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

Proceeding	91173105
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TAB AA

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 78/339,571
Published: May 30, 2006 at TM 674
Mark: DEALERDASHBOARD

HONDA MOTOR COMPANY, LTD.,	:	
Opposer,	:	
-vs-	:	Opposition No. 91/173,105
MICHAEL DALTON,	:	
Applicant.	:	

* * *

TRANSCRIPT OF TESTIMONY DEPOSITION

* * *

Testimony Deposition of MICHAEL DALTON, a party herein, was taken by the Applicant on Direct Examination, pursuant to Notice of Deposition, the Federal Rules of Civil Procedure and stipulations hereinafter set forth at the Law Office of Cathy R. Cook, 114 East Eighth Street, Cincinnati, Ohio, commencing at 10:00 a.m., Friday, July 17th, 2009, before Christina Potter, a notary public within and for the State of Ohio.

COPY

APPEARANCES

ON BEHALF OF THE OPPOSER:

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S T I P U L A T I O N S

It is stipulated by and between Opposer and Applicant that the deposition of MICHAEL DALTON, a party herein, called as upon direct examination by the Applicant, may be taken at this time and place pursuant to the Federal Rules of Civil Procedure and notice of counsel as to time and place of taking said deposition; that the deposition was recorded in stenotype by the court reporter, Christina Potter, and transcribed out of the presence of the witness; and that said deposition is to be submitted to the witness for examination and signature.

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1 T-R-A-N-S-C-R-I-P-T OF P-R-O-C-E-E-D-I-N-G
2 MICHAEL DALTON
3 having been duly sworn, was examined and deposed as if on
4 direct examination as follows:
5 MS. FINGUERRA-DUCHARME: For the record,
6 we've stipulated that the court reporter is
7 qualified to record this deposition, and I don't
8 challenge the stenographer's qualifications.
9 DIRECT EXAMINATION
10 BY MR. DALTON:
11 Q. Mr. Dalton, you have before this hearing an
12 application for Trademark for the term DealerDashboard; is
13 that correct?
14 A. Yes.
15 Q. There's been an opposition filed in this
16 hearing by Honda Motor Limited; is that correct?
17 A. Yes.
18 (Applicant's Exhibit No. 38 was marked for
19 identification.)
20 Q. Mr. Dalton, you have in front of you Exhibit
21 38, could you identify that for the record.
22 A. Yes. This is from the Trademark Patent and
23 Appeals Board. It's a snap shot publication of the
24 pre-approval. It states that the serial number of my
25 application was 78339571. That it was approved for

publication. That the filing basis is 1(a). And there's a standard character mark of the word DealerDashboard, no spaces, one word. It has an international class of 35. And it has a descriptive text of providing automotive dealerships managerial information concerning their sales, service, and parts departments, key financial indicators of how their dealership is performing via internet; and providing a website featuring information about automotive -- automobile dealerships, automobiles, automotive parts and accessories, at which users can link to the retail or wholesale websites of others. It indicates a first use date of 10/5/1999. And a first use in commerce date of 10/5/1999. And an approved for publication date of 3/23/2006. Also it has a representative example of the term DealerDashboard in block lower and capital case.

Q. Mr. Dalton, does that accurately reflect your use of the term DealerDashboard, the usage, the descriptive text?

A. Yes, it does.

Q. And all elements of that descriptive text was in use as of 10/5/1999?

MS. FINGUERRA-DUCHARME: Objection. Form. Leading.

Q. Was the descriptive text in use on 10/5/1999?

1 MS. FINGUERRA-DUCHARME: Objection.
2 Leading.
3 Q. Could you please describe for the record
4 your usage of the term DealerDashboard?
5 A. Yes. The descriptive text is my usage and
6 the first time I used that in that particular verbiage was
7 10/5/1999, although I did provide managerial information
8 concerning sales service and parts departments as of
9 1/1/1999 under the term DealerDashboard except that I did
10 not have the ownership of the domain name
11 DealerDashboard.com.
12 (Applicant's Exhibit No. 39 was marked for
13 identification.)
14 Q. Mr. Dalton, could you describe for the
15 record what Exhibit 39 --
16 MS. FINGUERRA-DUCHARME: Do you have copies?
17 Q. I'm sorry. Mr. Dalton, could you please
18 describe for the Court what Exhibit 39 represents?
19 A. Yes. This represents a public document
20 available via the web at NetworkSolutions for a WHOIS
21 Search that I conducted, which I conducted this search on
22 7/14/2009. And this accurately reflects the print screen
23 of the results of that search, and in that search it
24 states that the registrant of DealerDashboard.com is
25 myself, Michael Dalton and the record was created on 5,

1 October, 1999.
2 (Applicant's Exhibit No. 40 was marked for
3 identification.)
4 Q. Mr. Dalton, you have in front of you what is
5 marked as Exhibit 40, for the record could you identify
6 that document, please.
7 A. Yes. This is a search that I did at the
8 internet archive of Wayback Machine, it's a public
9 document available to the general public. The Wayback
10 Machine is an archive site that archives websites on the
11 web. And what this represents is I did a search on
12 DealerDashboard.com and it shows when the time period was
13 that the Wayback Machine started archiving the website
14 DealerDashboard.com, and it took some time for them to
15 start archiving it. They show a first date of archival of
16 February 29th, 2000 and this document is dated 1/6/2007,
17 and as of that date they had archived it through April
18 28th, 2006. This document I provided in my answers to
19 Interrogatories. And it demonstrates that the websites
20 DealerDashboard.com was alive and has remained alive.
21 MS. FINGUERRA-DUCHARME: Objection.
22 A. It represents that they have archived this
23 site on a continuing basis from February 29th, 2000 to
24 April 28th, 2006.
25 (Applicant's Exhibit No. 41 was marked for

1 identification.)
2 Q. Mr. Dalton, I have marked Exhibit 41, you
3 have that in front of you, could you identify that for the
4 record.
5 A. Yes. This is a screen shot from the Wayback
6 archive, the web.archive.org on the Wayback of a screen
7 shot of what the website looked liked in use as of
8 10/5/1999. In the upper left-hand corner it shows
9 DealerDashboard and the standard character mark with the
10 future view of the automotive world.
11 MS. FINGUERRA-DUCHARME: Objection to
12 characterization of what appears in this document.
13 Q. Mr. Dalton, could you read what the document
14 states.
15 A. In the upper left-hand corner there is the
16 term DealerDashboard as standard character with the words
17 future view of the automotive world. There's a logo that
18 has DealerDashboard.com in the center of the page,
19 underneath there it says behind the wheel we deliver.
20 There is a series of radio buttons that say home, company,
21 press, unlegible. There's a graphic of an automobile,
22 there's a graphic of a dashboard and an advertisement for
23 Serious Explorations banner.
24 Q. Mr. Dalton, does that accurately reflect
25 your website as of 10/5/1999?

1 A. Yes.
2 (Applicant's Exhibit No. 42 was marked for
3 identification.)
4 Q. Mr. Dalton, if we could go back to 41 for
5 one second, please. Mr. Dalton, has this document been
6 provided to the opposer?
7 A. Yes, it has and as you can see in the lower
8 right-hand corner it has H001283, it's a replica of a
9 document that was utilized during my discovery deposition.
10 Q. Mr. Dalton, I have in front of you Exhibit
11 42, could you identify that for the record.
12 A. Yes. This is a screen shot of the website
13 of DealerDashboard.com. In the upper left-hand corner it
14 reads ADealerDashboard.com-DealerDashboard with new Cars,
15 Used Cars, Trucks, SUV and this was produced 12/30/04.
16 And in the left-hand side lower bottom it as
17 http://dealerdashboard.com, so this reflects the actual
18 website as of that date.
19 Q. Mr. Dalton, was this document provided to
20 the opposer?
21 A. Yes, it was. And if you'll notice in the
22 lower right-hand corner it states H001284, it is an exact
23 duplicate of an Exhibit from my discovery deposition.
24 (Applicant's Exhibit 43 was marked for
25 identification.)

1 Q. Mr. Dalton, I have in front of you what I've
2 labeled Exhibit 43, can you identify that for the record.
3 A. Yes. This is a photocopy which I created of
4 a postcard front and back of an advertising mailer that's
5 currently in effect. It states retail lenders A to E,
6 floor-plan financing, environmental protection, vehicle
7 service warranty, dealer management system, GAP, We want
8 your business, DealerDashboard.com, telephone number on
9 the front of the postcard. On the back it states
10 DealerDashboard.com, we deliver, with an address, simonize
11 glasscoat environmental protection, vehicle service
12 warranty-fully insured, floor-plan financing, dealer
13 management solutions, national non-recourse lenders A to
14 E, electronic application sent to multiple lenders,
15 approval in seconds with no monthly fee, credit
16 repair-finally the be back buyer, my phone number and the
17 email address of sales@DealerDashboard.com.
18 MR. DALTON: Off the record.
19 (Applicant's Exhibit No. 44 was marked for
20 identification.)
21 Q. Mr. Dalton, you have in front of you Exhibit
22 44, a multiple page document, would you please identify
23 that for the record.
24 A. Yes. These are screen shots from
25 DealerDashboard.com. The first page has to do with

1 DealerDashboard logo that indicates some key financial
2 data for dealers, with regards to used vehicle inventory,
3 inventory management systems, inventory reports, it allows
4 you to do vehicle cost control and that is to help the
5 dealers with the sales of new vehicles.
6 The next page, the second page would be D2D
7 vehicle detail that would be where the dealer would have
8 the breakdown of the cost in a vehicle, this would be key
9 financial data for a dealer. It shows the trade-in value
10 detailing costs, repair costs, his sale price and then his
11 gross profit per vehicle..
12 The third page is a duplicate of page 2
13 without the numbers. Page 4 shows a vehicle price sticker
14 that allows a dealer to manage their inventory more
15 effectively. This is a sticker that they would put on the
16 side of the window that is on their lot for sales. It
17 shows the retail price, asking price and it also shows
18 what the dealer would be willing to wholesale the car for
19 at the online auction.
20 Page 5 is captioned used inventory
21 management system, this provides the dealer with key
22 financial information with regards to aging on your
23 vehicles. It shows a snap shot of a screen where cars
24 would be listed and they would be highlighted in different
25 colors. Red would mean 90 days old, yellow would be 30 to

1 60 days old, and green would mean 30 days old, and that
2 allows the dealer to visually see the aging of the
3 inventory and push those vehicles that have a higher age.
4 Page 6 has to do with a dealers key
5 financial information in the service department, it's an
6 expense breakdown. It has for the dealers information, a
7 composite under the percentage column and that is based on
8 a national average of what costs are to a dealer. The
9 example shows salaries, semi-fixed costs, fixed costs, and
10 heat, light and power. It shows the average percent of
11 gross of those particular categories and it allows the
12 dealer to compare that to their actual to see if they
13 maybe out of line, where they possibly could look at a
14 category more effectively.
15 Page 7 shows that screen shot where you can
16 close a window or print that screen shot, buttons. Page 8
17 this provides key financial information with regards to
18 service and mechanic department. It shows the time
19 distribution of a particular month. It shows how much
20 customer sales or internal sales or warranty and give you
21 your total. And it shows what the national average is for
22 return on repair orders with regards to labor, it shows
23 that the national average is 2.2 hours per repair order,
24 that allows a dealer to calculate his labor repair order
25 to see if there's any -- provides key financial

1 information with regards to the service department, has
2 two radio buttons whether to close the window or print the
3 text.
4 On Page 9 this is a continuation of service
5 department labor and this would give you service
6 utilization, rates broke down into the different
7 categories of a car, truck, warranty, internal, your total
8 sales. And it allows you to take your total labor rates,
9 divide that by the number of technicians you have and you
10 get your average tech rate. And then it allows you to
11 note to put your costs, your average tech rate, and it
12 shows you the amount of hours that you billed. Two radio
13 buttons, close this window, print this text.
14 Page 10 has to do with key financial data
15 for a dealers parts department. This shows order
16 efficiency, shows whether they've purchased the parts on a
17 stock order or specialty order, or specialty priced parts,
18 the units down, then it shows the turn time of your
19 inventory, and it shows key financial averages and it
20 shows the turn rate of 3.5-4.5 turns per year. It also
21 shows your inventory turn rate with regards to how many
22 times per year and it shows the national average of five
23 to six times per year. This provides a dealer key
24 financial information with regards to the parts
25 department, it has two radio buttons close this window,

1 print this text.
2 Page 11 is the handling cost that allows a
3 dealer to add key financial information with regards to
4 how much it's costing to handle their parts with regards
5 to stock orders, emergency orders, vehicle inventory --
6 wholesale inventory, sorry, and parts inventory
7 adjustments. So, this provides the dealer with how much
8 freight is costing them on a monthly basis, it has two
9 radio buttons close this window, print this text.
10 Page 12 says expenses with regards to
11 different brands and makes, it has two radio buttons close
12 this window, print this text.
13 Page 13 has cash planning worksheet of all
14 their cash in, cash out, and it provides key financial
15 information to a dealer with regards to their overall
16 operations with a radio button close this window, print
17 this text. This actually reflects services that were
18 available to a dealer as of 1/1/1999 and available on the
19 website DealerDashboard.com as of 10/5/1999.
20 MS. FINGUERRA-DUCHARME: Objection.
21 Mischaracterizes the document. Also object for
22 inadmissible conclusion.
23 Q. Mr. Dalton, for the record would you please
24 state what this represents?
25 MS. FINGUERRA-DUCHARME: Objection.

