 Q Under name.

14 A If you pull an item from Biker Design's stock,
15 we also generate an invoice showing what the Biker
16 Design retail used from that item.

17 Q So does Quick Books also reflect the retail
18 sales or just wholesale?

19 A It won't show the retail sales. I mean, this
20 will -- for keep track of how much Biker Design used
21 from that item, let's say, for item 5A, army green,
22 Biker Design used 72 pieces of that item. That gives me
23 some indication --

24 Q Okay.

25 A -- how that item does, too.

1 Q All right. And I'm probably not being clear.
2 What I'm saying does it include or does it reflect
3 retail sales, I'm not asking if it tells every person
4 that purchased at T-shirt at retail. I'm just asking if
5 the sales dollars are reflected in Quick Books for
6 retail sales?

7 A Well, this -- these sales at the end of the
8 year is -- we back to Biker -- Biker Design sales out of
9 the equation, because all of the retail sales are
10 already in the bank account.

11 Q Okay.

12 A Okay. So let's say at the end of the -- at
13 the end of the year we have, hypothetically speaking,
14 let's say \$50,000 in Biker Design sales of many
15 different items. We have to back that out of the, you
16 know, sales of the wholesale. This only gives us a
17 guidelines in here.

18 Q Okay. As far as retail sales?

19 A As far as wholesale sales and our retail
20 sales.

21 Q Okay. How would you determine then the extent
22 of the wholesale sales, if this is only a guideline?

23 A My wholesale sales is this, minus whatever
24 Biker Design numbers are.

25 Q Okay. And then --

1 A That's my wholesale sales for the year.

2 Q Okay. And then how do you determine retail
3 sales?

4 A Whatever goes into the bank.

5 Q Do the bank deposits also include wholesale
6 sales?

7 A Yep, everything.

8 Q Okay.

9 A Even rent goes into the bank. Every dollar
10 Biker Design makes goes into the bank account.

11 Q Where would the sales of the ladies'
12 short-sleeve shirts that had the design appear in Quick
13 Books?

14 A We have to check it -- you know, if -- maybe
15 it's not put into the Quick Books. I'm not sure.
16 Again, it was only done once, I believe, and -- because
17 I seen it. But it might not be in the Quick Books. And
18 maybe I provided them, but maybe they don't have it.
19 Or, maybe you didn't get it. But I'll -- you know, we
20 can check it.

21 MS. OONK: Yeah.

22 MS. WESTON: Okay.

23 BY MS. WESTON:

24 Q To whom are these catalogs that we talked
25 about earlier at tab C distributed?

1 A To our wholesale customers.

2 Q Does Biker maintain a customer list?

3 A Yes. Just from the Quick Books we can -- we
4 have that list.

5 Q Who does the actual distribution of -- or
6 mailing of the catalogs?

7 A Don't really go and do a mass mailing. As --
8 as the customer comes and maybe buys them, then every
9 time they have an order, we put a new catalog in and we
10 sent it to them.

11 Q Okay.

12 A We don't -- we just don't go out and do a mass
13 mailing.

14 Q Has that always been the case even when Biker
15 Design was just starting?

16 A No. It wasn't always like that.

17 Q How was it done initially?

18 A Initially back in '96, '95, some time in that
19 time frame, you know, we -- we also thought about doing
20 a, you know, mail order type of a operation and we had a
21 mass mailing done, I believe, only once. Approximately
22 like 10,000 some mailings was done back in, you know,
23 mid nineties.

24 Q Is it the case that since the time of that one
25 mass mailing in '95 or '96 catalogs have only been given

1 to current or prior customers of Biker Design?

2 A No. Current. I mean, we -- we also attend
3 some trade shows and, you know, try to obtain new
4 customers. That's been given to them as well. That's
5 how we obtain the customers.

6 Q How many trade shows approximately does Biker
7 Design participate in each year?

8 A We used to do approximately six to eight trade
9 shows a year. And probably last year we only did four.
10 Probably this year we'll only do two.