1 Unintelligible.
2 Q. Mr. Dalton, could you go a little further in
3 explaining Exhibit 44 for the record.
4 A. Yes.
5 MS. FINGUERRA-DUCHARME: Objection. Calls
6 for a narrative response.
7 Q. Mr. Dalton, on Exhibit 44 when did you use
8 this with the term DealerDashboard.com?
9 MS. FINGUERRA-DUCHARME: Objection. Vague
10 and ambiguous.
11 A. I first used all of the documents in Exhibit
12 44 as of 1/1/1999 and continuing and was transferred to
13 the website DealerDashboard.com 10/5/1999. During the
14 period of 1/1/1999 I was developing the website under the
15 code and was soliciting dealers with the name
16 DealerDashboard via phone call and direct communication.
17 I used these instruments to assist dealers although during
18 that period I did not secure any clients.
19 Q. Mr. Dalton, does Exhibit 44 accurately
20 reflect -- strike that. Mr. Dalton, you have in your
21 usage that you're providing an automotive dealership
22 management information, sales, service and parts
23 department, key financial indicators --
24 MS. FINGUERRA-DUCHARME: I didn't understand
25 the beginning, you have in your what?

1 (Court reporter responds.)
2 Q. Mr. Dalton, Exhibit 38, the description of
3 services that states providing automotive dealerships
4 managerial information concerning their sales, service,
5 and parts departments key financial indicators of how
6 their dealership is performing via the internet. Does
7 Exhibit 44 accurately reflect that descriptive text?
8 A. Yes.
9 MR. DALTON: Off the record.
10 (Off the record.)
11 Q. Mr. Dalton, the opposer has presented a
12 claim that DealerDashboard mark is a generic term or
13 merely a descriptive term; is that correct?
14 A. Yes.
15 MS. FINGUERRA-DUCHARME: Objection.
16 Leading.
17 Q. Mr. Dalton, could you for the record state
18 what the opposition is to your Trademark application
19 DealerDashboard?
20 A. Yes. It is my understanding that Honda is
21 claiming -- Honda Motor Company Limited is claiming that
22 the term DealerDashboard is a generic term and merely a
23 descriptive term and they've also claimed that I was not
24 providing the services to automotive dealerships
25 managerial information concerning their sales, service,

1 parts departments key financial indicators of how their
2 dealership was performing via the internet.
3 (Applicant's Exhibit No. 45 was marked for
4 identification.)
5 Q. Mr. Dalton, I have in front of you Exhibit
6 45, please identify that for the record.
7 A. Yes. This is a search I conducted on the
8 United States Patent Trademark's office website, it was a
9 search on the term Dashboard. The reason why I did that
10 search is it appeared that the opposer had issues with the
11 term Dashboard as being generic. What is here is multiple
12 registrations of the term Dashboard, Trademark names,
13 which have been approved by the Patent Trademark office.
14 This accurately reflects what was available on line, it's
15 an exact duplicate printing of that search from the
16 Trademark electronic search system none as TESS. The
17 search was done on 7/2/2009 and there's multiple pages.
18 Q. Could you for the record read what it states
19 with regards to the registration of DISCOVERY DASHBOARD
20 with regards to goods and services.
21 A. Computer software for use in the marketing
22 field that provides real time, integrated business
23 management intelligence by combining information from
24 various databases and presenting it in an
25 easy-to-understand user interface. And that has a

1 registration number of 3412436, that's utilizing the term
2 dashboard.
3 Q. Mr. Dalton, could you read the goods and
4 services for the registered Trademark BANKER'S DASHBOARD.
5 A. Yes. Providing temporary use of
6 non-downloadable computer software for financial
7 institutions for providing financial analysis, financial
8 reporting, asset liability management reporting and
9 analysis, and product pricing. Registration number
10 3236291 as of May 1st, 2007.
11 Q. Mr. Dalton, could you read the goods and
12 services description for the registered Trademark
13 MARKETING DASHBOARD.
14 A. Yes. Business marketing services and
15 providing business marketing information, namely,
16 providing client marketing data for purposes of analysis,
17 reporting, and decision support. It has a registration
18 number of 3299462 and a registration date of September
19 25th, 2007.
20 Q. Mr. Dalton, could you read the goods and
21 services for the registered Trademark DASHBOARD.
22 A. Yes. Business consulting services, namely,
23 determining and providing a benchmark performance report
24 for emergency care facilities and providing
25 recommendations for improvement of such emergency care

1 facilities based thereon. It has a registration number of
2 3403177 and a registration date of March 25th, 2008.
3 Q. Mr. Dalton, could you read the goods and
4 services for registered Trademark NEWS DASHBOARD.
5 A. Yes. Financial information provided by
6 electronic means and financial information processing,
7 namely financial valuation measuring the value of a press
8 release through tracking and analyzing the promulgation
9 and other characteristics of press releases, and reporting
10 such press release statistics. It has a registration
11 number of 3137105 and a registration date of August 29th,
12 2006.
13 Q. Mr. Dalton, could you read the goods and
14 services description for the registered Trademark
15 BUNKERDASHBOARD.
16 A. Yes. Computer software for use in managing
17 marine fuel purchases. It has a registration number of
18 3069389 and a registration date of March 14th, 2006.
19 Q. Mr. Dalton, could you read the goods and
20 services for the registered Trademark DOCUMENT DASHBOARD.
21 A. Yes. Providing online non-downloadable
22 browser-enabled client interface software that allows a
23 user to use predefined document templates to create text
24 content, manage graphical and color content, modify and
25 edit template attributes, distribute via printed media and

track production status for direct mail or billing correspondence in a high-speed and high volume service bureau production environment. It has a registration number of 3083947 and a registration date of April 18th, 2006.

Q. Moving now to the registered HOME DASHBOARD. Could you read the goods and services for that registered Trademark HOME DASHBOARD.

A. Yes.

MS. FINGUERRA-DUCHARME: Mr. Dalton, if you want to just read all of the names, Trademark names, then I have no problem stipulating that these documents are an accurate reflection of the last printout as of 7/3/2009.

MR. DALTON: Okay. Thank you, so stipulated.

MS. FINGUERRA-DUCHARME: So, just read the names of all the marks, start with RESUME.

A. DASHBOARD RESUME, the next one would be HOME DASHBOARD, DEMOCRACY DASHBOARD, IP DASHBOARD, RESOURCE DASHBOARD, MORTGAGEDASHBOARD, that's M-O-R-T-G-A-G-E-D-A-S-H-B-O-A-R-D, all one word, SOLAR DASHBOARD, BUILDING DASHBOARD, PRICING DASHBOARD, AGENT DASHBOARD, DEAL DASHBOARD, MEDICAL MANAGEMENT DASHBOARD, DIGITAL DASHBOARD, and AUTODEALER.

1 (Applicant's Exhibit No. 46 was marked for
2 identification.)
3 MS. FINGUERRA-DUCHARME: I just would like
4 to make an objection on the record and I'll renew it
5 if you need me to with each document shown, but I'm
6 going to move to strike these documents, because
7 they were not produced in discovery and you had an
8 on-going obligation to supplement your discovery and
9 not show up the day of your testimony deposition
10 with a stack of documents that we had asked very
11 clearly in our document request for. All the
12 documents you've shown so far are responsive to them
13 and you have not met your obligation under the
14 rules.
15 MR. DALTON: So, it's my understanding
16 you're objecting to Exhibit 46; is that correct?
17 MS. FINGUERRA-DUCHARME: I'm objecting from
18 Exhibit 43, so Exhibit 43, 44, Exhibit 45 and now
19 Exhibit 46, because none of these documents have
20 been produced to us prior to today and you haven't
21 even produced them to me, you're just showing them
22 to yourself during your testimony deposition and
23 that's not proper under the rules.
24 You had an obligation to Rule 26(A)1 to --
25 it may not be (A)1, but Rule 26 to -- I think it's

26(E), you have an obligation to continue to supplement your discovery and you've not done so prior to today. Today you're not even supplementing your discovery you're just trying to introduce documents into evidence.

MR. DALTON: Okay. So, you're objecting to Exhibit 43?

MS. FINGUERRA-DUCHARME: I'm objecting to Exhibit 43, 44, 45 and 46.

MR. DALTON: 44, all those documents you were presented with and if you'll notice in the lower --

MS. FINGUERRA-DUCHARME: I'm sorry, not 44, you're right, 43, 45 and 46.

MR. DALTON: And 45, okay.

MS. FINGUERRA-DUCHARME: None of those documents have been produced to us prior to today and you had an on-going obligation under the rules to supplement your discovery and to produce to us prior to this testimony deposition any documents you had planned to rely upon during the testimony phase that was a specific request and you did not do so, so I'll move to strike all these documents.

MR. DALTON: For the record, objection, of 45, untimely.

1 MS. FINGUERRA-DUCHARME: How is it justified
2 as untimely?
3 MR. DALTON: Let's move forward. You had
4 the opportunity to object and you stipulated to the
5 entry of them.
6 MS. FINGUERRA-DUCHARME: No, I stipulated to
7 you the fact of what those documents said. I did
8 not stipulate to the entry of them into evidence. I
9 just didn't want to waste our time with you reading
10 each document, but for the record there is no
11 stipulation as to admissibility. There is a
12 stipulation as to what the printout says, but they
13 were not produced prior to today.
14 Q. Mr. Dalton, I'd like to take you back to
15 Exhibit 45 and have you re-examine those, if I could. Mr.
16 Dalton, could you state for the record how you obtained
17 these documents?
18 A. Yes.
19 MS. FINGUERRA-DUCHARME: Objection to
20 relevancy.
21 A. They are general publication documents from
22 the Patent Trademark office available to anyone. I rely
23 upon them with regards to general publication, published
24 to the public, so it is available to anyone who wishes to
25 retrieve them.

1 MS. FINGUERRA-DUCHARME: Objection to the
2 admissibility of those documents.
3 Q. You now have in front of you Exhibit 46,
4 could you identify that for the record.
5 A. Yes. This is a general public document
6 available via the web. It is from the Harley-Davidson
7 website and you can see midway through the first paragraph
8 it states that Dealer Dashboard with the trade TM
9 insignia, indicating a trademark. Harley-Davidson has a
10 claim of trademark rights.
11 MS. FINGUERRA-DUCHARME: Objection.
12 Competency. Foundation.
13 Q. Mr. Dalton, could you read the document for
14 the record, please.
15 A. Program Manager Dealer Dashboard, Wisconsin
16 -- Juneau Avenue, Registration number 2519. Job summary,
17 the performance consulting program's primary objective is
18 dealership performance improvement by providing consulting
19 services across five functional areas: Financial
20 Management Excellence, Sales Excellence, Inventory
21 Excellence, Service Excellence and F&I Excellence. The
22 Dealer Dashboard the trademark insignia provides the
23 mechanism to track the performance improvements across
24 these functional areas. The purpose and intent of this
25 position is to provide strategic and tactical direction to

1 the Dealer Dashboard trademark insignia System. In
2 addition, this position will act as the key liaison
3 between the I.S. Department and the various internal and
4 external stakeholders. This position leads the overall
5 design, development and tactical direction of the Dealer
6 Dashboard trademark insignia System. Directly supervises
7 the Dealer Dashboard trademark insignia support staff. In
8 addition, provides guidance and direction to internal and
9 third party consultants as well as the dashboard set-up
10 visit staff.
11 Q. You can stop there if you like.
12 MS. FINGUERRA-DUCHARME: I'm not asking the
13 questions, Mr. Dalton.
14 Q. I was making a statement.
15 (Applicant's Exhibit No. 47 was marked for
16 identification.)
17 Q. Mr. Dalton, I have in front of you Exhibit
18 47, would you identify that for the record.
19 A. Yes. This was found on the web. It's
20 available to the general public, it's a publication
21 publicly available and it has the title Riding with
22 Business Objects at Harley-Davidson. It has participants
23 2004 International User Conference, Randall Smith,
24 Harley-Davidson, Christopher Elfer, Greenbrier & Russel.
25 MS. FINGUERRA-DUCHARME: Move to strike this

1 document for failure to produce prior to today.
2 A. This document is readily available to the
3 public, it's a published document and --
4 MS. FINGUERRA-DUCHARME: Objection. There
5 doesn't seem to be a question on the table.
6 MR. DALTON: I'm still talking, you
7 interrupted me.
8 A. -- and available to the public. On Page 7
9 this was copywrited in 2004. On Page 7 halfway down the
10 page it states Dealer Dashboard with the trademark
11 insignia.
12 (Applicant's Exhibit No. 48 was marked for
13 identification.)
14 Q. Mr. Dalton, I have in front of you Exhibit
15 48, please identify that for the record.
16 A. Yes. This is a document of an opposition
17 that I filed in opposition number 91163349 with regards to
18 Nowcom Corporation.
19 MS. FINGUERRA-DUCHARME: Objection. Move to
20 strike, relevance.
21 A. The Nowcom Corporation attempted to
22 trademark the term Dealer Dashboard and I opposed that
23 registration and it caused a delay in this proceeding.
24 MS. FINGUERRA-DUCHARME: Objection. Move to
25 strike. Relevance.

A. What it indicates --

MS. FINGUERRA-DUCHARME: You have to ask yourself a question.

MR. DALTON: I'm still identifying this for the record.

MS. FINGUERRA-DUCHARME: You're not asking proper questions. You can't ask a question that calls for a narrative answer. You have to ask a direct question and answer the question. You can't just speak for 10 minutes.

Q. Mr. Dalton, Nowcom was presented to you before in the deposition, discovery deposition; was it not?

A. Yes, it was.

Q. Could you briefly describe for the record what is going on with this particular Nowcom Corporation.

MS. FINGUERRA-DUCHARME: Objection. Vague and ambiguous. Objection, relevance.

A. Yes. This had to do with the term Dealer Dashboard, this particular Nowcom Corporation viewed it as a trademarkable term. I had first use of that term, so I filed an opposition and ultimately prevailed, but this particular company, Nowcom Corporation, when they filed Dealer Dashboard it was approved for publication and I ultimately prevailed ceasing registration of that mark due

1 to prior use.
2 MS. FINGUERRA-DUCHARME: Objection. States
3 evidence. Relevancy.
4 Q. Mr. Dalton, on Exhibit 48, could you please
5 read the opposition beginning with Page 4.
6 MS. FINGUERRA-DUCHARME: I'm happy to
7 stipulate as to what Page 4 says, you don't need to
8 read it into the record, but I still maintain my
9 objection.
10 (Applicant's Exhibit No. 49 was marked for
11 identification.)
12 Q. Mr. Dalton, you have in front of you Exhibit
13 49, please identify that for the record.
14 A. Yes. This is a screen shot of a search that
15 I did on the web.archive on Wayback Machines on 7/14/09.
16 It was Westlake Financial who owns Nowcom.com and here it
17 indicates --
18 MS. FINGUERRA-DUCHARME: Objection. No
19 foundation. Competency. And I move to strike for
20 failure to produce this prior to today.
21 A. This is a search that I did on 7/14/09, it's
22 a public document readily available to the general public.
23 I rely on this document to demonstrate that Westlake
24 Financial the owner of Nowcom.com had a history of
25 exploiting products other than their own.

1 MS. FINGUERRA-DUCHARME: Objection.
2 Relevancy. No foundation. Calls for a conclusion.
3 Competency.
4 A. If you look in the lower left-hand corner
5 you'll see a screen shot where they have taken a WD-40 can
6 and imposed their brand on that particular can. On the
7 third page is a blow up and they basically took the trade
8 dress of the WD-40 can and made it their own.
9 MS. FINGUERRA-DUCHARME: Objection.
10 Relevancy. Foundation. Inadmissible conclusion.
11 Calls for a narrative, there isn't even a question
12 on the table. Mr. Dalton, you can't just sit there
13 and talk. You need to ask proper questions on
14 direct and answer them. You can't sit here all day
15 and have narratives on topics that you have no
16 competency which to testify.
17 Q. Mr. Dalton, can you please read the last
18 paragraph of Page 1.
19 A. WDC.NET ad not yet released. Still in the
20 works, this final ad in the DealerCenter campaign uses a
21 retro feel to show a lighter side in the ads. Reminiscent
22 of the Scratcher and Dice ads of the first campaign, this
23 one takes a familiar product in this case WD-40 and tweaks
24 it to promote the new DealerCenter website.
25 (Applicant's Exhibit No. 50 was marked for

1 identification.)
2 Q. Mr. Dalton, please identify what you have in
3 front of you marked as Exhibit 50.
4 A. Yes. This is a data-driven market research
5 document for which the opposer produced to me at the
6 deposition, my discovery deposition, and it was presented
7 questioning the validity of the accuracy of Ranking.com
8 report.
9 MS. FINGUERRA-DUCHARME: Objection.
10 Mischaracterizes prior testimony.
11 Q. Mr. Dalton, in your own words could you
12 please summarize what you believe -- what you recall
13 regarding the testimony during your discovery deposition
14 and the questions asked about Ranking.com?
15 A. Yes.
16 MS. FINGUERRA-DUCHARME: Objection to form
17 of the question.
18 Q. Mr. Dalton, could you for the record
19 summarize your testimony regarding this document in your
20 discovery deposition?
21 MS. FINGUERRA-DUCHARME: Objection. The
22 record speaks for itself.
23 (Applicant's Exhibit No. 51 was marked for
24 identification.)
25 Q. Mr. Dalton, could you for the record

identify Exhibit 51.

A. Yes. This is a screen shot of a publication available to the general public via the web. Nielsenmedia.com.

MS. FINGUERRA-DUCHARME: Objection. Renew my objection to any documents that we're seeing for the first time including Exhibit 51 and we move to strike for failure to produce prior to today under Mr. Dalton's continuing obligation of discovery.

Q. Mr. Dalton, when was this search done on this particular generally available public document?

A. 7/15/2009.

Q. I refer you to Page 3, paragraph 4 and if you could please read that into the record.

A. Yes. To comprehend the dimension of our task, let's look at the numbers. We collect information from approximately 25,000 metered households starting at about 3 a.m. each day, process approximately 10 million viewing minutes a day, and make more than 4,000 gigabytes of data available for customer access the next day. In addition, we collect and process data from 1.6 million handwritten paper diaries from households across the country during sweep periods.

MS. FINGUERRA-DUCHARME: Objection to relevance.

1 Q. Mr. Dalton, could you go to Page 1 and read
2 into the record paragraph 4.
3 A. Initial contact, designated households are
4 mailed an introductory letter, which includes a
5 questionnaire with a request to provide Nielsen Media
6 Research with basic demographic information.
7 MS. FINGUERRA-DUCHARME: Objection to
8 relevance.
9 (Applicant's Exhibit No. 52 was marked for
10 identification.)
11 Q. Mr. Dalton, you have in front of you what
12 I've marked Exhibit 52, please identify that for the
13 record.
14 A. Yes. This is a web search on the Wikipedia,
15 the free encyclopedia, regarding key words Sample size.
16 MS. FINGUERRA-DUCHARME: Objection. Move to
17 strike based on failure to produce prior to
18 today.
19 A. This search was done on 7/17/2009.
20 Q. And, if you could, could you please read the
21 second paragraph of the first page.
22 A. Typically, all else being equal, a larger
23 sample size leads to increased precision in estimates of
24 various properties of the population. This can be seen in
25 such statistical rules as the law of large numbers and the

central limit theorem. Repeated measurements and replication of independent samples are often required in measurement and experiments to reach a desired precision.

(Applicant's Exhibit No. 53 was marked for identification.)

Q. Mr. Dalton, did you give prior testimony regarding search results for the term DealerDashboard?

A. I did.

Q. Thank you. And as DealerDashboard one word and Dealer Dashboard as separate?

A. I did.

Q. And when did you do that?

A. I did that during my discovery deposition.

Q. Since that discovery deposition have you had opportunities to compare your search terms with the search terms of any other alleged trademarks?

A. Yes, I have.

MS. FINGUERRA-DUCHARME: Objection. Unintelligible.

Q. Mr. Dalton, before you is Exhibit 53, could you please identify that for the record.

A. Yes. This is a publicly available document available to the general public that I relied on regarding the search term Honda. It demonstrates 1 to 10 of 663 million hits for the term Honda.

1 MS. FINGUERRA-DUCHARME: Objection. Move
2 to strike for failure to produce.
3 A. This search was done on 7/15/2009. The
4 first page states 1 to 10 of 663 million. I did a search
5 on Yahoo. I did a search on --
6 MS. FINGUERRA-DUCHARME: Is there a question
7 pending?
8 A. I'm still identifying. I did a search on
9 AOL and AOL showed 1 of 176 million hits on the term
10 Honda.
11 MS. FINGUERRA-DUCHARME: Objection. Move to
12 strike. Relevance.
13 A. I did a search on Google, which showed a
14 result of 1 of about 177 million hits for the term Honda.
15 (Applicant's Exhibit No. 54 was marked for
16 identification.)
17 Q. Mr. Dalton, I have in front of you Exhibit
18 54, please identify that for the record.
19 A. Yes. This is an email dated July 7 from
20 Brenda Lawrence to me in response to cease and desist
21 dated June 9, 2009 and it states that they have ceased the
22 use of the term DealerDashboard for RVTraderOnline
23 Dominion Enterprises.
24 MS. FINGUERRA-DUCHARME: Objection. Move to
25 strike for failure to produce, this was specifically

1 asked for as well as part of a continuing obligation
2 during his discovery deposition, and also
3 mischaracterization of the document.
4 Q. Mr. Dalton, could you read the first
5 paragraph of the return email from Brenda Lawrence.
6 A. Yes. Dear Mr. Dalton, we have investigated
7 your claim of exclusive right to the term Dealer
8 Dashboard. We note that your trademark application has
9 been subject to opposition proceedings under the Trademark
10 Trial and Appeal Board for almost three years. However,
11 any similarity between RVTraderOnline's use for a
12 newsletter to your use of the term for a website was
13 inadvertent. We will be changing the name of our
14 newsletter with the August issue. Signed Brenda Lawrence
15 Dominion Enterprises, Intellectual Property Administrator.
16 (Applicant's Exhibit No. 55 was marked for
17 identification.)
18 Q. Mr. Dalton, I have before you what I have
19 marked as Exhibit 55, could you please identify that for
20 the record.
21 A. Yes. This was presented to me during the
22 discovery deposition, it has a number at the bottom of
23 H001379 that was presented by the opposer with regards to
24 the term DealerDashboard and Goalline Solutions using that
25 term.