11 Q Where are the trade shows located?

12 A Right here in Orlando is one. Surf Expo.

13 COURT REPORTER: I'm sorry?

14 THE WITNESS: Surf Expo.

15 We're doing Cincinnati's Motorcycle Expo.

16 BY MS. WESTON:

17 Q What other types of events?

18 A We've done wholesale on print. Not wholesale
19 -- I'm sorry -- the printing and embroidery shows. I
20 don't remember what the names of those shows were.
21 They're small expos at the -- there are a lot of
22 printers. They look for new products. We attend those
23 shows and display our products and gave catalogs away.

24 Q What was the expo in Cincinnati?

25 A Expo is called Motorcycle Expo, I believe.

1 Q What other sorts of advertising or marketing
2 efforts has Biker made in the past five years?

3 A Plenty. Advertising on the -- on certain
4 magazines, advertising on many -- many banners during
5 the special events.

6 Q Anything else?

7 A Mainly motorcycle event related. You know,
8 distribution has been -- you know, we gave ads on them.

9 Q And --

10 A Maybe right here in Daytona, too. You know,
11 Bike Week booklets and stuff like that.

12 Q What magazines has Biker advertised in?

13 A What magazine what --

14 Q What magazines has Biker put advertisements
15 in?

16 A All related to the motorcycle events. I don't
17 remember the names of them.

18 Q But are they magazines that people can go buy
19 at the book store?

20 A No. No. They're -- they're magazines that's
21 only relates to the event.

22 Q Okay.

23 A Let's say, Daytona Beach Bike Week or Myrtle
24 Beach Bike Week or --

25 Q Okay.

1 A So event related magazines that indicates what
2 the activities are and where and what's going to happen
3 and so forth.

4 Q Okay. Do you have copies of any of those
5 magazines?

6 A Yeah.

7 Q Yes, Biker Design does?

8 A Yes, we do. Uh-huh.

9 Q Do you have copies of any of the Bike Week
10 booklets?

11 A I don't believe I kept some of those. But we
12 have an art department. They can generate some copies
13 of --

14 Q I'm going to show you what we will call
15 Exhibit H. Exhibit H is just the paper.

16 MS. OONK: Okay.

17 BY MS. WESTON:

18 Q Would you take a look at that design, please.
19 I'm going to show with you the T-shirt that --

20 A Very similar to this --

21 Q -- that we copied that from.

22 A -- or identical to this.

23 Q And so I'm just going to ask you, is Exhibit
24 H, is that an accurate copy of a T-shirt produced by
25 Biker Design?

1 A Yes, it is.

2 Q And specifically the tank top that we were
3 calling 55, I think, earlier or M55?

4 A I believe so, yes.

5 Q Okay. I'm going to hand you what we'll call
6 Exhibit I, along with a T-shirt. I'm just going to ask
7 you to confirm that Exhibit I is a copy of a T-shirt, a
8 women's long-sleeve orange shirt produced and sold by
9 Biker Design.

10 A I believe it is. You know --

11 Q And again --

12 A -- the copy, you know -- you know, looks
13 similar, you know.

14 Q And what --

15 A I can't confirm whether it's been copied from
16 this or that. You know, I didn't copy it, so I cannot
17 confirm it.

18 Q Well, and that's what I'm asking is if you
19 would just take a look at Exhibit I.

20 A And compare this to that?

21 Q Yes, please, and tell me if Exhibit I is a
22 photocopy of a design on a shirt sold by Biker Design?

23 A It's not this sleeve. Looks like it's the
24 left sleeve. Looks similar, yes.

25 Q Now I'm going to hand you what we've marked as

1 Exhibit J and ask you to tell me whether Exhibit J is a
2 true and accurate copy of a sleeve of a shirt sold by
3 Biker Design containing the design?

4 A Yep. Yes, it is.

5 Q Finally, I'm going to hand you Exhibit K.
6 It's two pages of a catalog that you produced for me
7 here today. Is that correct?