1 Q. Mr. Dalton, did that upset you?
2 MS. FINGUERRA-DUCHARME: Objection.
3 Relevance.
4 Q. Mr. Dalton, you're claiming exclusive use of
5 the term DealerDashboard; is that correct?
6 A. Yes.
7 MS. FINGUERRA-DUCHARME: Objection.
8 Leading.
9 Q. Mr. Dalton, do you claim exclusive use of
10 the term DealerDashboard?
11 MS. FINGUERRA-DUCHARME: Objection.
12 Leading.
13 Q. Mr. Dalton, you have an application for
14 trademark for the term DealerDashboard; is that correct?
15 A. Yes.
16 MS. FINGUERRA-DUCHARME: Objection.
17 Leading.
18 MR. DALTON: Let's take a break.
19 (Off the record.)
20 (Applicant's Exhibit No. 56 was marked for
21 identification.)
22 Q. Mr. Dalton, you have in front of you Exhibit
23 56, could you please identify that for the record.
24 MS. FINGUERRA-DUCHARME: And just for the
25 record I object for not producing this prior to

1 today.
2 A. Yes. That's a search I did on 7/16/2009 and
3 I went to the web address
4 http://www.goallinesolutions.com/glweb/dashboard.aspx and
5 it provided me directly to this page that has the website
6 address up at the top for goalline solutions.
7 (Applicant's Exhibit No. 57 was marked for
8 identification.)
9 Q. Thank you. Mr. Dalton, I refer you back to
10 Exhibit 56, and ask you if that document is readily
11 available to the general public?
12 A. Yes, it is. It's a public document on the
13 web published on the web, it's a screen shot.
14 Q. Mr. Dalton, you have in front of you Exhibit
15 57, please identify that for the record.
16 A. Yes. This is an Exhibit that was presented
17 to me during my discovery deposition, in the lower
18 right-hand corner it has an insignia of H001386, which was
19 produced by the opposer.
20 Q. Mr. Dalton, could you please read the
21 heading of Page 1 of Exhibit 57, the heading that's in
22 bold.
23 A. Subaru Australia Drives Dealer Productivity
24 Via Plumtree-Powered Dashboard.
25 (Applicant's Exhibit No. 58 was marked for

1 identification.)
2 MS. FINGUERRA-DUCHARME: I move to strike
3 Exhibit 58 for failure to produce prior to today.
4 Q. Mr. Dalton, you have in front of you what is
5 marked as Exhibit 58, could you please identify that for
6 the record.
7 A. Yes. This is a newly discovered email,
8 which I discovered last night. I had discussed this email
9 in the discovery deposition.
10 Q. Mr. Dalton, could you please read the email
11 into the record.
12 A. This is from Adriana Chiocchi at
13 Plumtree.come that C-H-I-O-C-C-H-I, dated December 15th,
14 2004, to DealerDashboard@hotmail.com, subject, dashboard
15 brand. To whom it may concern, Plumtree has removed all
16 references to your brand as requested. Regard, Adriana
17 Chiocchi, C-H-I-O-C-C-H-I.
18 (Applicant's Exhibit No. 59 was marked for
19 identification.)
20 Q. Mr. Dalton, you have in front of you Exhibit
21 59, please identify to the -- that for the record.
22 A. Yes. This is a search I did on 7/16/2009
23 from the public Wikipedia, the free encyclopedia, it
24 identifies Plumtree Software.
25 MS. FINGUERRA-DUCHARME: I move to strike

1 Exhibit 59 for not being produced prior to today.
2 Q. Mr. Dalton, when did you discover this
3 document?
4 A. On 7/16/2009, which was yesterday.
5 Q. If you could, please read the first
6 paragraph of the first page of Exhibit 59.
7 A. Sure. Plumtree Software is a former
8 software company founded in 1996 by product managers and
9 engineers from Oracle and Informix with funding from
10 Sequoia Capital. The company was a pioneer of extending
11 the portal concept popularized by Yahoo! from the web to
12 enterprise computing. BEA Systems acquired Plumtree on
13 October 20, 2005, and Oracle subsequently acquired BEA.
14 Plumtree's former portal product continues as part of
15 Oracle's product line.
16 (Applicant's Exhibit No. 60 was marked for
17 identification.)
18 Q. Mr. Dalton, I have in front of you what is
19 marked as Exhibit 60, could you please identify that for
20 the record.
21 A. Yes. This is a document that was produced
22 to me at my discovery deposition, it has the number
23 H001134 in the lower right-hand corner. It appears to be
24 a screen shot from ZDNet.com.
25 Q. Mr. Dalton, for the record could you read

1 the bottom paragraph starting with Mazda deployed.
2 A. Yes. Mazda deployed the BEA AquaLogic User
3 interaction to provide managers with easy access to the
4 data they need for dealership reviews. Through this
5 dealer analysis application, managers view performance on
6 the national, regional, and local level.
7 (Applicant's Exhibit No. 61 was marked for
8 identification.)
9 MS. FINGUERRA-DUCHARME: Objection to
10 Exhibit 61 for not having been produced prior to
11 today.
12 Q. Mr. Dalton, you have in front of you Exhibit
13 61, could you please identify that for the record.
14 A. Yes. This is a newly discovered document as
15 of 7/16/2009. It's a web search that I made, which is a
16 general publication available to the public from the
17 Wikipedia, the free encyclopedia, as titled AquaLogic.
18 MS. FINGUERRA-DUCHARME: Objection to
19 relevance.
20 Q. Would you read the second paragraph
21 beginning with BEA AquaLogic into the record, please.
22 A. BEA AquaLogic BPM suite - now Oracle BPM.
23 Q. That's fine you can stop.
24 (Applicant's Exhibit No. 62 was marked for
25 identification.)

1 Q. Mr. Dalton, I put in front of you Exhibit
2 62, could you please identify that document for the
3 record.
4 A. Yes. This is a document that was produced
5 to me by the opposer during my discovery deposition. It's
6 labeled H001364 in the lower right-hand corner.
7 Q. And if you could at the bottom of the page,
8 could you read the website address up through B31104.
9 A. Yes. Http://download.oracle.com.
10 MS. FINGUERRA-DUCHARME: For the record
11 there's more to the domain name, but the document
12 speaks for itself.
13 (Applicant's Exhibit No. 63 was marked for
14 identification.)
15 Q. Mr. Dalton, I refer you back to Exhibit 62,
16 did you have an occasion to visit the website address
17 which is in the lower left-hand corner of Exhibit 62?
18 A. Yes.
19 MS. FINGUERRA-DUCHARME: Objection to form.
20 Q. And what was the results of that address
21 search?
22 A. It produced a no page found.
23 Q. I now put before you Exhibit 63, could you
24 please identify that to the Court.
25 A. Yes. This is a newly discovered web search

1 that I did on 7/16/2009. This shows the screen as a
2 result of inputting the web address, which is found on
3 Exhibit 62.
4 MS. FINGUERRA-DUCHARME: Objection. Move to
5 strike for failure to produce prior to today.
6 (Applicant's Exhibit No. 64 was marked for
7 identification.)
8 Q. I have before you Exhibit 64, could you
9 please identify that for the record.
10 A. Yes. This is a document that the opposer
11 produced in questioning me about, it's labeled in the
12 lower right-hand corner as H001343, it's labeled ADP
13 Lightspeed.
14 (Applicant's Exhibit No. 65 was marked for
15 identification.)
16 MS. FINGUERRA-DUCHARME: Move to strike
17 Exhibit 65 for failure to produce prior to
18 today.
19 Q. Mr. Dalton, I have in front of you Exhibit
20 65, would you please identify that for the Court.
21 A. Yes. This is a newly discovered document
22 that I just discovered last night sitting -- it was
23 actually sitting in my spouse's folder and was not
24 available to me, her name is MelsonW@hotmail, is her email
25 address. I discovered this last night. I had to testify

1 regarding ADP Lightspeed and I thought that they had
2 agreed to cease the use of DealerDashboard and what --
3 Q. And, Mr. Dalton, would you read the email
4 into the record.
5 A. Yes. Mr. Dalton, we are not using that name
6 for our service any longer. This article was published
7 with the wrong name on the page. We are having them
8 change the name now on the service and will not use
9 DealerDashboard in any of our marketing. We apologize for
10 the confusion. Please contact me if you have any further
11 questions. Sorry, I have been in and out of the office,
12 but would be more then willing to set up a time to talk if
13 we necessary. Adam Shiflett, S-H-I-F-L-E-T-T, ADP
14 Lightspeed.
15 (Applicant's Exhibit No. 66 was marked for
16 identification.)
17 MS. FINGUERRA-DUCHARME: Move to strike
18 Exhibit 66 for failure to produce prior to today.
19 Q. Mr. Dalton, I have in front of you Exhibit
20 66, would you identify it for the record.
21 A. Yes. This is a email from The Dashboard
22 Spy.
23 Q. And could you please read the second
24 paragraph.
25 A. Please note that the content to which you

1 refer has been removed.
2 Q. And could you please read the last
3 paragraph.
4 A. Nevertheless, we have removed the post
5 concerning the PFW Systems Corp's IntelliDealer Dashboard
6 product.
7 (Applicant's Exhibit No. 67 was marked for
8 identification.)
9 MS. FINGUERRA-DUCHARME: Move to strike
10 Exhibit 67 for failure to produce prior to today.
11 Q. Mr. Dalton, you have in front of you Exhibit
12 67, could you please identify that for the record.
13 A. Yes. This is a generally available document
14 publication of a published website, which was done on a
15 search on 7/15/2009 for PFW Systems Corporation.
16 Q. And could you please read the heading
17 beginning with ADP.
18 A. Yes. ADP Dealer Services Acquires PFW
19 Systems.
20 MS. FINGUERRA-DUCHARME: Objection to
21 relevance.
22 (Applicant's Exhibit No. 68 was marked for
23 identification.)
24 Q. Mr. Dalton, I have in front of you Exhibit
25 68, please identify that for the record.

A. Yes. This is a newly discovered document on 7/17/2009. It's a search I did and an exact replica of a screen shot from the TESS, Trademark Electronic Search System, on the search term Spam.

MS. FINGUERRA-DUCHARME: Objection for failure to produce. Objection for relevance. Move to strike.

Q. Mr. Dalton, I'll refer you to Page 9 of Exhibit 68, could you please read into the record the goods and services.

MS. FINGUERRA-DUCHARME: Mr. Dalton, I'm happy to stipulate that the goods and services are as they appear in this document without waiving my right to strike for relevance and for failure to produce prior to today. So, again, if you just want to read the names for the record.

A. Spam Arrest, Spam, and Spam.

(Applicant's Exhibit No. 69 was marked for identification.)

Q. Mr. Dalton, you have in front of you Exhibit 69, please identify that for the record.

A. Yes. This is a public search I did on 7/17/2009 to Trademark Electronic Search System (TESS) on the search term Autoweb.

MS. FINGUERRA-DUCHARME: I stipulate to the

1 description of goods, but I move to strike for
2 failure to produce prior to today and for relevance.
3 Q. Mr. Dalton, I refer you back to Exhibit 41,
4 excuse me 44, I'm sorry.
5 A. Okay.
6 Q. Mr. Dalton, the opposer had a question
7 regarding your using the mark DealerDashboard in
8 connection with providing automotive dealers with
9 managerial information concerning their sales, service,
10 and parts department key financial indicators of how their
11 dealership is performing via internet; is that correct?
12 MS. FINGUERRA-DUCHARME: Objection.
13 Leading.
14 Q. Did the opposer have an objection of the
15 manner in which you use the mark DealerDashboard in
16 connection with providing automotive dealership managerial
17 information concerning your sales, service and parts
18 department key financial indicators of how their
19 dealership is performing via the internet?
20 MS. FINGUERRA-DUCHARME: Still leading.
21 A. Yes.
22 MR. DALTON: Off the record.
23 (Off the record.)
24 (Applicant's Exhibit No. 70 was marked for
25 identification.)

1 Q. Mr. Dalton, you have in front of you what
2 we've marked as Exhibit 70, could you identify that for
3 the record.
4 A. Yes. This is a notice of opposition from
5 the opposer that is opposing my application for Trademark,
6 and it is listed in the case file.
7 Q. Mr. Dalton, I refer you to paragraph 9 and
8 ask you to read it beginning at applicant is not using the
9 mark DealerDashboard.
10 A. Yes. Applicant is not using the mark
11 DealerDashboard in connection with providing automotive
12 dealerships managerial information concerning their sales,
13 service, and parts departments key financial indicators of
14 how their dealership is performing via the internet as he
15 has claimed in his application.
16 Q. Do you agree with that, Mr. Dalton?
17 A. No.
18 Q. I'm going to refer you to Exhibit 44 and ask
19 if you have an opinion with regards to the allegation and
20 Exhibit 44.
21 MS. FINGUERRA-DUCHARME: Objection. It
22 calls for an opinion. You can't ask yourself an
23 opinion.
24 A. Yes, I believe that answers that question.
25 MS. FINGUERRA-DUCHARME: Move to strike.

1 The witness cannot give an opinion. I also would
2 like to make clear for the record that in addition
3 to the objection that I keep re-asserting each time
4 a document is produced it was not produced to us
5 prior to today. For any of the emails that Mr.
6 Dalton has tried to enter, which I think include,
7 but are not limited to this is my list so far
8 Exhibits 54, 58 --
9 MR. DALTON: Objection. Untimely.
10 MS. FINGUERRA-DUCHARME: -- and 65, 66. I
11 will also assert an objection for hearsay.
12 MR. DALTON: What were those numbers again?
13 MS. FINGUERRA-DUCHARME: Any of the emails,
14 54, 58, 65, 66 according to my notes, I assert an
15 objection as to hearsay for those, in addition to
16 the objection as failure to produce prior to today
17 despite your obligation to do so.
18 MR. DALTON: And we object as untimely.
19 Okay. That concludes my part.
20 CROSS-EXAMINATION
21 BY MS. FINGUERRA-DUCHARME:
22 Q. If you want to look back at Exhibit 44. You
23 describe these as the services that you were offering to
24 dealers, correct?
25 A. Correct.

1 Q. Okay. Have you provided these services to
2 any dealer to date?
3 A. Absolutely.
4 Q. Can you please name for me your customers?
5 A. Saab Dealerships within a five state region,
6 Puccho Dealers within a seven state region, APO Dealers
7 within a five state region.
8 Q. When did Saab become a customer?
9 A. Saab was not a customer, I don't think that
10 was the question. I don't think that was the question.
11 Q. Who is using your services?
12 A. I don't think I identified them as a
13 customer.
14 Q. Who is using your dealership services?
15 A. I don't think I understand your question.
16 Q. Okay.
17 A. With regards to 44, I don't think I
18 understand your question.
19 Q. Okay. Page 1434 of Exhibit 44. What dealer
20 is currently using this document?
21 A. I don't have that answer, because there's
22 several dealerships who have access to that document, as
23 far as DealerDashboard there are none.
24 Q. There are none, okay. So --
25 A. Services are available, but they are not

1 currently being utilized.
2 Q. Okay. What I would like to know is on what
3 date did you first obtain a customer who actually used
4 your dealership services?
5 MR. DALTON: Objection. Irrelevant,
6 immaterial.
7 A. I have not secured any customers, I believe
8 I testified to that in the deposition.
9 Q. Okay. So, right now -- I'm sorry, strike
10 that. As of 10/5/1999, is it true that you had no
11 customer to whom you were providing automotive dealership
12 managerial information?
13 A. I can't -- I don't -- I don't know.
14 Q. Okay.
15 A. I do know that I was offering services since
16 1/1/99.
17 Q. But no one was actually using them as far as
18 you know?
19 MR. DALTON: Objection. Irrelevant,
20 immaterial.
21 A. That's correct.
22 Q. If you turn to Exhibit 42. In the header on
23 the top left, isn't it true that Dealer Dashboard appears
24 as two separate words?
25 A. It appears as a single word and two separate

words.

Q. The single word, however, is DealerDashboard.com, correct?

A. That's correct.

Q. Okay. All right. Mr. Dalton, you were deposed last year, correct?

A. I don't recall. I think maybe May 8th maybe.

Q. Okay. And during that deposition we reviewed various websites that used the term DealerDashboard, correct?

A. I don't recall.

Q. Well, let's review some of the Exhibits from last year. I'm handing you what we have previously marked as Dalton Exhibit 22, we can keep this Exhibit number. Exhibit 22 was a printout of some pages from the getsharepoint.com website, correct?

A. I wouldn't know. I can't authenticate this document. It's hearsay.

Q. I'm not asking you to authenticate the document. I'm asking you whether or not it appears as if this document --

MR. DALTON: Objection. Hearsay.

Q. Would you please answer the question.

A. What is the question?

1 Q. The question is, does this document appear
2 to be a printout of pages from the getsharepoint.com
3 website, correct?
4 A. I didn't do this search, I don't know that
5 that particular graphic is a representative of that domain
6 name.
7 Q. It appears as if Exhibit 22 was also printed
8 on May 3rd, 2008, correct?
9 A. It appears there's a 5/3/2008 pasted on the
10 page.
11 Q. Do you recall last year that we discussed
12 how Exhibit 22 described the Dealer Dashboard for Karastan
13 Dealers?
14 A. No, I do not.
15 Q. Okay. I'll show you your transcript just to
16 refresh your recollection.
17 MR. DALTON: Objection. Irrelevant,
18 immaterial.
19 A. I'd like to refer to it.
20 Q. Does that refresh your recollection?
21 A. No, it does not.
22 Q. Do you recall testifying that you sent
23 Karastan a cease and desist letter?
24 A. I don't recall that.
25 Q. Okay. On Page 154 of the deposition

1 transcript of Mr. Dalton it says I would note that they
2 receive a cease and desist, although, they are not
3 affiliated with the automotive industry. Does that
4 refresh your recollection?
5 A. I would like to see the transcript, please.
6 Q. Does that refresh your recollection?
7 A. No, it does not.
8 (Opposer's Exhibit No. 71 was marked for
9 identification.)
10 Q. Okay. Will you take a moment to review --
11 MR. DALTON: Objection. Irrelevant,
12 immaterial.
13 Q. -- what I have marked now as Exhibit 71.
14 MR. DALTON: Objection. Hearsay. Exhibit
15 71 is hearsay, irrelevant, immaterial.
16 Q. Would you agree that Exhibit 71 appears to
17 be a printout from a website getsharepoint.com?
18 A. I would not, I've not visited this website
19 and I could not make representation.
20 Q. And was it printed on July 14th, 2009?
21 A. I did not print this document, so I could
22 not attest to that.
23 MR. DALTON: Objection. Irrelevant,
24 immaterial.
25 Q. Okay. According to Exhibit 71 it appears

1 that Karastan is still using the Dealer Dashboard mark or
2 term; does it not?
3 A. I cannot attest to that, I'm not affiliated
4 with Karastan.
5 MR. DALTON: Objection. Irrelevant,
6 immaterial, hearsay.
7 Q. Could you please read for the record on the
8 second page, second paragraph starting with each, three
9 lines down.
10 MR. DALTON: Objection. Irrelevant,
11 immaterial.
12 A. I cannot attest that this is accurate
13 verbiage from the website as Karastan. Each dealer Rep
14 Group needed its own --
15 Q. No. I'm sorry, the second each, it's three
16 lines down.
17 A. Each Dealer Dashboard delivers all the
18 current and important information at a glance, i.e. newest
19 documents, announcements, calendars, links, et cetera.
20 MR. DALTON: I object. Irrelevant,
21 immaterial, hearsay.
22 MS. FINGUERRA-DUCHARME: You have to object
23 and then answer the question that's proper form.
24 MR. DALTON: I just stated that for the
25 record, ma'am.

1 MS. FINGUERRA-DUCHARME: It's a lot more
2 difficult when you're on my side when you're
3 rambling, you're asking a question to yourself and
4 then immediately answering.
5 MR. DALTON: Objection. Abusive, if it
6 continues I'll terminate this proceeding. It shows
7 a lack of respect for the adversary.
8 MS. FINGUERRA-DUCHARME: By pointing out the
9 rules I'm dealing with a pro se adversary, I'm
10 actually helping you.
11 Q. Is Karastan related to your
12 DealerDashboard.com business?
13 A. I cannot attest to what Karastan has.
14 MR. DALTON: Objection. Hearsay,
15 irrelevant.
16 Q. Is Karastan related to your
17 DealerDashboard.com business?
18 A. Karastan is not.
19 Q. Is your DealerDashboard.com website
20 affiliated with Karastan's Dealer Dashboard?
21 A. I could not attest to whether Karastan has a
22 Dealer Dashboard.
23 MR. DALTON: Objection. Immaterial,
24 irrelevant.
25 Q. The question is, is your DealerDashboard.com

1 website affiliated with Karastan's Dealer Dashboard?
2 A. I have no knowledge of that.
3 Q. Okay. Mr. Dalton, at your last deposition
4 we marked Exhibit 26, which was a printout from the
5 Diversified Financial website. Do you recall that last
6 year we discussed how Exhibit 26 described Dealer
7 Dashboard for dealers?
8 A. I do not.
9 Q. Do you recall testifying that you would send
10 out Diversified Financial Services a cease and desist
11 letter?
12 A. I do not.
13 MR. DALTON: With regard to Exhibit Dalton
14 26 I would object to irrelevant, immaterial, lack of
15 authentication.
16 Q. Did you send Diversified Financial a cease
17 and desist letter?
18 A. I do not recall.
19 (Opposer's Exhibit No. 72 was marked for
20 identification.)
21 Q. Okay. I've just handed you Exhibit 72,
22 which
23 is --
24 MR. DALTON: Objection. Irrelevant,
25 immaterial, hearsay.

1 Q. -- which is a printout from the Diversified
2 Financial Services website --
3 MR. DALTON: Objection. Calls for a
4 conclusion.
5 Q. -- on 7/16/2009 -- you have to let me finish
6 speaking, because she can't type us both talking at the
7 same time. -- which is a printout from the Diversified
8 Financial website on 7/16/2009.
9 MR. DALTON: Objection. Calls for
10 characterization. Calls for a conclusion. Lack of
11 authentication. Irrelevant, immaterial.
12 Q. If you would please look down about four
13 full paragraphs where it says with respect to cookies, and
14 could you please read that into the record.
15 MR. DALTON: Objection. Immaterial,
16 irrelevant, hearsay.
17 A. With respect to cookies: On Dealer Logins,
18 we set a cookie that helps us determine on the Dealer
19 Dashboard pages your unique dealer identification number.
20 Q. So, it appears as of July 16th, 2009
21 Diversified Financial is still using the term Dealer
22 Dashboard, correct?
23 MR. DALTON: Objection. Irrelevant,
24 immaterial, hearsay.
25 Q. You can answer the question.