8 A Do you need to put a K in here or just --

9 MS. OONK: No. The K is right there. We're
10 going --

11 MS. WESTON: She'll staple it.

12 MS. OONK: -- to staple it together.

13 THE WITNESS: Okay. Yes.

14 BY MS. WESTON:

15 Q And what year was that catalog produced?

16 A '94 maybe. Let me see.

17 Q '94?

18 A I mean -- 2004 possibly. I wish it was '94.

19 MS. OONK: It's a long day.

20 THE WITNESS: Hold on. Have to think about
21 the iterations of these catalogs.

22 MS. OONK: Do you need some paper?

23 THE WITNESS: Yeah.

24 MS. PAPP: I'm sorry. I took it.

25 THE WITNESS: To my best knowledge, 2004.

1 BY MS. WESTON:

2 Q Okay.

3 A There you go.

4 Q And am I correct in my understanding that
5 you're going to produce a copy of this catalog in its
6 entirety to me?

7 MS. OONK: Yes.

8 BY MS. WESTON:

9 Q Okay. On the --

10 A Right there. That's your copy.

11 MS. OONK: Yeah. But that's my copy.

12 THE WITNESS: Oh, I'm sorry. Okay.

13 MS. OONK: My second copy.

14 BY MS. WESTON:

15 Q On the cover of Exhibit K and page -- it looks
16 like it's page six where it has item 5A, are those the
17 long-sleeve shirts, which we photocopied the sleeves of,
18 as Exhibit I and J?

19 A Yes.

20 MS. WESTON: Okay. I need to take a break for
21 just a few minutes.

22 MS. OONK: Sure.

23 MS. WESTON: And I think we'll be finished.

24 MS. OONK: Okay.

25 MR. CARLSON: We're off the record at 5:02.

1 (Whereupon, a break was taken in the testimony.)

2 MR. CARLSON: We're back on the record at

3 5:12.

4 BY MS. WESTON:

5 Q Just wanted to follow up on one of the
6 questions that we were talking about with advertising.
7 I need to ask you to tell me some of the -- well, all of
8 the forms of advertising that Biker Design had used in
9 the past five years. And the answers were the catalogs
10 that you provided copies of, magazines, banners,
11 motorcycle event related distribution, and Bike Week
12 booklets.

13 A Yes.

14 Q Did -- did Biker Design maintain a Web site
15 during the past five years?

16 A Yes. And whether it started five years ago or
17 four years ago, I have to double-check it. But, yes, at
18 least in the last three years there has been a Web site.

19 Q Who -- who was responsible for creating that
20 Web site?

21 A Uhm, Dave from -- uhm, what is the name of his
22 company. It's a name that I mentioned it earlier. He's
23 the one that -- that creates the catalog also. Give you
24 his card. No.

25 MS. OONK: We do have his card. That's what

1 she said -- there it is.

2 THE WITNESS: Yeah. Graphic Solutions. I'm
3 sorry.

4 BY MS. WESTON:

5 Q Dave from Graphic Solutions created the Web
6 site?

7 A Yes. But he doesn't host it.

8 Q Who hosts?

9 A DatApex.

10 COURT REPORTER: I'm sorry?

11 THE WITNESS: DatApex. They're located off of
12 Bellevue or Beville Road.

13 BY MS. WESTON:

14 Q How long has DatApex hosted the Web site?

15 A Since its inception.

16 Q And has --

17 A However we make no retail single items sales
18 out of our Web site. Our Website is strictly only for
19 wholesale purposes and for wholesale applications and
20 for them to view the items. And they can place the
21 order, but he cannot order it and doesn't process
22 itself.

23 Q What does that mean?

24 A That means you cannot just click and order the
25 item automatically.

1 Q So it's more of a catalog, is that --

2 A More of a catalog. Basically same catalog
3 that you see it, it's on the Web site as well. People
4 can look at it. Because we assign dealers with those --
5 with the Web site. Only for wholesale purposes. Has no
6 retail value, zero.