1 A. I cannot attest to that. I'm not familiar
2 with that particular website.
3 Q. Is Diversified Financial related to your
4 DealerDashboard.com business?
5 A. I cannot attest whether they are or not.
6 Q. Are you -- is your DealerDashboard.com
7 website affiliated with Diversified Financial's Dealer
8 Dashboard?
9 A. I do not know.
10 Q. How don't you know?
11 A. Because there's thousands of people who are
12 affiliated with the website.
13 Q. Okay. Have you done business with
14 Diversified Financial on behalf of DealerDashboard?
15 MR. DALTON: Objection. Irrelevant,
16 immaterial.
17 Q. You can answer the question.
18 A. To the best of my -- well, I don't know. I
19 don't know. They could have a link on the site, I don't
20 know.
21 Q. Okay. We spoke before about Siebel,
22 correct, in your earlier testimony today?
23 A. Correct.
24 Q. Okay. And I believe at that time you had
25 marked that as Exhibit 62 in today's deposition the

1 document that we reviewed last year at your deposition,
2 which has formerly been marked as Dalton's Exhibit 27,
3 correct?
4 A. Repeat the question.
5 Q. How about if I just -- let's just strike
6 that all. Let me show you what has formerly been marked
7 as Dalton's Exhibit 27, which I believe we had reviewed
8 before as Exhibit 62. Do you recall discussing last year
9 at your deposition how Exhibit 27 or 62 since it's the
10 same document describes DealerDashboard employees to
11 review the most important information they need for their
12 work on one screen?
13 A. No, I don't recall that.
14 Q. Okay. Do you recall testifying that you
15 thought Siebel had ceased using the Dealer Dashboard name
16 for it's product?
17 A. I don't recall. I do know that I recently
18 visited this website address and it comes up page not
19 found.
20 Q. Okay.
21 A. And I think I might have had that as Exhibit
22 61 -- no.
23 (Opposer's Exhibit No. 73 was marked for
24 identification.)
25 MR. DALTON: Objection. Irrelevant,

1 immaterial, hearsay.
2 Q. Okay. Exhibit 73 is a printout from
3 download.oracle.com on 7/14/2009.
4 MR. DALTON: Objection. Is that a question?
5 Q. I'm identifying it for the record. Mr.
6 Dalton, can you please read for me what it says after
7 using Siebel.
8 A. Dealer Dashboards with an s.
9 Q. And if you turn to the next page, can you
10 also tell me what it appears to have?
11 A. What, what appears to have. I didn't
12 understand the question.
13 Q. You know what strike that. According to
14 Exhibit 73 Siebel appears to be using the Dealer Dashboard
15 term.
16 MR. DALTON: Objection.
17 Q. Would you answer the question, please.
18 A. I didn't hear a question, I heard a
19 statement.
20 Q. Isn't it true that as of 7/14/2009 it
21 appears that Siebel is still using the term Dealer
22 Dashboard?
23 A. I cannot attest to that. I did not make
24 this web search. When I went to that web search it came
25 up page not found.

1 (Opposer's Exhibit No. 74 was marked for
2 identification.)
3 MR. DALTON: Objection to Exhibit 74,
4 irrelevant, immaterial.
5 Q. I'm handing you Exhibit 74, it's also a
6 printout from download.oracle.com website from July 10th,
7 2009. Can you please read for the record the title --
8 MR. DALTON: Objection.
9 Q. -- of this document.
10 MR. DALTON: Objection. It appears to be
11 testimony.
12 A. Title of the document.
13 Q. Uh-huh.
14 A. Bookshelfv7.7: Changing Types of Activities
15 Displayed in the Dealer Dashboard.
16 MR. DALTON: Objection. Irrelevant and
17 immaterial.
18 Q. Is Siebel related to your
19 DealerDashboard.com business?
20 A. It is not.
21 Q. Okay. Is DealerDashboard.com website
22 affiliated with Siebel's Dealer Dashboard?
23 A. It is not.
24 Q. Earlier today we spoke about Goalline
25 Solutions, do you recall that?

1 A. I do.
2 (Opposer's Exhibit No. 75 was marked for
3 identification.)
4 MR. DALTON: Objection regarding Exhibit 75,
5 irrelevant, immaterial, hearsay.
6 Q. Mr. Dalton, will you please draw your eyes
7 to the right-hand side of Exhibit 75, can you please read
8 what it says above postcard ROI.
9 MR. DALTON: Objection. Irrelevant,
10 immaterial.
11 A. Dealer Dashboard.
12 (Opposer's Exhibit No. 76 was marked for
13 identification.)
14 Q. I'm handing you Exhibit 76, which is a
15 printout --
16 MR. DALTON: Objection. Irrelevant,
17 immaterial.
18 Q. Let me finish -- Exhibit 76 is a printout --
19 then you can voice your objection, Mr. Dalton. I want it
20 to be a clean record, it's going to be a lot of us cutting
21 each other off with dashes, it's easier this way.
22 MR. DALTON: Did you read our deposition.
23 Q. I'm handing you what's been marked Exhibit
24 76, which is a printout from goallinesolutions.com on
25 7/16/2009.

1 MR. DALTON: Objection. Irrelevant,
2 immaterial, hearsay.
3 Q. If you would please look to the bottom after
4 login and clear there's a line, what does it say under
5 there.
6 A. Home, company, products, contact us.
7 Q. Above that, sir.
8 MR. DALTON: Objection. Irrelevant,
9 immaterial.
10 A. Dealer Dashboard Postcard ROI.
11 Q. And then what does it say under that.
12 A. It's cut off, but I assume it says Login
13 here.
14 Q. Okay. Is Goalline Solutions related to your
15 DealerDashboard.com business?
16 A. They are not.
17 Q. Okay. Is your DealerDashboard.com website
18 affiliated with Goalline Solutions Dealer Dashboard?
19 A. They are not. Goalline Solutions has --
20 Q. You've answered the question, thank you very
21 much.
22 A. I might add that --
23 Q. You've answered the question.
24 MR. DALTON: Objection. Irrelevant,
25 immaterial, that will be continuing.

1 (Opposer's Exhibit No. 77 was marked for
2 identification.)
3 Q. I'm handing you Exhibit 77, which is a
4 printout from the usa.denon.com website on 7/10/2009.
5 MR. DALTON: Objection. Irrelevant,
6 immaterial, hearsay.
7 Q. Okay. Can you please read for me the header
8 of Exhibit 77, sir.
9 A. Are you talking about on the left-hand side?
10 Q. Yes.
11 MR. DALTON: Objection. Irrelevant,
12 immaterial.
13 A. Denon USA Dealer Dashboard.
14 Q. And can you please read for me the paragraph
15 that appears on the left-hand side.
16 MR. DALTON: Objection. Irrelevant and
17 immaterial.
18 A. The Dealer Dashboard is the easiest way for
19 Denon dealers to get the latest information on Denon
20 products, events, company information, and more. As a
21 Denon dealer, the Dashboard provides you with all kinds of
22 product related items such as downloads, images, sell
23 sheets, and more.
24 Q. And to the right would you agree with me
25 that it appears as if there's a login box for Dealer

1 Dashboard?
2 A. I would not. I cannot attest to the
3 authenticity.
4 Q. I'm not asking you to attest to the
5 authenticity. I'm asking you what does it say. What does
6 it say on the right-hand side under get the latest
7 updates, downloads, and user manuals for your product.
8 A. Where you have it highlighted on your copy,
9 Dealer Dashboard log-in.
10 Q. Is Denon USA related to your
11 DealerDashboard.com business?
12 A. To the best of my knowledge they are not.
13 Q. Is your DealerDashboard.com website
14 affiliated with Denon USA's Dealer Dashboard?
15 MR. DALTON: Objection. Irrelevant,
16 immaterial.
17 A. To the best of my knowledge they are not.
18 (Opposer's Exhibit No. 78 was marked for
19 identification.)
20 Q. Do you recall discussing Dashboard
21 Dealership Enterprises last year at your deposition?
22 A. I do not.
23 Q. Do you recall testifying that you had tried
24 to contact the registrant, but you were unsuccessful?
25 A. I do, yes.

1 Q. If you would take a moment to look at
2 Exhibit 78, which is a printout from Dashboardonline.com
3 dated 7/10/2009.
4 MR. DALTON: Objection. Irrelevant,
5 immaterial, hearsay.
6 Q. Can you read for me the top left-hand
7 corner, what is this called?
8 A. Are you talking about this (indicating)?
9 Q. You can read both.
10 A. Dashboard Online, Dashboard Dealership
11 Enterprises.
12 Q. And if you take a moment to read Exhibit 78,
13 according to the description noted in 78 -- actually
14 strike that. Is Dashboard Dealership Enterprises related
15 to your DealerDashboard.com business?
16 A. They are not.
17 Q. Is your DealerDashboard.com website
18 affiliated with the Dashboard Dealership Enterprises?
19 A. I can't attest to that.
20 Q. Is your DealerDashboard.com website
21 affiliated with Dashboard Dealership Enterprises Dealer
22 Dashboard?
23 A. I am not.
24 Q. Do you recall discussing the McIntosh Dealer
25 Dashboard during your deposition?

1 A. I do.
2 (Opposer's Exhibit No. 79 was marked for
3 identification.)
4 A. Let me correct that, I recall reading from a
5 paper that included McIntosh.
6 Q. Exhibit 79, which is a printout from
7 McIntoshlabs.com from 7/17 -- I'm sorry, 7/16/2009.
8 MR. DALTON: Objection. Irrelevant,
9 immaterial, hearsay.
10 Q. Okay. Can you please read for the record
11 what it says after welcome on Exhibit 79.
12 A. Welcome to the McIntosh Dealer Dashboard.
13 Q. And do you also see on this where it says
14 dealer login right above user name and email?
15 A. Yes.
16 Q. Is McIntosh Labs related to your
17 DealerDashboard.com business?
18 MR. DALTON: Objection. Irrelevant and
19 immaterial.
20 A. No.
21 Q. Is your DealerDashboard.com website
22 affiliated with McIntosh Labs' Dealer Dashboard?
23 MR. DALTON: Objection. Irrelevant,
24 immaterial.
25 A. No.

1 MS. FINGUERRA-DUCHARME: Let's take a short
2 break.
3 (Off the record.)
4 (Opposer's Exhibit No. 80 was marked for
5 identification.)
6 Q. I have marked Exhibit 80, which is a
7 printout from dealerdashboard.mooreandscarry.com website
8 as of 7/10/2009. Are you familiar with that?
9 MR. DALTON: Objection. Irrelevant and
10 immaterial, hearsay.
11 Q. Are you familiar with
12 dealerdashboard.mooreandscarry.com website?
13 A. I am not.
14 Q. Okay. Can you please read for the record
15 what it says starting from the beginning of Exhibit 80,
16 I'll tell you when you can stop.
17 MR. DALTON: Objection. Irrelevant,
18 immaterial, hearsay.
19 A. Dealer Dashboard, Dealer Dashboard, Welcome
20 to Dealer Dashboard, please login to your dashboard,
21 please login to use dashboard, Dashboard login.
22 Q. Okay. You can stop there. Is Moore and
23 Scarry Dealer Dashboard related to your
24 DealerDashboard.com business?
25 MR. DALTON: Objection. Irrelevant,

1 immaterial.
2 A. Not to my knowledge.
3 Q. Is DealerDashboard.com website affiliated
4 with Moore and Scarry Advertising, Inc.?
5 MR. DALTON: Objection. Irrelevant,
6 immaterial, hearsay.
7 A. Not that I know of.
8 (Opposer's Exhibit No. 81 was marked for
9 identification.)
10 Q. Okay. I've marked as Exhibit 81, a printout
11 from workplacefurn.com printed on July 10th, 2009.
12 MR. DALTON: Objection. Irrelevant,
13 immaterial, hearsay.
14 Q. Are you familiar with Mayline Group?
15 MR. DALTON: Objection. Irrelevant,
16 immaterial.
17 A. Not to my knowledge.
18 Q. Okay. Can you please read into the record
19 from where it says Mayline releases new.
20 MR. DALTON: Objection. Irrelevant,
21 immaterial, hearsay.
22 A. Mayline releases new dealer dashboard.
23 Q. Please continue on.
24 A. We have simplified dealer access to Mayline
25 information.

1 Q. Continue please.
2 A. The Mayline Group has made it easier than
3 ever for dealers to obtain proprietary information on a
4 host of topics via a n on the Mayline website. Called the
5 Dealer Dashboard, this internet site allows dealers to
6 obtain up-to-the-hour --
7 Q. Okay. You can stop there. Is the Mayline
8 Group related to your DealerDashboard.com business?
9 MR. DALTON: Objection. Irrelevant,
10 immaterial, hearsay.
11 A. Not to my knowledge.
12 Q. Is Mayline Group Dealer Dashboard related or
13 affiliated with the DealerDashboard.com website?
14 MR. DALTON: Objection. Irrelevant,
15 immaterial, hearsay.
16 A. Not to my knowledge.
17 (Opposer's Exhibit No. 82 was marked for
18 identification.)
19 Q. Are you familiar with the Rockford
20 Corporation?
21 MR. DALTON: Objection. Irrelevant,
22 immaterial, hearsay.
23 A. I am not.
24 Q. Okay. Did you know that the Rockford
25 Corporation is a publicly traded audio electronics,

1 speakers and accessories company?
2 MR. DALTON: Objection. Irrelevant,
3 immaterial, hearsay.
4 Q. You can answer the question. Did you know
5 that Rockford Corporation is a publicly traded audio
6 electronics, speakers and accessories company?
7 MR. DALTON: Objection. Irrelevant,
8 immaterial, hearsay.
9 Q. Do you know that?
10 A. I don't.
11 Q. It's a yes or no question.
12 A. I think it's been asked and answered.
13 Q. I don't think it has, you've not answered
14 the question as to whether or not --
15 A. Did you ask did I know Rockford Corporation,
16 I said, no.
17 (Opposer's Exhibit No. 83 was marked for
18 identification.)
19 Q. Okay. I've handed you Exhibit 83, which is
20 a printout from the login.rockfordcorp.com website as of
21 7/10/2009. Can you please read for me what it says --
22 MR. DALTON: Objection. Irrelevant,
23 immaterial, hearsay.
24 Q. Can you please read for me what it says in
25 the top left-hand corner of this document.

1 A. With regard to Exhibit 92?
2 Q. 83.
3 MR. DALTON: With regard to Exhibit 83 I
4 object to irrelevant, immaterial, hearsay.
5 A. Upper left-hand corner, Dealer Dashboard
6 sign on.
7 Q. Could you continue to read the document.
8 A. It looks like a logo Rockford, I guess
9 that's Rockford Corporation authorized dealer dashboard.
10 Q. Continue please.
11 A. Please sign in.
12 Q. Continue.
13 MR. DALTON: Objection. Irrelevant,
14 immaterial, hearsay.
15 A. Please enter your Dealer Dashboard username
16 and password.
17 Q. Is the Rockford Corporation Dealer Dashboard
18 related to your DealerDashboard.com business?
19 MR. DALTON: Objection. Irrelevant,
20 immaterial, hearsay.
21 A. Not to my knowledge.
22 Q. Is your DealerDashboard.com website
23 affiliated with Rockford's Dealer Dashboard?
24 MR. DALTON: Objection. Irrelevant,
25 immaterial, hearsay.

1 A. No.
2 (Opposer's Exhibit No. 84 was marked for
3 identification.)
4 Q. I've just handed you what's been marked as
5 Exhibit 84, which is a printout from 7/10/2009 of
6 eprofitfocus.com.
7 MR. DALTON: Objection. Exhibit 84, move to
8 strike, irrelevant, immaterial, hearsay.
9 Q. Are you familiar with Exhibit 84?
10 A. I am not.
11 Q. Were you aware that profit focus had a
12 product called the Dealer Dashboard?
13 MR. DALTON: Objection. Irrelevant,
14 immaterial, hearsay.
15 Q. Answer the question.
16 A. Not to my knowledge.
17 Q. Okay. Can you please read for the record
18 what it says from the challenge, there's two sentences
19 there, can you read that whole little paragraph on Exhibit
20 84.
21 MR. DALTON: Objection. Irrelevant,
22 immaterial, hearsay.
23 A. The challenge within today's environment
24 makes accessing relevant information quickly a priority.
25 Our Dealer Dashboard provides this functionality - when

1 your monthly data is uploaded to our website reports are
2 automatically generated for your viewing.
3 Q. Is the Profit Focus Dealer Dashboard related
4 to your DealerDashboard.com business?
5 MR. DALTON: Objection. Irrelevant,
6 immaterial, hearsay.
7 A. Not to my knowledge.
8 Q. Is your DealerDashboard.com website
9 affiliated with Profit Focus Dealer Dashboard?
10 MR. DALTON: Objection. Irrelevant,
11 immaterial, hearsay.
12 A. Not to my knowledge.
13 MR. DALTON: Move to strike.
14 (Opposer's Exhibit No. 85 was marked for
15 identification.)
16 Q. I've handed you what's been marked as
17 Exhibit 85, which is a printout of 7/10/2009 from
18 dealers.goarctic.co.uk. Are you familiar with Arctic
19 Spas?
20 A. Are you referring to Exhibit 85?
21 Q. I'm asking you if you're familiar with
22 Arctic Spas?
23 MR. DALTON: Objection. Irrelevant,
24 immaterial, hearsay.
25 A. No, I'm not.

1 Q. Can you please read for me what it says
2 there after welcome on Exhibit 85.
3 MR. DALTON: With regards to Exhibit 85, I
4 would object, irrelevant, immaterial, hearsay. Move
5 to strike.
6 Q. Can you please read to me what it says after
7 welcome on Exhibit 85.
8 A. To the Arctic Spas Dealer Dashboard.
9 Q. Okay. Is the Arctic Spas Dealer Dashboard
10 related to your DealerDashboard.com business?
11 MR. DALTON: Objection. Irrelevant,
12 immaterial, hearsay.
13 A. Not to my knowledge.
14 Q. Is your DealerDashboard.com website
15 affiliated with the Arctic Spas Dealer Dashboard?
16 MR. DALTON: Objection. Irrelevant,
17 immaterial, hearsay.
18 A. Not to my knowledge.
19 (Opposer's Exhibit No. 86 was marked for
20 identification.)
21 Q. I have marked as Exhibit 86 a printout of
22 7/10/2009 from ismtraining.com/blog.
23 MR. DALTON: Objection. Irrelevant,
24 immaterial, hearsay.
25 Q. Can you please read for me what it says from

1 posts tagged and continue to read until I ask you to stop
2 on Exhibit 86.
3 MR. DALTON: Objection. Irrelevant,
4 immaterial, hearsay.
5 A. Posts tagged the dealer dashboard,
6 TheDealerDashboard.com, Wednesday, February 4th, 2009.
7 Here is a great new tool to help you track your entire
8 e-commerce department's initiatives. Monitor in real time
9 all spending and performance. Are you putting your ad
10 dollars where you are getting the best results?
11 TheDealerDashboard.com will tell you. Check it out at
12 TheDealerDashboard.
13 Q. Okay. That's good. Is
14 TheDealerDashboard.com related to your DealerDashboard.com
15 business?
16 MR. DALTON: Objection. Irrelevant,
17 immaterial, hearsay.
18 A. Not to my knowledge.
19 Q. Is your DealerDashboard.com website
20 affiliated with TheDealerDashboard.com?
21 MR. DALTON: Objection. Irrelevant,
22 immaterial.
23 A. Not to my knowledge.
24 (Opposer's Exhibit No. 87 was marked for
25 identification.)

1 Q. Okay. I'm printing, I'm sorry, it's been a
2 long day. I've handed you Exhibit 87, which is a printout
3 from linkedin.com from 7/10/2009.
4 MR. DALTON: Objection to Exhibit 87. Move
5 to strike. Irrelevant, immaterial, and hearsay.
6 Q. Can you please tell me the company that is
7 listed on Exhibit 87?
8 MR. DALTON: Objection. Irrelevant,
9 immaterial.
10 A. I don't see a company.
11 Q. After the header companies, what is the
12 company listed?
13 A. I don't see a company.
14 Q. Isn't it true that it says Dashboard
15 Dealership Enterprises?
16 A. That's true that it does say that, I don't
17 see where that says it's a company.
18 Q. Okay.
19 A. Are you talking about the upper left-hand
20 side? I don't see where that says there's a company.
21 Q. Can you read the next sentence down that
22 says, this is the --
23 MR. DALTON: Objection. Irrelevant,
24 immaterial, hearsay.
25 A. This is a limited version of the Dashboard

1 Dealership Enterprises company profile.
2 Q. That's good. And can you continue in the
3 next paragraph where it says, dashboard on Exhibit 87.
4 MR. DALTON: Objection. Irrelevant,
5 immaterial, hearsay.
6 A. Dashboard is a market leader in web
7 management solutions for auto dealers including analytics
8 and exception based reporting.
9 Q. Period, sorry, you can stop there. Is
10 Dashboard Dealership Enterprises related to your
11 DealerDashboard.com business?
12 MR. DALTON: Objection. Irrelevant,
13 immaterial, hearsay.
14 A. Not to my knowledge.
15 Q. Is your DealerDashboard.com website
16 affiliated with Dashboard Dealership Enterprises?
17 MR. DALTON: Objection. Irrelevant,
18 immaterial, hearsay.
19 A. Not to my knowledge.
20 MR. DALTON: Move to strike.
21 (Opposer's Exhibit No. 88 was marked for
22 identification.)
23 Q. I've handed you what I've marked as Exhibit
24 88, which is a printout from a website called spoke.com
25 dated July 10th, 2009.