7 Q Okay. Are you saying that the orders can't
8 actually be placed on the Web site --

9 A Can't.

10 Q -- they have to call or fax?

11 A That's right.

12 Q Okay. What is the reason for that?

13 A Because it's a wholesale. I don't retail
14 anything out of the Website.

15 Q Okay. Did -- did Dave from Graphic Solutions
16 create the original Website that you have?

17 A I believe so.

18 Q Has he modified it over time?

19 A Yes.

20 Q When was the most recent time that he modified
21 it?

22 A About a year ago, I believe. Maybe -- maybe a
23 little less than a year.

24 Q How frequently does he generally modify it?

25 A Once a year.

1 Q Is that --

2 A Unless -- unless we have some other reasons to
3 modify it.

4 Q Such as?

5 A Wrong information, wrong pricing, wrong color.

6 Q Okay. Does he modify it when the new catalogs
7 come out?

8 A Typically that's when it's up -- updated.

9 Q Did Biker Design ever have any of the -- any
10 apparel containing the design involved in this lawsuit
11 on its Internet site?

12 A Yes, I believe. In 2004 to 2005 it probably
13 did. That one exhibit that you showed me, that catalog
14 was on the Web site.

15 Q Okay. So when -- at some point this Exhibit K
16 was on Biker Design's --

17 A Correct. And the items that is in the catalog
18 was at the Web site at one time.

19 Q Okay. Does Biker Design track who visits its
20 Web site?

21 A No.

22 Q Do you know if DatApex does?

23 A No idea.

24 Q Are you related to any of the following
25 people, Maria Thornhill, Kenneth Mundis, Deborah Brown,

1 Chad Kozan or Yunus Turkkan?

2 A No.

3 Q Is Mr. Giist related to any of those people?

4 A No.

5 Q Is Mr. Iskander related to any of them?

6 A No.

7 MS. WESTON: Okay. I don't have any other
8 questions.

9 MS. OONK: He'll read.

10 MR. CARLSON: This is the end of the
11 deposition. We're off the record at 5:18.

12 (Whereupon, the deposition concluded at 5:18
13 p.m.)

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REPORTER'S DEPOSITION CERTIFICATE

STATE OF FLORIDA)
COUNTY OF VOLUSIA)

I, DENISE D. MCMULLIN, RPR, certify that I was authorized to and did stenographically report the foregoing deposition of ERGUN RECEL; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 11th day of September, 2006.

DENISE D. MCMULLIN, RPR
COURT REPORTER

(This signature is valid only if signed in blue ink.)

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CERTIFICATE OF OATH

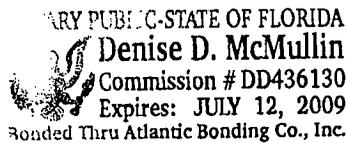
STATE OF FLORIDA)
COUNTY OF VOLUSIA)

I, the undersigned authority, certify that
ERGUN RECEL personally appeared before me and was
duly sworn.

WITNESS my hand and official seal this 11th day
of September, 2006.



Denise D. McMullin, RPR
Notary Public - State of Florida
My Commission No.: DD 436130
Expires: July 12, 2009
(This signature is valid only
if signed in blue ink.)



1 September 11, 2006

2
3 Volusia Reporting Company
4 432 South Beach Street
5 Daytona Beach, Florida 32114
6 Telephone (386)255-2150

7
8 Ergun Recel
9 c/o Lisa A. Oonk, Esquire
10 5201 West Kennedy Boulevard, Suite 450
11 Tampa, Florida 33602

12
13 In Re: BECKER DESIGNS, INC. VS BIKER DESIGN, INC.

14
15 Dear Mr. Recel:

16
17 This letter is to advise you that the transcript of your
18 deposition taken in the above-styled cause on August 22,
19 2006, has been completed and is awaiting your reading
20 and signing.

21
22 Please make arrangements with your attorney to read
23 through the transcript of your testimony within the next
24 30 days and make any corrections.

25
Any corrections you may desire to make in your testimony
should be printed on the attached Errata Sheet, giving
the page number, line number and desired correction.
Please return the Errata Sheet to our office with the
enclosed envelope.

Should you have any questions regarding this matter,
please call the number indicated above.

26
27 Sincerely,

28 

29 Denise D. McMullin
30 Court Reporter

31 cc: Kathryn D. Weston, Esquire
32 Lisa A. Oonk, Esquire