1 MR. DALTON: Objection. Irrelevant,
2 immaterial, hearsay. Move to strike.
3 Q. Exhibit 88 describes the Dealer Dashboard
4 coordinator position at Harley-Davidson, correct?
5 MR. DALTON: Objection. Irrelevant,
6 immaterial, hearsay.
7 Q. Answer the question.
8 A. I cannot attest to that. I have no knowledge
9 of that.
10 Q. Okay. If you can turn to Page 2 of Exhibit
11 88. Do you know Marva Gill-Herndon?
12 MR. DALTON: Objection. Irrelevant,
13 immaterial, hearsay.
14 Q. Do you know Marva Gill-Herndon?
15 A. I'm assuming your claim is that's an
16 individual or is it this little figurine.
17 Q. I'm asking you if you know someone named
18 Marva Gill-Herndon?
19 A. Not to my knowledge.
20 Q. Are you aware that she's the Dealer
21 Dashboard coordinator at Harley-Davidson, Inc.?
22 MR. DALTON: Objection. Irrelevant,
23 immaterial, hearsay.
24 A. No, I'm not.
25 Q. Okay. The Dealer Dashboard coordinator at

1 Harley-Davidson, Inc. is not related to your
2 DealerDashboard.com business; is it?
3 MR. DALTON: Objection. Irrelevant,
4 immaterial, hearsay.
5 A. Not to my knowledge.
6 MR. DALTON: Move to strike.
7 MS. FINGUERRA-DUCHARME: Okay. Let's take a
8 quick break, because I need to make a copy of
9 something that I wasn't expecting to have to show
10 you today.
11 (Off the record.)
12 Q. Mr. Dalton, I am handing you what was marked
13 at your last deposition as Exhibit 37. Do you recognize
14 this package?
15 A. You said deposition, I'm sorry, this is a
16 response to opposer's first request of documents, not
17 deposition.
18 Q. I know, I think we had reviewed this at your
19 last deposition, we had marked it as Exhibit 37, but do
20 you know what this document is?
21 A. I can't attest to -- I can't attest that we
22 discussed it, but I can say that this looks like what I
23 sent to you with regards to answers to your first request
24 of documents and things that's what it appears to be.
25 Q. Okay. If you look on Page 3 of Exhibit 37,

1 if you would turn to Page 3.
2 A. Okay.
3 MS. FINGUERRA-DUCHARME: Go off the record.
4 (Off the record.)
5 Q. Okay. Mr. Dalton, your answer to No. 28 was
6 in response to a question that said, please produce all
7 Exhibits that Applicant will rely on, refer to, or
8 introduce during the testimony period in this proceeding.
9 Can you please read for the record what your response was,
10 No. 28.
11 A. Exhibits A through T. Is that what you're
12 asking me?
13 Q. I'm asking you -- I wanted you to state for
14 the record what you wrote in response to request No. 28,
15 which called for all Exhibits that Applicant will rely on,
16 refer to, or introduce during the testimony period in this
17 proceeding. Can you read for the record what your
18 response was to No. 28.
19 A. Exhibits A through T and at
20 http:DealerDashboard.com.
21 Q. Okay. And Exhibits A through T that you
22 attached in response to opposer's first set of request of
23 documents and things did not include many of the Exhibits
24 you listed -- that you introduced today, which would
25 include 43, 44 --

1 MR. DALTON: Objection.
2 MS. FINGUERRA-DUCHARME: Let me finish with
3 my question.
4 Q. -- 43, 44, 45, 46, 47, 48, 49, 51, 52, 53,
5 54, 56, 58, 59, 61, 63, 65, 66, 67, 68, 69, 70 -- no,
6 that's it, correct?
7 MR. DALTON: Objection. Irrelevant,
8 immaterial, hearsay. And if you refer to 29,
9 reserves the right to amend during the course of
10 discovery.
11 Q. Do you recall when the discovery period
12 ended in this case?
13 A. I do not. Would that include for each
14 party, though?
15 Q. There's one discovery period.
16 A. Okay. Could -- so, when the discovery
17 period ended, I could probably refer to some notes here,
18 if you'd like.
19 MS. FINGUERRA-DUCHARME: That's fine. I
20 don't need you to answer the question. So, I'm
21 concluding the deposition for now, however I'm
22 reserving my right. I'm moving to strike the
23 documents that were not produced in response to
24 document request No. 28.
25 MR. DALTON: Objection. Untimely.

1 MS. FINGUERRA-DUCHARME: No, I'm not done.
2 No, they were absolutely not untimely and I reserve
3 the right if my objection gets overruled to conduct
4 further discovery.
5 MR. DALTON: Objection. Discovery has
6 ended. Are you finished?
7 MS. FINGUERRA-DUCHARME: I'm finished.
8 MR. DALTON: Okay. Rebuttal.
9 (Off the record.)
10 (Applicant's Exhibit No. 89 was marked for
11 identification.)
12 REDIRECT EXAMINATION
13 BY MR. DALTON:
14 Q. Mr. Dalton, I'm showing you what we've
15 marked as Joint Exhibit 89, which is a printout as of
16 7/16/2009 of the website the dealerdashboard.com; is that
17 correct?
18 A. Yes.
19 MS. FINGUERRA-DUCHARME: Objection.
20 Leading.
21 Q. Would you identify Exhibit 89 for the
22 record.
23 A. Yes. I did a web search on the term
24 thedealerdashboard.com and it came up with a blank page on
25 7/16/2009. And the reason why I did that web search is

1 that I --
2 MS. FINGUERRA-DUCHARME: Objection. Not
3 responsive to the question. Move to strike.
4 A. The reason why I did the web search is I
5 served them with a cease and desist letter.
6 MS. FINGUERRA-DUCHARME: Is there a question
7 pending?
8 MR. DALTON: I'm still identifying the
9 document.
10 MS. FINGUERRA-DUCHARME: Identifying the
11 document isn't a reason for running the search.
12 MR. DALTON: Your objection is noted for the
13 record. If you continue to harass during my
14 testimony we'll conclude this.
15 MS. FINGUERRA-DUCHARME: Fine.
16 MR. DALTON: I'll move to strike.
17 MS FINGUERRA-DUCHARME: You need to ask
18 yourself a direct question and answer it, you can't
19 just speak.
20 MR. DALTON: Your objection is noted for the
21 record.
22 MS. FINGUERRA-DUCHARME: And I move to
23 strike Exhibit 89 for failure to produce prior to
24 today.
25 A. Joint Exhibit 89 is a public document.

1 MS. FINGUERRA-DUCHARME: And I object to the
2 use of Joint Exhibit on this document, it's just
3 stickers that the court reporter used, it's by no
4 means a Joint Exhibit. So, maybe if we can go
5 through for the record and cross out the word joint
6 from all of these Exhibits and just note that
7 they're Exhibits.
8 Q. Mr. Dalton, would you continue with your
9 identification of Exhibit 89, Dalton Exhibit 89.
10 A. I did a search on a website, public document
11 published on the web available to the public, I intended
12 to rely on this document, it shows a blank page on the web
13 for the term thedealerdashboard.com.
14 MS. FINGUERRA-DUCHARME: Move to strike
15 Exhibit 89 for not producing prior to today.
16 Q. Mr. Dalton, I show in front of you what will
17 be marked as Dalton's Exhibit 90.
18 (Applicant's Exhibit No. 90 was marked for
19 identification.)
20 Q. And ask if you recognize that?
21 A. Yes, I do. It's an email exchange regarding
22 a cease and desist with the attorney for Growth
23 Industries. Growth Industries agreed to cease the use of
24 dealerdashboard.
25 MS. FINGUERRA-DUCHARME: Move to strike, not

1 responsive. It does not describe the document and I
2 move to strike Exhibit 90 as hearsay and as failure
3 to produce prior to today.
4 A. This document was received June 10, 2009
5 from lawyer, haskinslaw.
6 Q. Could you read the second sentence of the
7 paragraph beginning with as.
8 A. As Growth is not using your brand, and does
9 not intend to do so in the future.
10 MS. FINGUERRA-DUCHARME: Objection.
11 Hearsay. And is not a complete reading of the
12 document. It mischaracterizes the document. Move to
13 strike for failure to produce prior to today.
14 Q. Mr. Dalton, would you for the record read
15 the entire email exchange.
16 MS. FINGUERRA-DUCHARME: Objection.
17 Hearsay.
18 MR. DALTON: Strike that.
19 Q. Mr. Dalton, what is your email address?
20 A. My email address is DALTONME@hotmail.com.
21 Q. I have before you what's marked as Dalton's
22 Exhibit 90, would you please identify that for the record.
23 A. This is an email exchange from
24 haskinslaw@aol.com on Wednesday, June 10, 2009 addressed
25 to me at DALTONME@hotmail.com with the subject Trademark

1 Infringement.
2 Q. Mr. Dalton, could you read the email into
3 the record.
4 MS. FINGUERRA-DUCHARME: Objection.
5 Hearsay.
6 A. Mr. Dalton, I represent Growth Technologies
7 International, Inc. Your cease and desist email to
8 Growth's resellers is incorrect, as Growth is not using
9 your brand, and does not intend to do so in the future.
10 Any further emails or communications to resellers of
11 Growth Technologies threatening legal action and/or
12 violation of trademark infringement will be viewed as
13 defamatory and intentional interference with a
14 business/contractual relationship. My client will pursue
15 legal action immediately, if this conduct should occur.
16 Harry W. Haskins, Esquire, SunTrust Building, 3400 S.
17 Tamiami, T-A-M-I-A-M-I, Trail, Suite 201, Sarasota,
18 Florida 34239, telephone number 941-366-1388 office,
19 941-953-4284 facsimile.
20 Confidentiality Notice: The information in
21 this email and any attachments may be legally privileged
22 and confidential. It is intended solely for the
23 addressee. If you are not the intended recipient, any
24 disclosure, copying, distribution or any action taken or
25 omitted to be taken in reliance on it, is prohibited and

1 may be unlawful. If you have received this email in
2 error, please notify the sender and permanently delete the
3 email and any attachments immediately. You should not
4 retain, copy or use this email or any attachment for any
5 purpose, nor disclose all or any part of the contents to
6 any other person. Wanna slim down for summer? Go to
7 America Takes it Off to learn how. Dated 7/16/2009, page 1
8 of 1, DALTONME.
9 (Applicant's Exhibit No. 91 was marked for
10 identification.)
11 Q. Mr. Dalton, I have in front of you what is
12 marked as Defendant's (SIC) 91. And I ask if you would
13 identify that for the record.
14 MS. FINGUERRA-DUCHARME: I object to Exhibit
15 91 on the grounds that it has not been produced
16 prior to today.
17 A. This is a public document published public
18 document for a WHOIS search on the term
19 thedealerdashboard.com. It indicates that
20 thedealerdashboard.com -- I'm sorry --
21 MS. FINGUERRA-DUCHARME: Objection.
22 Hearsay.
23 A. -- it's from administrative contact,
24 contactprivacy.com
25 thedealerdashboard.com@contactprivacy.com. And it is

1 sitting on the THATSUS.com servers.
2 (Applicant's Exhibit No. 92 was marked for
3 identification.)
4 Q. Mr. Dalton, I have in front of me -- you,
5 Dalton's Exhibit 92. And if you could identify that for
6 the record.
7 A. It's a printout from
8 www.networksolutions.com/whois/registry-data.
9 Q. If you could read from the domain name.
10 MS. FINGUERRA-DUCHARME: I move to strike
11 Exhibit 92 as not being produced prior to today.
12 A. Domain Name, thedealerdashboard.com,
13 registrar, TUCOWS, Inc., Whois server, whois.tucows.com,
14 and sitting on THATSUS.com server.
15 MR. DALTON: I have no further
16 questions. I move to strike all the documents to
17 which the opposer has entered as being irrelevant,
18 immaterial, and hearsay.
19 MS. FINGUERRA-DUCHARME: I have the same
20 objection to all of Mr. Dalton's Exhibits being
21 hearsay, irrelevant, immaterial. And most and
22 foremost for his failure to comply with the TMP,
23 Federal Rules of Civil Procedure, and his
24 obligations.
25 MR. DALTON: So, you're objecting to all

Exhibits?

MS. FINGUERRA-DUCHARME: All Exhibits that were not produced prior to today.

MR. DALTON: Untimely. I don't think she noticed us at the time they were presented.

* * *

(Deposition concluded at 2:45 p.m.)

* * *

MICHAEL DALTON

STATE OF OHIO :
: ss.
COUNTY OF BUTLER :

I, CHRISTINA POTTER, a Notary Public for the State of Ohio, do hereby certify:

That the witness named in the deposition, prior to being examined, was by me first duly sworn;

That said deposition was taken before me at the time and place therein set forth and was taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

That said deposition is a true record of the testimony given by the witness and of all objections made at the time of the examination.

I further certify that I am neither counsel for nor related to any party to said action, nor in any way interested in the outcome thereof.

IN WITNESS WHEREOF, I have subscribed my name and affixed my seal this 22nd day of July, 2009.

Christina Potter

My commission expires:
March 21st, 2010

Notary Public in and for the
State of Ohio